

RECORDING REQUESTED BY AND  
WHEN RECORDED, MAIL TO:

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PREPARED BY: ROBYN V EISENBERG

*Robyn V Eisenberg*

Sears Consumer Financial Corporation of Delaware  
2500 Lake Cook Road  
Suite CL-A  
Riverwoods, IL 60015

02860111

Loan No. \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MORTGAGE

THIS MORTGAGE, is made this 12 day of November 1992  
between the Borrower, DAVID W POSLEY & MARILYN POSLEY  
HUSBAND AND WIFE AS JOINT TENANTS

(herein "Borrower"), whose address is  
18643 CYPRESS  
COUNTRY CLUB HILLS, IL 60478

and the Mortgagee,

DEPT. OF RECORDING 131.50  
T2222 TRAN 2887 11/17/92 10:26:00  
10455 \*--92-280111  
COOK COUNTY RECORDER

Sears Consumer Financial Corporation of Delaware

a Delaware Corporation, whose address is: 2500 Lake Cook Road, Suite CL-A, Riverwoods, IL 60015 (herein "Lender")

WHEREAS, Lender and Borrower have entered into an Account Agreement and Disclosure Statement (the "Agreement") pursuant to which Lender has agreed from time to time to make loans to Borrower under an arrangement whereby Borrower may borrow, repay and borrow again during the term of the Agreement.

BORROWER, in consideration of the indebtedness herein recited and the mortgage herein created, irrevocably mortgages, grants and conveys to Lender the following described property located in the County of

COOK, State of Illinois, with MORTGAGE COVENANTS:  
LOT 85 IN TIERRA GRANDE UNIT NUMBER 4 PHASE 1, BEING A SUBDIVISION OF PART  
OF THE NORTHEAST 1/4 AND THE SOUTHEAST 1/4 OF SECTION 3, TOWNSHIP 35 NORTH  
RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.  
TAX PARCEL NUMBER: 31-03-208-008

which has the address of 18643 CYPRESS (Number and Street)  
COUNTRY CLUB HILLS, IL 60478 (herein "Property Address");  
(City, State and Zip Code)

AMOUNT SECURED: Seventy Four Thousand Four Hundred and 0/100  
(\$ 74400.00).

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights appurtenances, rents

(subject however to the rights and authorities given herein to Borrower to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, 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 herein referred to as the "Property";

*3/30*

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Property of Cook County Clerk's Office

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TO SECURE to Lender (a) the repayment of all indebtedness due and to become due under the terms and conditions of the Agreement and Disclosure Statement (the "Agreement") executed by Borrower and dated the same day as this Mortgage, and all modifications, extensions and renewals thereof, which Agreement provides that Lender shall make advances to Borrower of a revolving nature and that such advances may be made, repaid and remade from time to time, subject to the limitation that the total outstanding principal balance owing at any one time under the Agreement (not including finance charges thereon at a rate which will vary from time to time, and other fees and other charges which may from time to time be owing under the Agreement) shall not exceed the Amount Secured designated on the first page of this Mortgage; (b) the payment of all other sums advanced in accordance herewith to protect the security of this Mortgage, with finance charges thereon at the variable rate described in the Agreement; (c) the performance of the covenants and agreements contained herein and in the Agreement; and (d) any future advances made by Lender to Borrower pursuant to paragraph 8 of this Mortgage (herein "Future Advances").

Any references in this Mortgage to the "Note" shall be deemed to refer to the Agreement, and any references in this Mortgage to notes and promissory notes shall include loan agreements, as applicable. All references to interest shall be deemed to include finance charges.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, that the Property is unencumbered, except for the encumbrances of record approved by Mortgagee, except as provided in paragraph 3 hereof, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

COVENANTS. Borrower and Lender covenant and agree as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Agreement, and the principal of and interest on any Future Advances secured by this Mortgage.

2. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, all payments received by Lender under the Agreement and paragraph 1 hereof shall be applied by Lender first (in the order Lender chooses) to any finance charges, collection costs and other charges owing under the Agreement or this Mortgage, second, to the principal payable under the Agreement.

3. CHARGES; LIENS. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain priority over this Mortgage (excluding the lien of any mortgage or deed of trust encumbering the Property that is prior in right or in time ("Prior Mortgage") to this Mortgage and that has been approved by Lender), and leasehold payments or ground rents, if any, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due and when Borrower makes payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Mortgage (excluding the lien of any Prior Mortgage); provided that Borrower shall not be required to discharge any such lien so long as Borrower shall (a) agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or (b) in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof, or (c) secure from the holder of such prior lien an agreement in form satisfactory to Lender subordinating such lien to this Mortgage. Any default by Borrower under the terms of any Prior Mortgage shall constitute a default under this Mortgage.

Borrower shall not enter into any agreement with the holder of any Prior Mortgage by which the Prior Mortgage or the indebtedness secured by the Prior Mortgage is modified, amended, extended or renewed, without the prior written consent of Lender. Borrower shall neither request nor accept any future advances under any Prior Mortgage without the prior written consent of Lender.

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4. HAZARD INSURANCE. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and such other hazards as Lender may require and in such amounts and for such periods as Lender may require. Unless Lender in writing requires otherwise, the policy shall provide insurance on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage stipulated in the hazard insurance policy. The amount of coverage shall be no less than Borrower's credit limit under the Agreement plus the full amount of any superior lien on the Property.

The insurance carrier providing insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this mortgage, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this mortgage.

Unless Lender and Borrower otherwise agree in writing, such application of proceeds to principal shall not extend or postpone the due date of the payments referred to in paragraph 1 hereof or change the amount of such payments. If under paragraph 17 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this mortgage immediately prior to such sale or acquisition.

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 impairment or deterioration of the Property and shall comply with the provisions of any lease if this mortgage is on a leasehold. If this mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by Borrower and recorded together with this mortgage, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this mortgage as if the rider were a part hereof.

6. PROTECTION OF LENDER'S SECURITY. If Borrower fails to perform the covenants and agreements contained in this mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorneys' fees and entry upon the Property to make repairs. If Lender required mortgage insurance as a condition of making the loan secured by this mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 6, with interest thereon, shall become additional indebtedness of Borrower secured by this mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Agreement unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take action hereunder. Any action taken by Lender under this paragraph 6 shall not cure any breach Borrower may have committed of any covenant or agreement under 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.

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.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Mortgage.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 hereof or change the amount of such payments.

**9. BORROWER NOT RELEASED.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage or release of any security for the obligations secured hereby, or any other amendment to the Agreement or this Mortgage granted by Lender to Borrower or to any successor in interest of Borrower, shall not operate to release, in any manner, the liability of Borrower or Borrower's successors, as the case may be. Lender shall not be required to commence proceedings against any successor in interest of Borrower or refuse 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 or Borrower's successor in interest.

**10. FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.

**11. REMEDIES CUMULATIVE.** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

**12. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 18 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

**13. NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided in this Mortgage shall be given by personally delivering such notice to Borrower or by mailing such notice by first class mail addressed 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 first class mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**14. UNIFORM MORTGAGE; GOVERNING LAW; SEVERABILITY.** This form of Mortgage combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform mortgage covering real property. This Mortgage shall be governed by the law of the jurisdiction in which the Property is located, except to the extent preempted by federal law. In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable.

**15. BORROWER'S COPY.** Borrower shall be furnished with a conformed copy of the Agreement and this Mortgage at the time of execution or after recordation hereof.

**16. TRANSFER OF THE PROPERTY.** If Borrower transfers any or all of the Property or any interest in it, or Borrower agrees to sell or otherwise transfer or assign Borrower's rights in the Property, Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable.

**17. ACCELERATION; REMEDIES.** Upon Borrower's breach of any covenant of agreement of Borrower in this Mortgage, 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 4 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 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 and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date

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Lien No. \_\_\_\_\_

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 invoke any remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 8, including, but not limited to, reasonable attorney's fees to the extent permitted by law. Lender shall publish the notice of sale and the Property shall be sold in the manner prescribed by applicable law. Lender or Lender's designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all reasonable costs and expenses of the sale, including reasonable attorney's fees to the extent permitted by law and costs of title evidence; (b) to all sums secured by this Mortgage, and (c) the excess, if any, to the person or persons legally entitled thereto.

**18. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 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 17 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled 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 Lender or 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. Lender and the receiver shall be liable to account only for those rents actually received.

**19. RELEASE** Upon payment of all sums secured by this Mortgage, Lender shall discharge this Mortgage without cost to Borrower. Borrower shall pay all costs of recordation if any.

**20. REQUEST FOR NOTICE.** Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address.

**21. WAIVER OF HOMESTEAD.** Borrower waives all right of homestead exemption in the property.

**22. NO MERGER.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the prior written consent of Lender.

Property of Cook County Clerk's Office

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Cash No. \_\_\_\_\_

IN WITNESS WHEREOF, BORROWER has executed this Mortgage under Seal.

David W. Posley                      Marilyn Posley  
 DAVID W POSLEY                      MARILYN POSLEY

Robert J. Byrne                      1 1/2  
 WITNESS                                      WITNESS

STATE OF ILLINOIS, \_\_\_\_\_ County as:

On this 11<sup>th</sup> day of November 1992 before me,  
 personally appeared Marilyn Posley & David Wayne Posley <sup>Husband & wife</sup>  
 acknowledged the foregoing instrument to be Their and  
 free act and deed.



Witness my hand and official seal.

Signature Beatrice S. Harris

Beatrice S. HARRIS  
 Name (Typed or Printed)

(Reserved for official seal)

My commission expires 11-17-96

(Space Below This Line Reserved For Lender and Recorder)

This instrument was prepared by:  
 Cheryl Livingston  
 Regional Finance Manager  
 Sears Consumer Financial Corporation  
 2500 Lake Cook Rd, CL-A  
 Riverwoods, IL 60015

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