

B-43890.2



992290

CHEQUE-EQUITY REAL ESTATE MORTGAGE

MERCANTILE NATIONAL BANK OF INDIANA

This Mortgage made this 5th day of August, 1988, by and between William H. & Kathy A. Noel, Husband & Wife of (hereinafter called "Mortgagor") and MERCANTILE NATIONAL BANK OF INDIANA, 5243 Hohman Avenue, Hammond, Indiana, 46320 (hereinafter called "Mortgagee")

WITNESSETH:

That the Mortgagor and Mortgagee have entered into a certain Cheque Equity Line of Credit Agreement (hereinafter called "Agreement") dated August 5, 1988, whereby the Mortgagee, subject to default by Mortgagor, has obligated itself to loan monies to the Mortgagor from time to time, as requested by the Mortgagor, which may not exceed the aggregate principal sum of Twenty Thousand Dollars and 00/100 (\$ 20,000.00) at any one time for a period of five (5) years. That to the extent that the Mortgagor has borrowed or will borrow monies from the Mortgagee pursuant to said Agreement, the Mortgagor has agreed to pay the Mortgagee minimum monthly installments in a sum equal to the FINANCE CHARGE accrued to and including the last day of each monthly billing cycle.

That the interest rate charged for any monies loaned to Mortgagor by Mortgagee pursuant to said Agreement is based upon an Index Rate which rate is defined as being the Prime Rate as published in the money rates section of the Wall Street Journal on the first business day of the billing cycle, if more than one Prime Rate is listed, the Index Rate shall be the highest of the Prime Rates listed. If the term Prime Rate is redefined or if it is no longer published, then the ANNUAL PERCENTAGE RATE shall be determined by selection of another index which is similar, beyond our control, and readily verifiable by you plus a margin of 1.50%. The interest rate charged is a variable one and will increase or decrease in the event that the Index Rate increases or decreases. The interest rate as computed is changed once a month on the first day of each billing cycle which is monthly, and will remain in effect until the first day of the next billing cycle. The FINANCE CHARGE is determined by applying the daily periodic rate to the average balance for the billing cycle.

That any changes in the interest rate are mandatory pursuant to said Agreement and any increase therein can reduce the amount of any payment by the Mortgagee that is applied to principal and increase the amount applied to interest. The minimum monthly payments required by said Agreement will not amortize the Mortgagor's loan balance within the five (5) year term of the Agreement, and at the end of said five (5) year term the entire principal balance and unpaid interest shall be immediately due and owing by the Mortgagor.

That the recording of this mortgage by the Mortgagee, in addition to giving constructive and public notice to all third parties of the lien rights of the Mortgagee in the mortgaged property, is also done to inform all subsequent lienholders, whether they be consensual, judicial, or statutory, that the Mortgagee's obligation to advance funds to the Mortgagor is mandatory pursuant to said Agreement, subject to default by the Mortgagor, and that any and all future advances made by the Mortgagee to the Mortgagor subsequent to any other lien being placed against the mortgaged property shall be done by any such lienholder with prior notice to it of the Mortgagee's obligation to advance monies to the Mortgagor pursuant to said Agreement.

THAT IT IS THE PURPOSE OF THE MORTGAGEE BY THIS CLAUSE, AND THE RECORDING OF THIS MORTGAGE, TO GIVE NOTICE TO ALL THIRD PARTIES DEALING WITH THE MORTGAGOR OR THE MORTGAGED PROPERTY OF THE MORTGAGEE'S INTENTION TO ASSERT A PRIOR LIEN AS TO ANY AND ALL SUBSEQUENT LIENHOLDERS OF THE MORTGAGED PROPERTY TO THE FULL AMOUNT OF ALL LOANS AND ADVANCES MADE BY MORTGAGEE TO THE MORTGAGOR OR ON BEHALF OF THE MORTGAGOR PURSUANT TO SAID AGREEMENT AND THIS MORTGAGE, PLUS ACCRUED INTEREST, COSTS OF COLLECTION, AND A REASONABLE ATTORNEY'S FEE, WHETHER SAID LOANS AND ADVANCES ARE MADE PRIOR TO OR AFTER ANY SUCH LIEN WHICH MAY BE SUBSEQUENTLY PLACED AGAINST THE MORTGAGED PROPERTY.

NOW THEREFORE, to secure to Mortgagee the repayment of (A) any and all indebtedness or liabilities to Mortgagee as evidenced by said Agreement, together with any extensions or renewals thereof, and any other instrument given by Mortgagor to Mortgagee as evidenced of or in payment of any indebtedness arising out of said Agreement; (B) any and all other obligations and liabilities now owing or hereafter incurred by Mortgagor to Mortgagee, whether joint or several, primary or secondary, or absolute or contingent, and whether or not related to or of the same class as the specific debt secured herein or secured by additional or different collateral, with the exception of any other indebtedness for personal, family or household purposes if this mortgage is on the Mortgagor's principal dwelling, including a mobile home; (C) the payment of all other sums advanced to protect the security of this mortgage; and (D) the performance of all covenants and agreements of the Mortgagor herein contained, the Mortgagor does hereby MORTGAGE and WARRANT unto the Mortgagee, its successors and assigns the following described Property located in

Lake County, in the State of Indiana, legally described as follows:

Lot 30, Block 2, Fair Meadow 4th Addition to Munster, Indiana. Recorded in Plat Book 37, Page 52. in Lake County, Indiana. Commonly known as: 9626 Fran-Lin Parkway, Munster, Indiana 46321

CHICAGO TITLE INSURANCE COMPANY INDIANA DIVISION

LILLIAN A. BLASTICK RECORDER, LAKE COUNTY CROWN TITLE INSURANCE CO. LAKE COUNTY INDIANA FILED FOR RECORD. AUG 15 10 21 AM '88

TOGETHER with all buildings, improvements, and tenements now or hereafter erected on the property, and all easements, rights, rights-of-way, drives, alleys, pavements, curbs and street front privileges, rents, issues, profits, royalties, mineral, oil and gas rights and profits, water, water rights and water stock appurtenant to the property; and all fixtures, equipment, apparatus, motors, engines, machinery and building materials of every kind of nature whatsoever now or hereafter located in, on, used or intended to be used in connection with the Property, including, but not limited to those for the purpose of supplying or distributing heating, cooling, ventilating, power, electricity, gas, air, water and light; and all blinds, shades, curtains, curtain rods, mirrors, cabinets, attached floor coverings, awnings, storm windows, doors, storm doors, screens, antennas, trees, shrubs and plants, plumbing and electrical fixtures and communication systems, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this instrument whether actually physically annexed to the property or not, and all of the foregoing together with said Property are herein referred to as the "Property."

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. **WARRANTY OF RIGHT TO MORTGAGE.** Mortgagor covenants that mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property, and the Mortgagor will warrant and defend generally the title to the Property against all claims and demands, subject to any liens, easements, covenants, conditions and restrictions of record listed in a schedule of exceptions to coverage in any title insurance policy insuring Mortgagee's interest in the Property.

2. **TAXES AND CHARGES.** Mortgagor shall pay from time to time, when due, and before any penalty attaches, all general and special taxes and assessments, water and sewer charges and taxes, and all other public charges imposed or assessed against the Property or arising in respect to the use, occupancy or possession thereof. Mortgagor shall promptly furnish to Mortgagee, upon request by Mortgagee, all notices, bills and statements received by Mortgagor of amounts so due, and Mortgagor shall, upon request by Mortgagee, promptly furnish Mortgagee receipts evidencing such payments. Mortgagor may in good faith contest at its own expense the validity of any tax, assessment or charge provided Mortgagor pays the same in full under protest or deposits said sum with the Mortgagee as security for payment thereof.

3. **INSURANCE.** Mortgagor shall keep all buildings and improvements now existing or hereafter erected or situated on the Property insured against fire, lightning, windstorm, vandalism, malicious damages, and any such other hazards included with the term "extended coverage," together with such other hazards, liabilities and contingencies in such amounts and for such periods as Mortgagee may from time to time reasonably require. Mortgagor shall keep all buildings and improvements insured against loss by damage by flood if the Property is located in a Flood Hazard Zone. Mortgagor shall obtain premises liability insurance with respect to the Property in an amount acceptable to the Mortgagee.

All said insurance policies and renewals thereof shall be issued by carriers satisfactory to the Mortgagee, and shall include a standard mortgage clause, loss payee clause or endorsement in favor of the Mortgagee and in form and substance acceptable to the Mortgagee. Each such policy shall not be cancellable by the insurance company without at least thirty (30) days prior written notice to the Mortgagee. Any such insurance policy shall be in a sum sufficient to pay in full the cost of repairing and replacing the buildings and improvements on the Property and in no event shall be less than the maximum amount that the Mortgagee is obligated to loan to the Mortgagor pursuant to said Agreement secured hereby plus the outstanding balance on the first mortgage. The Mortgagor shall deliver the original of any such policy to the Mortgagee to be held by it. The Mortgagor shall promptly furnish to Mortgagee, on request, all renewal notices and receipts for paid premiums. At least thirty (30) days prior to the expiration date of any such policy, Mortgagor shall deliver to Mortgagee any such renewal policy.

In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Mortgagor authorizes and empowers Mortgagee as attorney-in-fact for Mortgagor to adjust and compromise any claim under any such insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, to endorse and deposit any insurance checks or drafts payable to Mortgagor, and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this paragraph 3 shall require Mortgagee to incur any expense or take any action hereunder, nor prevent the Mortgagee from asserting any independent claim or action versus any such insurance carrier in its own name.

The insurance proceeds after the deduction of the Mortgagee's expenses incurred in collecting the same, shall be applied to the payment of the sums secured by this Instrument, whether or not then due with the balance, if any, to Mortgagor. Any such application of the proceeds shall not extend or postpone the due dates of the payments or change the amounts of such installments provided by said Agreement. If the Property is sold pursuant to paragraph 12 hereof or if Mortgagee acquires title to the Property, Mortgagee shall have all of the right, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

4. **PRESERVATION AND MAINTENANCE OF PROPERTY.** Mortgagor (A) shall not commit waste or permit impairment or deterioration of the Property, make any material alterations therein, nor demolish or remove the same, (B) shall not abandon the Property, (C) shall keep the Property including improvements thereon in good condition and repair, (D) shall not mortgage or otherwise encumber nor allow any judgment liens, tax liens or mechanic's liens to be imposed against the Property, (E) shall promptly pay when due any indebtedness which may be secured by any other mortgage, lien or charge on the Property, (F) shall comply with all laws, ordinances, regulations, codes and requirements of any governmental body applicable to the Property, (G) shall give notice in writing to Mortgagee of and, unless otherwise directed in writing by Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Mortgagee.

5. **USE OF PROPERTY.** Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Mortgagor shall not initiate or acquiesce to a change in the zoning classification of the Property without Mortgagee's prior written consent.

6. **PROTECTION OF MORTGAGEE'S SECURITY.** If Mortgagor fails to perform any of the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property of title thereto or the interest of Mortgagee therein, then Mortgagee at Mortgagee's option may disburse such sums, may make such appearances and take such action as Mortgagee deems necessary, in its sole discretion, to protect Mortgagee's interest.

Any amounts disbursed by Mortgagee pursuant to this Paragraph 6 shall become an additional indebtedness of Mortgagor secured by this Instrument. Such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Agreement. Mortgagor hereby covenants and agrees that Mortgagee shall be subrogated to the rights of the holder of any lien so discharged, in whole or in part, by the Mortgagee. Nothing contained in this Paragraph 6 shall require Mortgagee to incur any expense or take any action hereunder. If Mortgagee makes any payment authorized by this Paragraph 6, including but not limited to taxes, assessments, charges, liens security interests or insurance premiums, Mortgagee may do so according to any notice, bill, statement or estimate received from the appropriate party without inquiry into the accuracy or validity or such notice, bill, statement or estimate. The payment of any such sums by the Mortgagee shall not be deemed a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Instrument and declare this Instrument in default, and failure to so act shall not be considered as a waiver of any right accruing to Mortgagee on account of any default hereunder on the part of the Mortgagor.

7. **INSPECTION.** Mortgagee may make or cause to be made reasonable entries upon and inspection of the Property at all reasonable times and access thereto shall be permitted for that purpose by the Mortgagor.

8. **CONDEMNATION.** Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Mortgagee.

In the event of a total or partial taking of the Property, Mortgagor authorizes Mortgagee to apply such awards, payments, proceeds or damages, after the deduction of Mortgagee's expenses incurred in the collection of such amounts to payment of the sums secured by this Instrument, whether or not then due, with the balance, if any, to Mortgagor. Any application of the proceeds shall not extend or postpone the due date of the monthly installments or change the amount of such installments referred to in said Agreement. Mortgagor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Mortgagee may require.

9. **TRANSFERS.** Mortgagor shall not sell or transfer all or any part of said Property, grant an option to purchase the same, lease the Property, sell the same by contract, transfer occupancy or possession of the Property, nor sell or assign any beneficial interest or power of direction in any land trust which holds title to the Property without the prior written consent of the Mortgagee.

10. **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS.** The covenants and agreements herein contained shall bind the respective successors and assigns of Mortgagee, subject to the provisions of Paragraph 10 hereof, and the rights and privileges of the Mortgagee shall inure to the benefit of its payees, holders, successors and assigns. All covenants and agreements of Mortgagor shall be joint and several. In exercising any rights hereunder of taking any actions provided for herein, Mortgagee may act through its employees,

agents or independent contractors as authorized by Mortgagee. The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

11. **GOVERNING LAW; SEVERABILITY.** This instrument shall be governed and enforced by the laws of the State of Indiana except where the Mortgagee by reason of a law of the United States or a regulation or ruling promulgated by an agency supervising the Mortgagee is permitted to have or enforce certain provisions in this Instrument then in that event the Mortgagee may elect to have those provisions of this Instrument enforced in accordance with the laws of the United States. In the event that any provision of this Instrument or the Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Agreement which can be given effect without the conflicting provisions, and to this end the provisions of this Instrument and the Agreement are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor is interpreted so that any charge provided for in this Instrument or in the Agreement, whether considered separately or together with other charges levied in connection with this Instrument and the Agreement, violates such law, and Mortgagor is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Mortgagee in excess of the amounts payable to Mortgagee pursuant to such charges as reduced shall be applied by Mortgagee to reduce the principal of the indebtedness evidenced by the Agreement. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor has been violated, all indebtedness which is secured by this Instrument or evidenced by the Agreement and which constitutes interest, as well as all other charges levied in connection with such indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Agreement.

12. **DEFAULT; ACCELERATION; EXTENTION; REMEDIES.** Upon Mortgagor's default of any covenant, warranty, condition or agreement of Mortgagor in this Instrument, including but not limited to, the covenants to pay when due any sums secured by this Instrument, or the default by Mortgagor of anyone or more of the events or conditions defined as an Event of Default in the Agreement secured hereby, or in any other obligation secured by this mortgage or upon the default by Mortgagor in any obligation under any mortgage having priority over this Instrument, Mortgagee, at Mortgagee's option, may declare all of the sums secured by this Instrument to be immediately due and payable without further demand and may foreclose this Instrument by judicial proceedings and may invoke any other remedies permitted by applicable law or provided herein. Mortgagee shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees, appraisal fees, expert witness fees, costs of court reporters, travel expenses, costs of documentary evidence, abstracts and title reports.

The Mortgagee, at its option, may extend the maturity of the note and indebtedness secured hereby, or any balance due thereon, from time to time, upon written agreement executed by the Mortgagor, for such further periods, at such rate of interest, and upon such conditions as may then be agreed upon, and no such extension, and no forbearance or delay of the Mortgagee in enforcing any of the provisions of this indenture, shall operate to impair the lien thereof or waive any rights accrued or that might accrue hereunder.

The Mortgagee shall also be entitled to collect all costs and expenses, including but not limited to, reasonable attorney's fees, incurred by Mortgagee in connection with (A) any proceeding, without limitation, probate, bankruptcy, receivership or proceedings to which the Mortgagee may be a party, either as plaintiff, claimant or defendant by reason of this Instrument or any indebtedness secured hereby; (B) preparation of the commencement of a suit for foreclosure of this Instrument after accrual of the right to foreclose whether or not actually commenced; or (C) the defense of this mortgage in any proceeding instituted by any other lienholder. All costs, expenses and attorney's fees when incurred or paid by Mortgagee shall become additional indebtedness secured by this Instrument and which shall be immediately due and payable by Mortgagor with interest at the rate stated in said Agreement.

13. **ASSIGNMENT OF RENTS.** That Mortgagor hereby assigns to Mortgagee as additional and collateral security for the indebtedness hereinbefore described, all of the rents, issues and profits accruing under any leases now on said Property, or which may hereafter be placed thereon, and all lessees or sub-lessees are hereby directed, upon demand of Mortgagee, to pay said rents, issues and profits direct to Mortgagee, this assignment to become null and void upon releases of this mortgage, PROVIDED, however, this assignment shall become effective only upon default by Mortgagor in making payment under the Agreement hereby secured or in the performance of any of the terms and conditions of this mortgage.

14. **MISCELLANEOUS.** (A) The word "Mortgagor" as used herein shall include all persons executing this mortgage and the word "Mortgagee" shall mean its respective successors and assigns. The singular shall mean the plural and the plural shall mean the singular and the use of any gender shall be applicable to all genders; (B) Any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law or equity, shall not be a waiver of or preclude the exercise of any such right or remedy; (C) Each remedy provided for in this Instrument is distinct and cumulative to all other rights and remedies under this Instrument or afforded by applicable law or equity, and may be exercised concurrently, independently or successively in any order whatsoever; (D) That no change, amendment or modification of this Instrument shall be valid unless in writing and signed by the Mortgagor and Mortgagee or their respective successors and assigns.

IN WITNESS WHEREOF, Mortgagor has executed this Instrument the date and year set forth above

William H. Noel II
William H. Noel II

Kathy A. Noel
Kathy A. Noel

STATE OF Indiana) SS:

COUNTY OF Lake)

Before me, Denise A. Ryan, A Notary Public in and for said County and State, on this 5th day of August, A.D., 19 88, personally appeared William H. & Kathy A. Noel,
Husband & Wife

personally known to me, and known to me to be the person(s) who (is) (are) described in and who executed the foregoing mortgage, and acknowledged the same to be (his) (their) voluntary act and deed for the uses and purposes herein set forth.

WITNESS My hand and official seal.

My commission expires: May 18, 1992

Denise A. Ryan
Denise A. Ryan, Notary Public

Resident of Lake County.

This Instrument prepared by: lf Foley