

# UNOFFICIAL COPY

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OPEN END MORTGAGE

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Agreement dated as of October 13, 1989 by and among the Home Owners Savings Bank, F.S.B. ("Lender") having its principal place of business at 225 West Cavour Avenue, Fergus Falls, Minnesota 56537 and Larry P. Mortellaro and Sharri L. Mortellaro, husband and wife ("Borrower") of 908 Seminole, Elgin, IL 60120

## THE MORTGAGE

To secure to Lender (a) the repayment of the indebtedness evidenced by the Revolving Credit Loan Agreement and Disclosure Statement dated October 13, 1989 between Borrower and Lender ("Revolving Credit Agreement") up to the maximum amount of \$ 8600.00 (the "Credit Limit"), together with interest thereon and all renewals, replacements, extensions and modifications; (b) the performance and observance of the covenants and agreements of this Borrower contained in the Revolving Credit Agreement and the Mortgage, and (c) the payment of all of the sums with interest thereon advanced in accordance herewith to protect the security of this Mortgage, for consideration paid, Borrower does hereby mortgage, grant and convey to Lender, with Mortgage Covenants and with power of sale, the Property, further described below, located in the (City) (Town) of Elgin, County of Cook, State of Illinois:

The West 32 feet of Lot 243 and Lot 244 (except the West 30 feet thereof) in Third Addition to Blackhawk Manor, being a Subdivision of part of Section 6 and 7, Township 41 North, Range 9, East of the Third Principal Meridian, according to the plat thereof registered in the office of the Registrar of Titles of Cook County, Illinois, on January 9, 1958 as Document 1776797.

06-07-106-058

which has the address of 908 Seminole, Elgin, IL 60120 (the "Property"), together with all improvements thereon, whether now or hereafter made or erected, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to said Property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property;

### 1. FUNDS FOR TAXES AND INSURANCE.

(a) Upon request by Lender, Borrower shall pay to Lender on or before the day each Minimum Payment under the Revolving Credit Agreement is due hereunder, until Termination and the payment in full of the Revolving Credit (as Termination and Revolving Credit are defined in the Revolving Credit Agreement) and all other obligations secured hereby, a sum ("Funds") equal to 1/12th of the yearly taxes and assessments which may attain priority over this Mortgage, plus 1/12th of yearly premium installments for hazard insurance, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills of reasonable estimates thereof.

(b) The Funds shall be held by Lender. Lender shall apply the Funds to pay said taxes, assessments and insurance premiums. Lender may charge a fee, unless prohibited by law, for so holding and applying the Funds, analyzing said account, or verifying and compiling said assessments and bills. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to the Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings 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.

(c) If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, and insurance premiums shall exceed the amount required to pay said taxes, assessments and insurance premiums as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on future monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments and insurance premiums as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is mailed by Lender to Borrower requesting payment thereof.

(d) The Funds are pledged as additional security for the sums secured by this Mortgage. Upon Termination and the payment in full of the Revolving Credit and all other obligations secured hereby, Lender shall promptly refund to Borrower any Funds held by Lender. At any time after the occurrence of an Event of Default under the Revolving Credit Agreement or under this Mortgage (an "Event of Default"), Lender may apply any Funds then held by Lender as a credit against the sums secured by this Mortgage.

(e) Notwithstanding anything in this Section 1 to the contrary, the Borrower shall be in compliance with this section if Borrower pays the Funds to the holder of the Senior Lien (see Section 18 below), if any, under an agreement which requires the Funds to be applied in a manner consistent with the terms of this section.

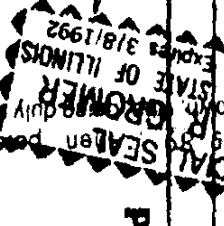
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Notary Public

Bloomington, MN 55437  
 Home Owners Savings Bank, F.S.B.  
 8400 Normandale Lake Blvd., Suite 280  
 This Mortgage was recorded by: 8036879  
 On this 31st day of October, 1989, before me, the undersigned, a Notary Public in and for the State of Illinois, personally appeared Larry P. Mortellaro and Sharril L. Mortellaro, husband and wife, who are duly sworn, acknowledged the foregoing to me, and declared to me that they are the legal owners of the premises described in the foregoing instrument, and that they executed the foregoing instrument voluntarily and without any duress, fraud, coercion, or undue influence, and that they intended to be bound by the terms and conditions of the foregoing instrument.



1989 OCT 31 PM 4:01

By signing below, Borrower accepts and agrees to the terms and covenants contained in the Open-End Mortgage as of the date and year first above written.

(Borrower) Larry P. Mortellaro  
 (Borrower) Sharril L. Mortellaro

23. WAIVER OF HOMESTEAD: Borrower waives all right of homestead exemption in the Property.

22. FINANCING STATEMENT: This Mortgage is intended to obtain the benefits of a Security Agreement and to be filed in lieu of a Financing Statement.

21. AMENDMENT OF CREDIT AGREEMENT: It is understood that this Mortgage is part of and incorporated in the Revolving Credit Agreement between Borrower and Lender and that no Amendment, renewal, modification or extension of said agreement shall affect the enforceability or priority of this Mortgage which shall act as security for said agreement as amended, renewed, modified or extended.

20. REVOLVING CREDIT: It is understood that this Mortgage secures the committed revolving line of credit set forth in the Revolving Credit Agreement, and that from time to time the outstanding balance of loans made under said credit may change and may, at one or more times during the term of this Mortgage Agreement, be zero.

19. COVENANTS REGARDING SENIOR LIEN: Borrower shall not modify, amend, extend, refinance or renew the Senior Lien, or the debt or any other obligation secured by the Senior Lien, and the Borrower shall not cause or permit the balance of the debt secured by the Senior Lien to be increased, without the prior written consent of the Lender.

(a) Any default under the Senior Lien or the obligations secured thereby, of which default Lender has knowledge, shall be an Event of Default under the Revolving Credit Agreement and this Mortgage, and the Lender shall be entitled (but not obligated) to cure said default and amounts advanced hereunder shall be subject to the provisions of Section 6 above.

18. SENIOR LIEN: This mortgage is subject to a prior mortgage from Larry P. Mortellaro and Sharril L. Mortellaro (herein the Senior Lien) Borrower represents and warrants that there is presently an outstanding principal balance secured by the Senior Lien which is equal to or less than said original principal sum, and that the Senior Lien is not in default and that no event has occurred which, solely with the passage of time or giving of notice, or both, will cause the Senior Lien to be in default and that no breach of covenant of the Senior Lien exists or will occur as a result of Borrower's execution of this Mortgage.

for Cook (County), in Book Page (as Document No. 3661163 and securing an original principal sum of \$ 70,487.00

(b) Upon or after the occurrence of an Event of Default, or upon such acceleration, or upon the abandonment of the Property, and at any time prior to the expiration of any period of redemption following judicial sale, 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 the Lender or 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 attorney fees, and then to the sums otherwise secured by this Mortgage. Such amounts shall also be secured by this Mortgage as if they were advanced at Borrower's request under this Mortgage. Lender shall be liable to account only for those rents actually received.

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(a) The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other

## 8. CONDEMNATION.

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.

(b) Any amounts disbursed by Lender pursuant to this Section 6 shall bear interest from the date of disbursement at the interest rate stated in the Revolving Credit 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 such law) and 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 demand. Nothing contained in this Mortgage shall require Lender to incur any expenses or take any action hereunder.

(a) If Borrower fails to perform the covenants and agreements contained in this Mortgage and the Revolving Credit Agreement, or if any action or proceeding is commenced which has a material adverse effect upon Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements involving a bankrupt or decedent, the Lender, at Lender's option, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest in the Property, including, but not limited to, disbursement of reasonable attorneys' fees and entry upon the Property to make repairs.

## 6. PROTECTION OF LENDERS SECURITY.

5. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS; CONDOMINIUM; PLANNED UNIT DEVELOPMENTS. Borrower shall keep the Property as Borrower's principal residence, in good repair and shall not commit waste or permit impairment or deterioration of the Property. 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 bylaws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by the 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 The Revolving Credit Agreement as if the rider were a part hereof.

4. MORTGAGE INSURANCE. If Lender requires mortgage insurance as a condition of making the loans 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.

(e) Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of subsequent Minimum Payments. Upon the occurrence of an Event of Default, 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 shall pass to Lender to the extent of the sums secured by this Mortgage.

(d) Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damages, provided that Lender's sole judgment such restoration or repair is economically feasible or the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or the security of this Mortgage would be impaired, as determined by the Lender in its discretion, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. Upon the occurrence of an Event of Default, or if the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 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 and is hereby granted a power of attorney, deemed to be coupled with an interest, to negotiate a settlement of such claim on behalf of Borrower and 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.

(c) All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of 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.

(b) The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender, which approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid in the manner provided under Section 1 above, and if not paid in such manner, by Borrower making payment, when due, directly to the insurance carrier.

(a) 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.

## 3. HAZARD INSURANCE

2. CHARGES; LIENS. The Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage in the manner provided under Section 1 above, or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Mortgage, provided that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall 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.

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taking of the Property, or part thereof or of conveyance in kind or condemnation are hereby assigned and shall be paid to Lender.

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(b) Unless otherwise agreed by the Lender and the Borrower, in writing, in the event of a total or partial taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower.

(c) Upon the occurrence of an Event of Default, or 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 such notice is mailed, Lender is authorized and is hereby granted a power of attorney, deemed to be coupled with an interest, to negotiate a settlement of such claim on behalf of Borrower, and 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.

(d) Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal pursuant to this section shall not extend or postpone the due date of subsequent Minimum Payments as required by the Revolving Credit Agreement.

**9. BORROWER NOT RELEASED.** 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, 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 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.

**10. FOREBEARANCE 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 of or preclude the exercise of any such right or remedy.

**11. REMEDIES CUMULATIVE.** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy granted by 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; CO-SIGNERS; CAPTIONS.** The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Section 14. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Mortgage but does not execute the Note (a) is co-signing this Mortgage only to mortgage, grant and convey that 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. 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 thereof.

**13. GOVERNING LAW; SEVERABILITY.** In the event that any provision or clause of this Mortgage or the Revolving Credit Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or Revolving Credit Agreement which can be given effect without the conflicting provision. To this end the provisions of the Mortgage and the Revolving Credit Agreement 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, EVENT OF DEFAULT.** The sale or transfer by the Borrower of all or any part of the Property or an interest therein without Lender's prior written consent, which consent Lender may withhold in its sole discretion, excluding (a) the creation of a purchase money security interest for household appliances, (b) a transfer by devise, descent or by operation of law upon the death of a joint tenant who is not the sole Borrower hereunder or (c) the grant of any leasehold interest of three years or less not containing an option to purchase, shall constitute an additional Event of Default.

**16. ACCELERATION; REMEDIES.** Upon the occurrence of an Event of Default, as defined in the Revolving Credit Agreement, or as otherwise provided in this Mortgage, in addition to any remedies provided in the Revolving Credit Agreement, 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 Lender may invoke any remedies permitted by this Mortgage or the Revolving Credit Agreement or by applicable law.

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 Section 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 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 non-existence of a default or any other defense of Borrower to acceleration and sale. 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 invoke the power of sale and any other remedies permitted by applicable law, including foreclosure by judicial proceeding. Lender shall be entitled to collect all reasonable cost and expenses incurred in pursuing the remedies provided in this Section 16, including, but not limited to, reasonable attorneys' fees.

**17. ASSIGNMENT OF RENTS; LENDER IN POSSESSION**

(a) As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under this Mortgage of the abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

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