

# UNOFFICIAL COPY

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DEPT-01 RECORDING \$39.50  
740008 TRAN 5110 03/20/97 11:54:00  
#6499 # B-J #-97-193875  
COOK COUNTY RECORDER

97193875

Acct. No.: 0649399

## MORTGAGE TO SECURE ADVANCES UNDER GMAC HOME EQUITY LINE OF CREDIT AGREEMENT

NOTICE: THIS MORTGAGE MAY SECURE ADVANCES MADE AFTER A TRANSFER OF PROPERTY.

THIS MORTGAGE, as amended and extended (this "Mortgage") is signed to secure advances under a GMAC Home Equity Line of Credit Agreement (the "Agreement"); it is dated as of Jan. 17, 1997, and is made by Enrique Gervais and Audrey Gervais who reside(s) at 3902 Streamwood Drive Hazel Crest, Illinois 60429 as mortgagor(s), in favor of GMAC Mortgage Corporation, a Pennsylvania Corporation, 100 Witmer Road, Horsham, Pennsylvania 19044-0963, as mortgagee.

Throughout this Mortgage, "we", "us" and "our" refer to mortgagor(s) and any Illinois land trust ("Trust") that holds title to the property described below. "GMAC" refers to GMAC Mortgage Corporation or its assigns. The "Account" refers to the Home Equity line of credit account established by GMAC under the Agreement. "Borrower" refers to each person who signs the Agreement as borrower. The Agreement, this Mortgage and the Security Agreement and Collateral Assignment from Borrowers to GMAC (if the Property is held in Trust), taken together, are called the "Credit Documents." "Signer" refers to any person (other than GMAC) who has signed a Credit Document.

### DESCRIPTION OF SECURITY

By signing this Mortgage, we grant, bargain, sell, convey, and mortgage (unless mortgagor is a Trust, in which event the Trust conveys, mortgages and quitclaims) to GMAC, subject to the terms of this Mortgage, (a) the real estate located at 3902 Streamwood Drive, Hazel Crest, County of Cook, State of Illinois 60429, more fully described in Schedule A; (b) all buildings and other structures on the property; (c) all rights we may have in any road, alley, easement or license regarding the property or in any mineral, oil, gas or water which is part of the property; (d) all rents and royalties from the property; (e) all proceeds of any insurance on the property and all refunds of premiums on such insurance; (f) all proceeds of any taking (or threatened taking) of the property by any governmental authority ("condemnation"); and (g) all fixtures on the property at any time (collectively, the "Property").

The Property includes all rights and interests which we now have or which we may acquire in the future. For example, if the security mortgaged under this Mortgage is a leasehold estate and we subsequently acquire fee title to the Property, the rights and interests granted to GMAC by this Mortgage will include the fee title that we acquire. This Mortgage is also a Security Agreement under the Illinois Uniform Commercial Code and we hereby grant GMAC a security interest in the personal property described in (d) through (g) above.

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## SECURED OBLIGATIONS

We have signed this Mortgage to secure payment to GMAC of up to \$50,000.00, plus FINANCE CHARGES and any other amounts due GMAC under the Agreement (the "Total Balance Outstanding") and to secure performance by Borrower under the Agreement and our performance of the covenants of this Mortgage (collectively, the "Secured Obligations").

## PRIORITY OF ADVANCES

The lien of this Mortgage will attach on the date this Mortgage is recorded and will not be impaired prior to termination of the Agreement by virtue of our repayment in full of the Total Balance Outstanding at any time.

## REPRESENTATIONS AND DUTIES

We promise that, except for Permitted Liens: (a) we own the Property; (b) we have the right to mortgage the Property to GMAC; and (c) there are no outstanding claims or charges against the Property. The term "Permitted Lien" means (x) any mortgage, deed to secure debt or deed of trust ("security instrument") disclosed to GMAC by any Signer in applying for the Account, to the extent that the amount secured by such security instrument does not exceed the amount disclosed on such application; and (y) any liens, claims and restrictions of record that do not individually or collectively have a material adverse impact upon GMAC's security, the value of the Property or the Property's current use.

Each of us, except any Trust, gives a general warranty of title to GMAC. This means that each of us will be fully responsible for any losses which GMAC suffers because someone has rights in the Property other than Permitted Liens. We promise that we will defend our ownership of the Property against any claims of such right.

We will neither take nor permit any action to partition, subdivide or change the condition of title to all or any part of the Property. We will not amend any Permitted Lien without GMAC's prior written consent.

## CERTAIN PROVISIONS OF THE AGREEMENT

We understand that GMAC may, under certain circumstances set forth in the Agreement, cancel its obligation to make future advances and/or require repayment at once of all sums due under the Credit Documents (the "Total Balance Outstanding").

Under the Agreement, FINANCE CHARGES are based on the "prime rate" published in The Wall Street Journal or in certain circumstances the "prime rate" published in The New York Times or a similar index selected by GMAC. The rate of FINANCE CHARGES changes on a daily basis as the index or the amount outstanding under the Agreement increases or decreases. We understand that Borrower will not receive advance notice of such changes.

## PROMISES AND AGREEMENTS

We agree with GMAC as follows:

1. **TIMELY PAYMENT.** Except as limited by paragraph 10 below, Borrower shall pay when due all sums owed GMAC under the Credit Documents.
2. **APPLICATION OF PAYMENTS.** All payments shall be applied by GMAC as set forth in the Agreement.
3. **MORTGAGES AND DEEDS OF TRUST; CHARGES; LIENS.** We shall make payments when due and perform all our obligations under any mortgage, deed of trust or other security agreement on the Property.

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We shall pay or cause to be paid when due all loans, taxes, assessments, charges, fines, impositions and rents of any kind relating to the Property ("Assessments"). Receipts evidencing such payments shall be delivered to GMAC upon its request. Except for Permitted Liens, we shall not allow any encumbrance, charge or lien on the Property to become prior to this Mortgage.

#### 4. HAZARD INSURANCE; CONDEMNATION.

(a) We shall, at our cost, keep all improvements on the Property insured against loss caused by hazards included in the term "extended coverage" or by other hazards GMAC may reasonably specify. Hazard insurance shall be in an amount equal to the lesser of (i) the full replacement cost of the building that is part of the Property or (ii) the amount of this Mortgage plus the total amount of all Permitted Liens; but never less than the amount necessary to satisfy any coinsurance requirement contained in the insurance policy.

We may choose the insurance company, subject to approval by GMAC which may not be unreasonably withheld. All insurance policies and renewals must be in form acceptable to GMAC and must include a standard mortgagee clause in favor of GMAC. GMAC shall have the right to hold the policies and renewals, subject to the terms of any Permitted Liens. If we pay the premiums directly, we shall provide GMAC with all renewal notices and, if requested by GMAC, all receipts for premiums. If policies and renewals are held by any other person, we shall supply copies of them to GMAC within ten calendar days after they are issued.

In the event of loss, we shall give prompt notice to the insurance company and GMAC. GMAC may file a proof of loss if we fail to do so promptly.

(b) The proceeds of any condemnation of the Property shall be paid to GMAC, subject to any Permitted Liens. We shall give GMAC notice of any threatened condemnation and sign all documents required to carry out this paragraph 4. No condemnation settlement may be made without GMAC's prior written approval which shall not be unreasonably withheld.

(c) Subject to the terms of any Permitted Lien, GMAC may elect that the proceeds of any insurance or condemnation (after payment of all reasonable costs, expenses and attorneys' fees paid or incurred by GMAC and us) shall be applied to pay the Secured Obligations, to repair or reconstruct the Property, and/or pay us for our loss. In the event that such proceeds are not used entirely for repair and reconstruction, we shall provide GMAC with a new appraisal or valuation of the Property, conducted by a person or entity and in a form reasonably acceptable to GMAC, unless GMAC waives this requirement in writing. The receipt of proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

If the Property is abandoned by us, or if we fail to respond to GMAC in writing within 30 calendar days from the date notice of a proposed insurance or condemnation settlement is given to us, GMAC may settle the claim, collect the proceeds and apply them as set forth above.

If the Property is acquired by GMAC, all of our right, title and interest in and to any insurance or condemnation proceeds shall become the property of GMAC to the extent of the sums secured by this Mortgage.

**5. MAINTENANCE OF THE PROPERTY; LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** We shall: use, improve and maintain the Property in compliance with law; keep the Property in good repair and pay when due all repair costs; prevent waste, impairment and/or deterioration of the Property; and comply with the provisions of any lease of the Property.

If the Property is part of a condominium project or a planned unit development, we shall promptly perform all of our obligations under the governing documents of the project or development.

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**6. PROTECTION OF GMAC SECURITY.** We shall appear in and defend any action or proceeding which may affect the security of GMAC under this Mortgage or result in a violation of paragraph 3 above. If such an action is filed, we violate this Mortgage or Borrowers violate the Agreement, then GMAC may disburse funds and do whatever it believes necessary to protect the security of this Mortgage. In doing so, GMAC shall give us notice but it need not make demand or release us from any obligation.

Any amounts paid by GMAC under this paragraph 6, with FINANCE CHARGES at the variable rate in effect under the Agreement, shall be paid by us upon demand. Until paid by us, such amounts are secured by this Mortgage. GMAC is not required to incur any expense or take any action under this Mortgage and no action taken shall release us from any duty.

**7. INSPECTION.** Representatives of GMAC may inspect the Property from time to time. Except in an emergency, GMAC must first give notice specifying reasonable cause for the inspection.

**8. FINANCE CHARGES AFTER END OF ACCOUNT AND/OR JUDGMENT.** To the extent permitted by law, we agree that FINANCE CHARGES after the end of the Account and/or after a judgment is entered shall continue to accrue at the rate and in the manner specified in the Agreement.

**9. OUR CONTINUING DUTIES AND GMAC'S RIGHTS; WAIVERS.** No waiver of any GMAC right under the Credit Documents shall release or limit our liability, Borrower's liability, or that of our successors or Borrower's successors, nor shall any waiver affect the lien or priority of this Mortgage. GMAC shall not be required to start proceedings against any successor or modify payment terms by reason of any demand made by us or any successor.

No GMAC act or failure to act shall waive any right under this Mortgage. All waivers must be in writing and signed by GMAC; they shall apply only to the extent and with respect to the event specified in the writing. Obtaining insurance, or paying taxes, other liens or charges shall not be a waiver of GMAC's right to demand payment at once of the sums secured by this Mortgage in the event of default under the Credit Documents.

**10. SUCCESSORS AND ASSIGNS; JOINT AND SEVERAL LIABILITY; CO-SIGNERS.** This Mortgage shall bind us and our respective successors and permitted assigns for the benefit of GMAC and its successors and assigns. All agreements made by us or any successor are joint and several and may be enforced against each of us or any successor.

Any Signer who does not execute the Agreement (a) is co-signing only to encumber that person's interest in the Property and to waive all homestead, dower, curtesy, appraisement, valuation, redemption, reinstatement, stay, extension, exemption and moratorium laws now existing or hereafter enacted, (b) is not personally liable under the Credit Documents, and (c) agrees that GMAC and any Signer may modify either Credit Document, without consent and without modifying the interests of the rest of us under this Mortgage.

**11. NOTICES.** All notices shall be in writing. Except where applicable law requires otherwise:

(a) GMAC notices shall be hand delivered or mailed by first class, registered or certified mail to the address of the Property or to such other address specified by the addressee in a written notice given to GMAC. Any GMAC notice shall be considered given on the day it is deposited in the U.S. mail or is hand-delivered.

(b) Our notices shall be mailed to GMAC by first class, registered or certified mail to the address for such notices specified on our most recent monthly statement under the Agreement or to such other address specified by GMAC in a written notice given to us. Any such notice shall be considered given on the day it is received by GMAC.

**12. GOVERNING LAW.** This Mortgage will be governed by federal and Illinois law. If any provision is invalid, illegal, or unenforceable, this Mortgage shall be interpreted as if such provision had never been included.

**13. COPIES.** We shall receive copies of the Credit Documents at the time they are signed or after this Mortgage is recorded.

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14. **EXERCISING REMEDIES.** GMAC may exercise all of the rights and remedies provided by the Credit Documents or law, and any of these rights and remedies may be exercised individually or jointly, once or a number of times.

## 15. EVENTS OF DEFAULT.

(a) The events set forth in paragraph 15(b) are Events of Default if and when GMAC gives any Signer notice of default. We agree to notify GMAC promptly upon the happening of any event that would be an Event of Default under either Credit Document upon the giving of notice by GMAC.

(b) After giving notice of default, GMAC may end the Account and/or demand repayment at once of the Total Balance Outstanding in any of the following events:

(i) There has been fraud or material misrepresentation by any Signer in connection with the Account;

(ii) Borrowers have failed to meet the repayment terms of the Agreement for any amount outstanding; or

(iii) Any action or inaction by any Signer has adversely affected the Property or any right of GMAC in the Property; to the extent permitted by law, this will include, but not be limited to, any Signer (or any legal representative or successor of any Signer) agreeing to sell, transfer or assign or selling, transferring or assigning any interest in the Property, without the prior written consent of GMAC.

(c) Notwithstanding any language in this Mortgage to the contrary, GMAC will not give notice of default unless permitted by applicable law and GMAC will give us any grace period, right to cure and/or reinstatement right required by applicable law. This paragraph 15 is intended to give GMAC all rights permitted by applicable law.

**16. REMEDIES. IF BORROWERS DO NOT REPAY AT ONCE THE TOTAL BALANCE OUTSTANDING WHEN DUE, GMAC MAY EXERCISE ANY REMEDY AVAILABLE TO IT UNDER APPLICABLE LAW, INCLUDING FORECLOSURE.**

**17. ASSIGNMENT OF RENTS; RECEIVERS; GMAC POSSESSION OF THE PROPERTY.** As additional security, we hereby assign to GMAC any rents due on the Property after an Event of Default or abandonment of the Property. In any action to foreclose this Mortgage, GMAC shall be entitled to the appointment of a receiver.

If an Event of Default occurs or we abandon the Property, GMAC, without notice, may enter upon, take possession of, and manage the Property. GMAC may then collect or sue in its own name for any rents due on the Property. All rents so collected shall be applied first to payment of the reasonable costs of operation and management of the Property (such as collection costs, receiver's fees, bond premiums and attorneys' fees) and then to the Total Balance Outstanding. GMAC and the receiver must account only for rents actually received.

Acts taken by GMAC under this paragraph 17 shall not cure or waive any Event of Default or invalidate any act done pursuant to notice of default.

We will not, without the written consent of GMAC, receive or collect rent from any tenant on the Property more than one month in advance. Upon an Event of Default, we will pay monthly in advance to GMAC or any receiver the fair and reasonable rental value of the Property or that part of the Property in our possession. If we fail to pay such rent, we will vacate and surrender the Property to GMAC or to such receiver. We may be evicted by summary proceedings.

**18. RELEASE.** Upon payment and discharge of all sums secured by this Mortgage and termination of the Account, this Mortgage shall be void and GMAC shall release this Mortgage without charge to us.

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**19. REQUEST FOR NOTICES.** GMAC requests that copies of notices of default, sale and foreclosure from the holder of any lien which has priority over this Mortgage be sent to GMAC at 100 Witmer Road, Horsham, PA 19044-0963.

**20. EXHIBITS, SCHEDULES AND RIDERS, ETC.** The terms of any Exhibit, Schedule or Rider attached to this Mortgage or executed and recorded with this Mortgage shall be treated as if fully set forth in this Mortgage. All of the terms of the Agreement are made part of this Mortgage.

**21. TIME OF ESSENCE.** Time is of the essence in this Mortgage.

**22. ACTUAL KNOWLEDGE.** For purposes of the Credit Documents, GMAC shall not be deemed to have actual knowledge of any fact until it actually receives notice as set forth in paragraph 11 or until it receives written notice thereof from a source GMAC reasonably believes to be reliable. The date of receipt shall be determined by reference to the "Received" date stamped on such written notice by GMAC or its agent.

**23. TAXES.** If new taxes on mortgages or the debts they secure are established after the date of this Mortgage, we shall pay the full amount of any such tax.

**24. WAIVER OF STATUTORY RIGHTS.** To the extent permitted by law, for ourselves and our successors and assigns, we hereby waive the benefit of all homestead, dower, curtesy, appraisement, valuation, redemption, reinstatement, stay, extension, exemption and moratorium laws now existing or hereafter enacted and any right to have the Property marshalled upon any foreclosure. We further agree that any court having jurisdiction to foreclose may order the Property sold as an entirety.

**25. EXPENSES OF LITIGATION.** In any proceeding to enforce any remedy of GMAC under the Credit Documents there shall be allowed and included, to the extent permitted by law, as additional indebtedness in the judgment or decree, any court costs and reasonable expenses which may be paid or incurred by GMAC for attorneys; appraisers; documentary and expert evidence; stenographers; publication; surveys; abstracts of title; title searches; title insurance policies; Torrens certificates; and similar items which GMAC reasonably considers necessary in such proceeding or to evidence to bidders at any sale the true condition of the title to or value of the Property. Such expenses may be estimated to the extent they will be incurred after entry of the decree. All such expenses, and those that may be incurred to protect and maintain the Property or the lien of this Mortgage, shall be payable upon demand.

**26. CAPTIONS; GENDER; ETC.** The headings in this Mortgage are not to be used to interpret or define its provisions. In this Mortgage, the masculine gender includes the feminine and/or neuter, singular numbers include the plurals, and plurals include the singular.

**27. LIMITED LIABILITY OF TRUSTEE.** If this Mortgage is executed by a Trust, the Trustee executes this Mortgage under authority vested in it as such Trustee. It is expressly understood and agreed by GMAC and its successors that (a) nothing contained in the Credit Documents shall be construed to create any liability on the Trustee personally to pay any indebtedness or to perform any covenants either express or implied contained in the Credit Documents, and (b) any recovery under the Credit Documents shall be solely against and out of the Property by enforcement of the provisions thereof. This waiver shall in no way affect the personal liability of any Borrower.


**28. WRITTEN STATEMENTS.** Within five calendar days upon request in person or within ten calendar days upon request by mail, we will furnish a duly acknowledged written statement of the amount due under the Credit Documents and state whether any offsets or defenses exist against the debt secured by this Mortgage.

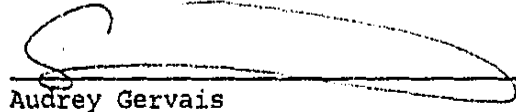
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By signing this Mortgage, we agree to all of the above.

  
Enrique B. Gervais  
MORTGAGOR

  
Audrey Gervais  
MORTGAGOR

\_\_\_\_\_  
MORTGAGOR

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MORTGAGOR

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MORTGAGOR

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STATE OF ILLINOIS )  
COUNTY OF COOK ) ss.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Enrique B. Gervais Audrey Gervais, personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument appeared before me this day in person, and acknowledged that ~~he~~ signed, sealed and delivered the said instrument as theirs free and voluntarily 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 17 day of January, of \_\_\_\_\_, 1997

Andrea L. Skopec  
Notary Public

Andrea L. Skopec  
Commission expires:

10-24-97



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## MORTGAGE

Title No. \_\_\_\_\_  
\_\_\_\_\_

### THIS INSTRUMENT PREPARED BY:

Peter Hender, Esq.  
GMAC Mortgage Corporation  
100 Witmer Road  
Horsham, PA 19044

TO

Recorded At Request of  
GMAC Mortgage Corporation

RETURN BY MAIL TO:  
GMAC Mortgage Corporation  
100 Witmer Road  
Horsham, PA 19044-0963



RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

Property of Cook County Clerk's Office

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## Schedule A

All that certain parcel of land situated in the County of Cook, State of Illinois being described as follows: Lot 56 in Dynasty Lake Estates Unit 2, being a subdivision of part of the Northwest Quarter of Section 2, Township 36 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois. Tax I.D. Number: 31-02-103-027-0000

Tax ID Number: 31-02-103-027-0000

Known as: 3902 Streamwood Drive , Hazel Crest, Illinois 60429

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