

UNOFFICIAL COPY

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When Recorded, please return to:  
MBNA Consumer Services, Inc.  
400 Christiana Rd  
MS 0883  
Newark, DE, 19713  
App # 54581815



F	3350	A
P		P
T	3350	V
I	110	

DEPT-01 RECORDING \$33.50  
T#7777 TRAN 8385 08/29/96 13:17:00  
#7336 9 MC \*-96-662233  
COOK COUNTY RECORDER

ILLINOIS MORTGAGE

**THIS MORTGAGE** is given on August 22, 1996. The mortgagor is Rory Dean Smith and Eyn M. Smith, Husband And Wife ("Borrower"). This Mortgage is given to MBNA Consumer Services, Inc., which is organized and existing under the laws of the State of Delaware and whose address is 400 Christiana Rd., Newark, Delaware 19713 ("Lender"). Borrower owes Lender the principal sum of Thirty-Three Thousand and 00/100 Dollars (U.S. \$33,000.00). This debt is evidenced by Borrower's note ("Note") dated the date of the Mortgage, which establishes the rate(s) of interest to be charged thereunder and provides for payment in monthly installments, with the final scheduled installment, due and payable on August 26, 2011. This Mortgage secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Mortgage; and (c) the performance of Borrower's covenants and agreements under this Mortgage and the Note. For this purpose, Borrower does hereby mortgage, grant, convey and warrant (unless Borrower is an Illinois land trust, in which case Borrower does mortgage, grant, convey and quitclaim) to Lender and Lender's successors and assigns the following described property located in Cook County, Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of Illinois:

All that certain parcel of land in Cook County, State of Illinois as more fully described in Deed Doc# 92292581, ID# 31-01-218-002 being known and designated as Lot 2, Block 3, ~~Section 4, Township 35, Range 13, Flossmoor Park Second Addition, IL~~

1-35-13, CCI

which has the address of 611 Perth Avenue, Flossmoor, Illinois 60422 ("Property Address");

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**TOGETHER WITH** all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property".

P.I.N.: 31-01-218-002

This document was prepared by and, after recording, should be returned to: MBNA Consumer Services, Inc., 400 Christiana Road, Christiana Center 1 - 2nd Floor, Newark, DE 19713.

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey and, if Borrower is not an Illinois land trust, then also warrant the Property and that the Property is unencumbered, except for encumbrances of record. Unless Borrower is an Illinois land trust, Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

**COVENANTS.** Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

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**2. Funds for Taxes and Insurance.** This paragraph shall not apply to the extent that Funds are paid and escrowed as required by a mortgage, deed of trust or security agreement with a lien superior to the lien of this Mortgage. Subject to applicable law and at Lender's demand, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Mortgage as a lien on the property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; and (d) yearly flood insurance premiums, if any. These items are called "Escrow Items". Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a Lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 1601 et seq., unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Mortgage.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in a lump sum or in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 18, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Mortgage.

**3. Application of Payments.** This paragraph intentionally left blank.

**4. Prior Mortgage and Deed of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Mortgage, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them or cause them to be paid on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes or causes these payments to be made directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien arising after the date of this Mortgage which has priority over this Mortgage unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the lienholder an agreement satisfactory to Lender subordinating the lien to this Mortgage. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Mortgage, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

**5. Hazard or Property 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 any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurer shall be chosen by Borrower subject to Lender's approval, which shall not be unreasonably withheld. If Borrower fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

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All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. Subject to the rights of a prior mortgage, deed of trust or other security agreement, Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurer 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 restore or repair the Property damaged, if restoration or repair is economically feasible and Lender's security is not lessened. If restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurer has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Mortgage, whether or not then due. The 30-day period will begin when the notice is given.

If under paragraph 18 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

**6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence and shall continue to occupy the Property as Borrower's principal residence unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any civil or criminal forfeiture action or proceeding is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Mortgage or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Mortgage or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Mortgage is on a leasehold, Borrower shall comply with all the provisions of the lease. If the Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**7. Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorney's fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

**8. Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

**9. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, 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, whether or not then due. Any excess shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Mortgage immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Mortgage shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the

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amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Mortgage whether or not the sums are then due.

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 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restore or repair the Property or to the sums secured by this Mortgage, whether or not then due.

The foregoing provisions are subject to the rights of a prior mortgage, deed of trust or other security agreement.

**10. 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 in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest 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 successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**11. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Mortgage shall bind and benefit the successor and assigns of Lender and Borrower, subject to paragraph 16. Borrower's covenants and agreements shall be joint and several. Any Borrower who signs this Mortgage but does not execute the Note: (a) is signing this Mortgage only to mortgage, grant, convey and, if such Borrower is not an Illinois land trust, then also warrant such Borrower's interest in the Property under the terms of this Mortgage; (b) is not personally obligated to pay the sums secured by this Mortgage; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent.

**12. Notices.** Notices to Borrower shall be sufficient if mailed postage prepaid to Borrower at the Property Address. Notices to Lenders shall be sufficient if mailed postage prepaid to Lender's address appearing at the top of page 1 hereof.

**13. Governing Law; Severability.** This Mortgage shall be governed by federal law and the law of the jurisdiction in which the Property is located. 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 or the Note which can be given effect without the conflicting provision. To this end the provisions of this Mortgage and the Note are declared to be severable.

**14. Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Mortgage.

**15. Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

**16. Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Mortgage) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Mortgage. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change in the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 12 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

**17. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any

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removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 17, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 17, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**18. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Mortgage (but not prior to acceleration under paragraph 15 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default 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 non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Mortgage without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

**19. Release.** Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower. Borrower shall reimburse lender for any recordation costs.

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

**21. Riders to this Mortgage.** If one or more riders are executed by Borrower and recorded together with this Mortgage, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Mortgage as if the rider(s) were a part of this Mortgage. [Check applicable box(es)]

Condominium Rider       2-4 Family Rider       Planned Unit Development Rider       Other(s)  
(specify)

**22. Maximum Amount Secured.** This Mortgage shall secure an amount not to exceed the sum of the principal and interest evidenced by the Note and additional amounts, which additional amounts shall in no event exceed \$500,000.

**23. Trustee Exculpation.** If this Mortgage is executed by an Illinois land trust, trustee executes this Mortgage as trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee, and it is expressly understood and agreed by Lender and by every person now or hereafter claiming any right or security hereunder that nothing contained herein or in the Note secured by this Mortgage shall be construed as creating any liability on the trustee personally to pay said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder or to perform any covenants either express or implied herein contained, all such liability, if any, being expressly waived, and that any recovery on this Mortgage and the Note secured hereby shall be solely against and out of the property hereby conveyed by enforcement of the provisions hereof and of said Note, but this waiver shall in no way affect the personal liability of any individual co-maker or guarantor of the Note.

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## REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS 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.

By Signing Below, Borrower accepts and agrees to the terms and covenants contained in this Mortgage and in any rider(s) executed by Borrower and recorded with it.

[Signature] (SEAL)  
Rory Dean Smith

[Signature] (SEAL)  
Eric M. Smith

STATE OF ILLINOIS )  
                                  )  
COUNTY OF COOK )

SS

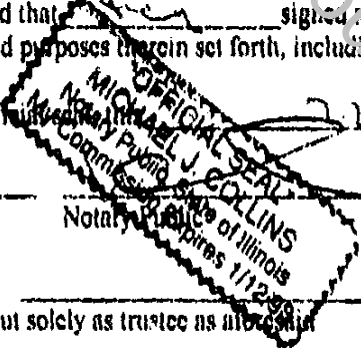
I, [Signature], a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that

Rory Dean Smith & Eric M. Smith Husband & wife

personally known to me to be the same persons whose name(s) is (are) subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that [Signature] signed and delivered the said instrument as [Signature] 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 22 day of November 1994

Commission Expires: 1/1/97



IF MORTGAGOR IS A TRUST:

not personally but solely as trustee as indicated

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Title: \_\_\_\_\_

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**SCHEDULE A**

ALL THAT CERTAIN PARCEL OF LAND IN COOK COUNTY, STATE OF ILLINOIS  
AND MORE FULLY DESCRIBED IN DEED DOC# 92292581, ID# 31-01-218-002  
BEING KNOWN AND DESIGNATED AS LOT 2, BLOCK 3, SECTION 1, TOWNSHIP  
3<sup>RD</sup> RANGE 13, FLOSSMOOR PARK SECOND ADDITION.

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