

304

UNOFFICIAL COPY

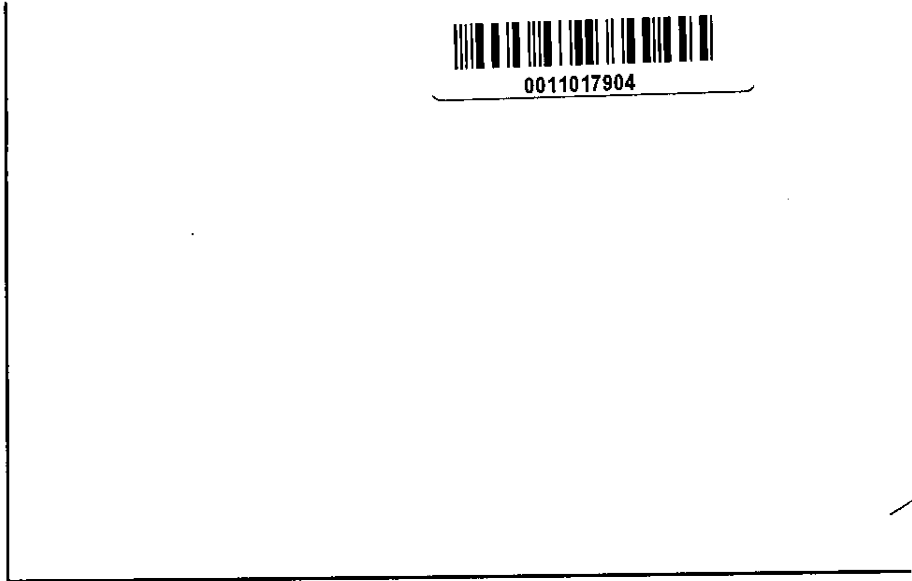
0011017904

86170036 18 001 Page 1 of 19  
2001-10-31 09:08:07  
Cook County Recorder 57.00



0011017904

Box for Recorder's Use Only



7A54481 D2MS 187756

Property of Cook County

MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT, AND FINANCING STATEMENT is dated as of October 22, 2001 and is made between Hearts United Homes Limited Partnership, an Illinois Limited Partnership ("Mortgagor"), located at 401 East 41<sup>st</sup>, Chicago, Illinois 60653-2705 and Hyde Park Bank and Trust Company ("Mortgagee"), located at 1525 East 53rd Street, Chicago, Illinois 60615.

19 CE

WITNESSETH

Mortgagor has executed a Promissory Note dated as of October 22, 2001 payable to the order of the Mortgagee in the principal amount of \$2,200,000.00 ("Note"), plus interest at the per annum rates set forth in the Note. The interest rate provided for in the Note is a variable rate of interest. The principal balance together with any accrued interest shall be payable in accordance with the terms of the Note and any unpaid principal balance plus any accrued and unpaid interest is due and payable in full on March 31, 2003. The proceeds of the Note will be advanced in multiple disbursements to Mortgagor by Mortgagee for financing the cost of acquisition of the Premises (defined below) and the construction of certain improvements thereon, all in accordance with the Construction Loan Agreement dated October 22, 2001 made by and between Mortgagor and others and Mortgagee ("Loan Agreement"). This Mortgage is subject to the Amended and Restated Redevelopment Agreement New Homes for Chicago Program dated as of September 26, 2001.

GRANT OF MORTGAGE

1.1 To secure payment of the liabilities, obligations and indebtedness evidenced by the Note (defined below) and the Liabilities (defined below) and the performance of the covenants and agreements of Mortgagor hereunder, including any and all renewals and extensions of the Note, Mortgagor does by these presents WARRANT, CONVEY and MORTGAGE unto Mortgagee, all of Mortgagor's estate, right, title and interest in the real estate situated, lying and being in the County

BOX 333-CTI

# UNOFFICIAL COPY

of Cook, and State of Illinois, legally described on attached Exhibit A and made part hereof, which is referred to herein as the "Premises", together with all improvements, buildings, tenements, hereditaments, appurtenances, water, gas, oil, minerals, and easements located in, on, over or under the Premises, and all types and kinds of furniture, fixtures, apparatus, machinery, goods and equipment, including without limitation, all of the foregoing used to supply heat, gas, air conditioning, water, light, power, refrigeration or ventilation (whether single units or centrally controlled) and all screens, window shades, storm doors and windows, floor coverings, awnings, stoves and water heaters, whether now on or in the Premises or hereafter erected, installed or placed on or in the Premises, and whether or not physically attached to the Premises. The foregoing items are and shall be deemed a part of the Premises and a portion of the security for the Liabilities.

1.2 The total amount of indebtedness secured by this Mortgage may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed a maximum principal amount of \$6,600,000.00 plus additional advances, plus interest thereof, and any disbursements made by Mortgagee for the payment of taxes, special assessments, or insurance on the Premises, with interest on such disbursements.

1.3 Further, Mortgagor does hereby pledge, assign, transfer, deliver and grant to Mortgagee, all contracts and contract rights for the sale of all or any portion of the Premises, all leases, written or verbal, rents, issues and profits of the Premises, including without limitation, all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing, and all deposits of money as advance rent or for security, under any and all present and future leases of the Premises, together with the right, but not the obligation, to collect, receive, demand, sue for and recover the same when due or payable. Mortgagee by acceptance of this Mortgage agrees, as a personal covenant applicable to Mortgagor only, and not as a limitation or condition hereof and not available to anyone other than Mortgagor, that until a Default shall occur or an event shall occur which under the terms hereof shall give to Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive and enjoy such avails.

1.4 As to all of the foregoing items described in paragraph 1.1 and 1.3 above, Mortgagor hereby grants Mortgagee a security interest in such items whether now existing or hereafter acquired, which security interest Mortgagor grants with the purpose of securing the payment and performance of the Liabilities. To that extent, this Mortgage shall be deemed to be a security agreement and financing statement for such purposes. The Mortgagor will execute Uniform Commercial Code Financing Statements as may be requested by the Mortgagee.

1.5 Mortgagor does hereby expressly waive and release all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois.

## MORTGAGOR COVENANTS and REPRESENTATIONS

While any of the Liabilities remain outstanding, Mortgagor represents, warrants, covenants and agrees as follows:

11017904

# UNOFFICIAL COPY

2.1 Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and, except for this Mortgage, free from any encumbrances, security interests, liens, mechanics' liens or claims for lien and any other claims or demands against Mortgagor's title to the Premises; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises and upon request exhibit satisfactory evidence of the discharge of such lien or charge to Mortgagee (except as the same are being contested diligently and in good faith and have been secured in a manner reasonably acceptable to Mortgagee); (d) complete in a good and workmanlike manner using new materials of first class quality and within a reasonable time any building or improvement now or at any time in process of construction upon the Premises; (e) comply and cause any tenant of the Premises to comply with all requirements of all laws or municipal ordinances with respect to the construction maintenance or use of the Premises or sales of lots comprising the Premises; (f) make no material alterations in the Premises, except as required by law or municipal ordinance, unless such alterations have been previously approved in writing by Mortgagee; (g) refrain from impairing or diminishing the value of the Premises; (h) use the proceeds of the Note solely for the purposes set forth in the Loan Agreement; (i) perform and comply with all of the terms, provisions and conditions of the Loan Agreement, including without limitation, those provisions pertaining to the construction of the Improvements and Residences (as defined in the Loan Agreement) upon the Premises within any applicable and residences periods as provided in the Loan Agreement; (j) not seek, make or consent to, without Mortgagee's prior written consent, any change in the zoning or conditions of use of the Premises or in the plans for the Improvements or Residences thereof or thereon which would impair Mortgagee's ability to construct the Improvements or Residences on the Premises pursuant to the Loan Agreement.

2.2 Mortgagor shall pay, when due and before any penalty attaches, all general taxes, special taxes, special assessments, water taxes or charges, drainage taxes or charges, sewer service taxes or charges, and other taxes, assessments or charges against the Premises. Mortgagor shall, upon written request, furnish to Mortgagee duplicate paid receipts for such taxes, assessments and charges. To prevent Default (as defined in Section 4.1) hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax, assessment or charge which Mortgagor may desire to contest prior to such tax, assessment or charge becoming delinquent.

2.3 Upon the request of Mortgagee, Mortgagor shall deliver to Mortgagee all original leases or contracts of sale of all or any portion of the Premises, together with assignments of such leases or contracts from Mortgagor to Mortgagee, which assignments shall be in form and substance satisfactory to Mortgagee. Mortgagor shall not, without Mortgagee's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, procure, permit or accept any prepayment, discharge or compromise of any rent or release any tenant from any obligation at any time while the Liabilities secured hereby remains unpaid. Mortgagor shall not, without Mortgagee's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, accept any amount as liquidated damages or cancel or terminate any contract of sale other than as specifically provided in such contract.

11017904

# UNOFFICIAL COPY

2.4 Any award of damages resulting from condemnation proceedings, exercise of the power of eminent domain, or the taking of the Premises for public use are hereby transferred, assigned and shall be paid to Mortgagee; and such awards or any part thereof may be applied by Mortgagee, after the payment of all of Mortgagee's expenses, including costs and attorneys' and paralegals' fees, to the reduction of the indebtedness secured hereby in such order of application as Mortgagee may elect, and Mortgagee is hereby authorized, on behalf and in the name of Mortgagor, to execute and deliver valid acquittances and to appeal from any such award.

2.5 Mortgagor shall keep the Premises and all buildings and improvements now or hereafter situated on the Premises insured under Builders Risk Insurance with extended coverage over fire and other casualties using completed values for the amount of full insurable value for all improvements and residences under construction at any time on the Premises. Mortgagor shall keep the Premises and all buildings and improvements now or hereafter situated on the Premises insured with extended coverage over loss or damage by fire, lightning, windstorm, vandalism and malicious damage and such other hazards as may from time to time be designated by Mortgagee. Mortgagor shall keep all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by flood, if the Premises is located in a flood hazard zone. Each insurance policy shall be for an amount sufficient to pay in full the cost of replacing or repairing the buildings and improvements on the Premises and, in no event, less than the principal amount of the Note. Mortgagor shall obtain liability insurance with respect to the Premises in an amount which is acceptable to Mortgagee. All policies shall be issued by companies satisfactory to Mortgagee. Each insurance policy shall be payable, in case of loss or damage, to Mortgagee. Each insurance policy shall contain a mortgagee's and/or lender's loss payee clause or endorsement in form and substance satisfactory to Mortgagee. In the event of any loss, Mortgagor shall give immediate notice thereof to Mortgagee and any appropriate insurers. The Mortgagee may make any proof of loss to any insurer, if the Mortgagor fails to immediately make a proof of loss to any such insurer. Mortgagor shall deliver all insurance policies, including additional and renewal policies, to Mortgagee. In case of insurance about to expire, Mortgagor shall deliver to Mortgagee renewal policies not less than ten days prior to the respective dates of expiration. Each insurance policy shall not be cancelable by the insurance company without at least 30 days' prior written notice to Mortgagee.

2.6 Notwithstanding any other provisions of this Mortgage, no sale, lease, mortgage, trust deed, or grant by Mortgagor of an encumbrance of any kind, conveyance, transfer of occupancy or possession, contract to sell, or transfer of the Premises, or any part thereof, or sale or transfer of ownership of any beneficial interest or power of direction in a land trust which holds title to the Premises, shall be made without the prior written consent of Mortgagee.

2.7 Unless otherwise agreed to in writing, Mortgagor covenants and agrees to deposit at the place as Mortgagee may, from time to time, in writing appoint and, in the absence of appointment, then at the office of Mortgagee commencing with the first interest payment pursuant to the Note secured hereby, and on each and every interest payment date thereafter until the Liabilities secured by this Mortgage is fully paid, a sum equal to the last total annual taxes and assessments for the last ascertainable year (general and special) with respect to the Premises divided by the number of annual

11017904

# UNOFFICIAL COPY

interest payments due hereunder. Notwithstanding the foregoing, if the taxes or assessments for the last ascertainable year exclude the buildings or improvements or any part thereof, now constructed or to be constructed on the Premises, then the amount of the deposits to be paid pursuant to this paragraph shall be based upon the reasonable estimate of Mortgagee as to the amount of taxes and assessments which shall be levied or assessed. Concurrent with the initial disbursement of the Note, Mortgagor will also deposit with Mortgagee an amount based upon the taxes and assessments so ascertainable or so estimated by Mortgagee, as the case may be, for taxes and assessments with respect to the Premises on an accrual basis for the period from January 1, immediately following the year for which all taxes and assessments have been fully paid to and including the date of the first installment tax and assessment deposit hereinabove mentioned. The deposits are to be held in trust without allowance of interest and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any of the taxes or assessments (general or special) for any year when the same shall become due and payable, Mortgagor shall, within ten days after receipt of a notice and demand from Mortgagee deposit the additional funds as may be necessary to pay such taxes and assessments (general and special). Any excess shall be applied to subsequent deposits for taxes and assessments.

2.8 Upon request by Mortgagee, concurrent with and in addition to the deposits for general and special taxes and assessments pursuant to the terms of Section 2.7 of this Mortgage, Mortgagor will deposit with Mortgagee a sum equal to the premiums that will next become due and payable on any insurance policies required hereunder, divided by the number of annual interest payments due hereunder so that such payments are sufficient to pay the insurance premiums when they become due and payable. All sums deposited hereunder shall be held in trust without interest for the purpose of paying the insurance premiums.

2.9 Mortgagor is the sole owner of the Premises free from any lien, encumbrance or claim, except this Mortgage.

2.10 The Mortgagor represents and warrants the following:

(a) the Premises and the operations conducted thereon do not violate any applicable federal, state or local law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any restrictive covenant or deed restriction (recorded or otherwise), including without limitation all applicable zoning ordinances and building codes, flood disaster laws and Environmental Laws (defined below);

(b) without limitation of Paragraph (a) above, the Premises and the operations conducted thereon by the Mortgagor or any current or prior owner or operator of the Premises or operation, are not and were not in violation of or subject to any existing, pending or threatened action, suit, investigation, inquiry or proceeding by any governmental authority or to any remedial obligations under any Environmental Laws;

11017904

# UNOFFICIAL COPY

(c) all notices, permits, licenses or similar authorizations, if any, required to be obtained or filed in connection with the operation or use of the Premises including without limitation past or present treatment, storage, disposal or release of a hazardous substance or solid waste into the environment, have been duly obtained or filed;

(d) the Mortgagor has taken all steps necessary to determine and has determined that no hazardous substances or solid wastes have been disposed of or otherwise released and there has been no threatened release of hazardous substances on or to the Premises except in compliance with Environmental Laws;

(e) the Mortgagor has taken all steps necessary to determine that no hazardous substances, asbestos, hazardous facilities, pollutants or contaminants are located in or on the Premises;

(f) the Mortgagor has no material contingent liability in connection with any release or threatened release of any hazardous substance or solid waste into the environment;

(g) there are no underground storage tanks on the Premises or as reasonably can be ascertainable, on property adjacent to or in close proximity to the Premises; and

(h) the use which the Mortgagor makes or intends to make of the Premises will not result in the unlawful or unauthorized disposal or other release of any hazardous substance or solid waste on or to the Premises.

The terms "hazardous substance", "release", "threatened release", "solid waste", "disposal" (or "disposed"), "hazardous facilities", "pollutants" or "contaminants" shall have the meanings specified in any applicable local, state or federal statute, ordinance, code or regulation. In the event any meaning of the foregoing terms is amended so as to broaden the meaning of those terms, such broader meanings shall apply subsequent to the effective date of such amendment and provided further that to the extent the laws of the state of Illinois establish a meaning which is broader than that specified in any federal statute, code or regulation, such broader meaning shall apply with regard to the Premises.

2.11 The Mortgagor shall maintain in full force and effect all licenses, bonds, franchises, leases, patents, contracts and other rights necessary to the profitable conduct of its business, including, without limitation, all notices, permits or licenses, if any, filed or obtained with regard to compliance with Environmental Laws. The Mortgagor shall continue in and limit its operations to the same general line or type of business as that presently conducted by it and shall comply with all applicable laws and regulations or all federal, state or local governmental authorities, including, without limitation, all Environmental Laws.

2.12 The Mortgagor shall use Mortgagor's best efforts to cause any and all lessees or other operators of the Premises to conduct their respective businesses so as to comply in all material

11017904

# UNOFFICIAL COPY

respects with all Environmental Laws; provided, however, that nothing contained in this Paragraph shall prevent the Mortgagor from contesting, in good faith and by appropriate legal proceedings, any such laws, regulation or interpretation or application thereof, provided, further, that the Mortgagor shall comply with the order of any court or other governmental body of applicable jurisdiction relating to such Environmental Laws unless the Mortgagor shall currently be prosecuting an appeal or proceedings for review and shall have secured a stay of enforcement or execution or other arrangement postponing enforcement or execution pending such appeal or proceedings for review.

2.13 The Mortgagor shall not permit the presence of any hazardous substances, hazardous facilities, pollutants or contaminants, including asbestos on the Premises. If the Mortgagee determines at any time that asbestos exists on or in the Premises and may present a health hazard, or if removal of any hazardous substance from the Premises is or may be required by applicable governmental or regulatory authorities or pursuant to applicable laws or regulations, the Mortgagee may, in its sole discretion, require the removal or containment of such asbestos or any other hazardous substances at the Mortgagor's sole expense.

2.14 The Mortgagor shall use its best efforts to cause all lessees or other operators of the Premises to dispose of any and all hazardous substances or solid waste generated at the Premises only at facilities and by carriers maintaining compliance with the Environmental Laws. To the best of the Mortgagor's knowledge, all such lessees are operating in compliance with valid permits under all Environmental Laws, and shall use its best efforts to obtain certificates of disposal from all contractors employed in connection with the transport or disposal of such hazardous substances or solid waste.

2.15 At the Mortgagee's request, from time to time, the Mortgagor shall establish and maintain, at its sole expense, a system to assure and monitor continued compliance with the Environmental Laws by any and all lessees and operators of the Premises. That system shall include, annual reviews of such compliance by employees or agents of the Mortgagor who are familiar with the requirements of the Environmental Laws. At the request of the Mortgagee, no more than once each year, Mortgagee shall be entitled to have made a detailed review of mortgagor's environmental law compliance (the "Environmental Report") by an environmental consulting firm acceptable to the Mortgagee; provided, however, that if any Environmental Report indicates any violation of Environmental Laws, such system shall include, at the request of the Mortgagee within three (3) months of the date of such Environmental Report, a detailed review of the status of such violation (a "Supplemental Report") by such environmental consultant. The Mortgagor shall provide the Mortgagee with notice of the enactment or promulgation of any Environmental Law which may result in a material adverse change in the business, financial condition, or operations of the Mortgagor within fifteen (15) days after the Mortgagor obtains knowledge thereof.

2.16 In the Mortgagee's sole discretion, the Mortgagee, or any person designated by the Mortgagee, shall have the right but not the duty or obligation, from time to time hereafter, to inspect the Mortgagor's Premises or place or places of business (or any other place where the collateral or

11017904

# UNOFFICIAL COPY

any information relating thereto is kept or located) during reasonable business hours, without hindrance or delay, to:

(a) verify such matters concerning the Premises as the Mortgagee may consider reasonable under the circumstances;

(b) take soil borings of the Premises and conduct any other tests or procedures at the Mortgagor's expense and inspect any books, records, journals, orders, receipts, correspondence, notices, permits or licenses, with regard to compliance with Environmental Laws, and to determine at the Mortgagor's expense whether any hazardous substances are present on the Premises.

The Mortgagor will deliver to the Mortgagee, within ten (10) days of request therefor, any instruments necessary to obtain records from any person maintaining such records. The Mortgagor shall pay on demand or within ten (10) days thereafter all costs and expenses incurred by the Mortgagee in acquiring information pursuant to this section with interest thereon at a per annum rate equivalent to the post maturity rate set forth in the Note. All expenditures incurred pursuant to the powers herein contained shall become a part of the Liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor for any action taken pursuant thereto.

2.17 Mortgagor shall indemnify and hold harmless Mortgagee, its participants, affiliates, parent and/or holding company, if any, and Mortgagee's officers, directors, employees or any of them from any and all loss, damage, claims or causes of action of every kind or nature together with all attorneys' fees, paralegals' fees and other costs and expenses incurred by the Mortgagee arising out of or connected with any of the following: (1) any suggestion that the Premises or any other property of the Mortgagor has contributed to, caused or become an environmental risk, hazard or pollutant or the suggestion that any hazardous substance, solid waste, hazardous facilities, pollutants, contaminants or petroleum derivatives or the release, threatened release or disposal of any hazardous substance, solid waste, hazardous facilities, pollutants, contaminants, or petroleum derivatives exists on the Premises or any other property owned by the Mortgagor; (2) any failure to comply with or violation or threatened violation of any Environmental Laws; (3) failure to comply with or violation of the Illinois Responsible Property Transfer Act; or (4) any failure to comply with any environmental representation or warranty contained herein or the making of any false environmental representation or warranty contained herein. Any such amounts shall be due and payable to Mortgagee from Mortgagor on demand. Until such amounts are paid to the Mortgagee by the Mortgagor, those amounts shall become additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at a per annum rate equivalent to the post maturity rate set forth in the Note. The provisions of this paragraph shall be in addition to any and all other obligations and Liabilities the Mortgagor may have to the Mortgagee under the Note, this Mortgage, any loan document, any other indemnity agreement and in common law, and shall survive (a) the repayment of all Liabilities, (b) the satisfaction of all of the other obligations of the Mortgagor contained in this Mortgage and under any loan document, (c) the discharge of this Mortgage, and (d)

11017904



# UNOFFICIAL COPY

the foreclosure of this Mortgage, the sale of the Premises whether purchased by Mortgagee or otherwise or acceptance of a deed in lieu of foreclosure.

2.18 As used herein, Environmental Laws means any and all laws, statutes, ordinances, rules, regulations, orders, or determinations of any federal or state governmental authority or courts pertaining to health or the environment in effect at any time in any and all jurisdictions in which the Premises is located, including without limitation, the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq., the Comprehensive, Environmental, Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., (CERCLA), the Federal Water Pollution Control Act Amendments, 33 U.S.C. Section 1251 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. Section 651 et seq., the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq., (RCRA), the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300(f) et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq., the Illinois Environmental Protection Act, as amended, Ill. Rev. Stat., ch. 111½, par. 1001 et seq. (1987) and the Illinois Responsible Property Transfer Act, as amended, Ill. Rev. Stat., ch. 30, par. 901 et seq. As used herein, RCRA means the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.

## MORTGAGEE RIGHTS

3.1 No remedy or right of Mortgagee hereunder shall be exclusive. Each right or remedy of Mortgagee with respect to the Liabilities, this Mortgage or the Premises shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay by Mortgagee in exercising, or omitting to exercise, any remedy or right accruing on Default shall impair any such remedy or right, or shall be construed to be a waiver of any such Default, or acquiescence therein, or shall affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

3.2 If Mortgagee makes any payment authorized by this Mortgage relating to taxes, assessments, charges, liens, security interests or encumbrances, Mortgagee may do so according to any bill, statement or estimate received from the appropriate party claiming such funds without inquiry into the accuracy or validity of such bill, statement or estimate or into the validity of the lien, encumbrance, security interest, tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

3.3 Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

## DEFAULT AND RIGHTS ON DEFAULT

4.1 Upon Default, at the sole option of Mortgagee, the Note and/or any other Liabilities shall become immediately due and payable, and Mortgagor shall pay all expenses of Mortgagee including attorneys' and paralegals' fees and expenses incurred in connection with this Mortgage and

11017904

# UNOFFICIAL COPY

all expenses incurred in the enforcement of Mortgagee's rights in the Premises and other costs incurred in connection with the disposition of the Premises. The term "Default" when used in this Mortgage means any one or more of the events, conditions or acts described as a Default in the Note, or the failure of debtor on the Note to pay and perform the Note or Liabilities in accordance with their terms, or failure of Mortgagor to comply with or to perform in accordance with any representation, warranty, term, provision, condition, covenant or agreement contained in this Mortgage, the Loan Agreement or any instrument, agreement or writing securing any Liabilities to which the Mortgagor and Mortgagee are parties. Any default under the Note shall be Default under this Mortgage.

4.2 Upon any Default hereunder and the expiration of any applicable cure period, Mortgagee may, but need not, make any payment or perform any act required of Mortgagor hereunder or under the terms of the Loan Agreement, including but not limited to the completion of the construction of any Improvements and Residences on the Premises, in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on any encumbrances, liens or security interests affecting the Premises and Mortgagee may purchase, discharge, compromise or settle any tax lien or other lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' and paralegals' fees, and any other funds advanced by Mortgagee to protect the Premises or the lien hereof, plus reasonable compensation to Mortgagee for each matter concerning which action herein authorized may be taken, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at a per annum rate equivalent to the post maturity rate set forth in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to Mortgagee on account of any Default hereunder.

4.3 When the indebtedness secured hereby shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien of this Mortgage. In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional indebtedness in the judgment of foreclosure all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' and paralegals' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, tax and lien searches, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute the foreclosure suit or to evidence to bidders at any foreclosure sale. All of the foregoing items, which may be expended after entry of the foreclosure judgment, may be estimated by Mortgagee. All expenditures and expenses mentioned in this paragraph, when incurred or paid by Mortgagee shall become additional indebtedness secured hereby and shall be immediately due and payable, with interest thereon at a rate equivalent to the post maturity interest rate set forth in the Note. This paragraph shall also apply to any expenditures or expenses incurred or paid by Mortgagee or on behalf of Mortgagee in connection with (a) any proceeding, including without limitation, probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant

11017904

# UNOFFICIAL COPY

LOT 15 (EXCEPT FROM SAID LOT 15 SO MUCH THEREOF AS HAS BEEN TAKEN OR USED AND OCCUPIED FOR STREET PURPOSES) IN BLOCK 2 IN MCKEY'S ADDITION TO HYDE PARK, BEING A SUBDIVISION MADE BY CIRCUIT COURT COMMISSIONERS IN PARTITION OF THAT PART OF THE SOUTH 10 ACRES OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE WEST LINE OF VINCENNES AVENUE, TOGETHER WITH LOTS 13 TO 23, INCLUSIVE, IN BLOCK 6 IN CLEAVERVILLE ADDITION, A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN,

(COMMONLY KNOWN AS 516-18 E. 41<sup>ST</sup> ST.)  
PIN'S 20-03-210-036 & -037

THE EAST 8 INCHES OF LOT 21 AND ALL OF LOT 22 IN OVIATT'S RESUBDIVISION OF LOTS 21 TO 33 IN DOBBINS SUBDIVISION OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. <sup>29</sup>

708 East Bowen 20-03-215-014

LOT 6 IN WILL H. MOORE'S RESUBDIVISION OF BLOCK 1 VACATED ALLEYS IN SAID BLOCK IN GEORGE S. BOWENS, SUBDIVISION OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

525 East 41st 20-03-213-015

11017904

# UNOFFICIAL COPY

## EXHIBIT A

LOT 5 IN RICE AND VALENTINE'S SUBDIVISION OF LOTS 11 TO 20 INCLUSIVE IN DOBBINS SUBDIVISION OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 OF THE NORTH EAST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

651 East Bowen

20-03-218-022

LOT 4 (EXCEPT THE EAST 6 1/4 FEET THEREOF IN RICE AND VALENTINE'S SUBDIVISION OF LOTS 11 TO 20 INCLUSIVE IN DOBBINS SUBDIVISION OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

653 East Bowen

20-03-218-023

11017904

# UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF COOK

I, Denise H. Hieber, a Notary Public in and for the County and State aforesaid, do hereby certify that Fred J. Bonner personally known to me to be the same person whose name is as President of Bonheur Development Corporation, an Illinois corporation, General Partner of Hearts United Homes Limited Partnership an Illinois Limited Partnership, subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he, being thereunto duly authorized, signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation and limited partnership for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 22nd day of October, 2001.

*Denise H. Hieber*



# UNOFFICIAL COPY

WITNESS the hand and seal of Mortgagor the day and year set forth above.

Hearts Limited Homes Partnership  
an Illinois Limited Partnership

By: Bonheur Development Corporation  
an Illinois Corporation

Its: General Partner

By: Fred L. Benner  
Its: President

Property of Cook County Clerk's Office

This instrument was prepared by  
and should be returned to:

Paul J. Richter  
Kelly, Olson, Michod, DeHaan, & Richter, L.L.C.  
181 West Madison Street  
Suite 4800  
Chicago, Illinois 60602  
(312) 236-6700

# UNOFFICIAL COPY

With a copy to:

Mr. C. Richard Johnson  
Foley & Lardner  
1 IBM Plaza  
330 North Wabash  
Chicago, IL 60611

Commissioner  
Department of Housing  
318 S. Michigan Ave.  
Chicago, IL 60604  
Attn: Deputy Commissioner, Developer Services

unless some other address shall be substituted therefor by Mortgagor by written notice to Mortgagee. Any notice which, by the provisions hereof, is required or may be given to Mortgagee shall be deemed to have been sufficiently given for all purposes by being sent certified mail, return receipt requested, postage prepaid, addressed to Mortgagee at Hyde Park Bank and Trust Company, Attention: Commercial Loan Department at 1525 East 53rd Street, Chicago, Illinois 60615, with a copy to Kelly, Olson, Michod, DeHaan & Richter, L.L.C., 181 W. Madison Street, Suite 4800, Chicago, Illinois 60602, Attention: Paul J. Richter or at such other address as may be filed with Mortgagor in accordance with this notice provision.

11017904

# UNOFFICIAL COPY

STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF THE MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE. IN THE EVENT THE PREMISES IS AGRICULTURAL PROPERTY AND MORTGAGOR IS AN ILLINOIS CORPORATION, A FOREIGN CORPORATION LICENSED TO DO BUSINESS IN THE STATE OF ILLINOIS OR A CORPORATE TRUSTEE OF AN EXPRESS TRUST, MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES, AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE. IN THE EVENT THE PREMISES IS RESIDENTIAL PROPERTY AS DEFINED UNDER THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, BUT PRIOR TO THE FILING OF A COMPLAINT FOR FORECLOSURE, THE PREMISES CEASES TO QUALIFY AS RESIDENTIAL PROPERTY, MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF THE MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

6.3 This Mortgage has been made, executed and delivered to Mortgagee in Cook County, Illinois and shall be construed in accordance with the laws of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law. If any provisions of this Mortgage are prohibited by or determined to be invalid under applicable law, such provisions shall be ineffective to the extent of such prohibitions or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Mortgage.

6.4 Any notice or demand which by the provisions hereof is required or may be given or served to or upon Mortgagor shall be deemed to have been sufficiently given or served for all purposes by being sent certified mail, return receipt requested, postage prepaid, addressed as follows:

Mr. Fred Bonner  
c/o Bonheur Development Corporation  
400 East 47<sup>th</sup> Street  
Chicago, IL 60653



# UNOFFICIAL COPY

income in the receiver's hands in payment in whole or in part of the indebtedness secured hereby, or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien or encumbrance which may be or become superior to the lien hereof or of the judgment, and the deficiency judgment against Mortgagor or any guarantor of the Note in case of a forfeiture sale and deficiency.

4.7 No action for the enforcement of the lien or of any provision of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

## DEFINITIONS

5.1 "Liabilities" means any and all liabilities, obligations and indebtedness of Mortgagor hereunder and under the Note and Loan Agreement, and of any other liabilities, obligations and indebtedness of the Mortgagor and any guarantor to the Mortgagee whether heretofore, now or hereafter owing or arising, due or payable, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, whether existing or arising, through discount, overdraft, purchase, direct loan, by operation of law or otherwise, together with attorneys' and paralegals' fees relating to the Mortgagee's rights, remedies and security interests hereunder, including advising the Mortgagee or drafting any documents for the Mortgagee at any time.

5.2 "Note" means the Promissory Note dated October 22, 2001, payable to the order of the Mortgagee, executed and delivered by the Mortgagor in the principal amount of \$2,200,000.00, plus any and all amendments, modifications, revisions, substitutions and renewals thereof.

5.3 This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all persons or parties claiming by, under or through Mortgagor. The word "Mortgagor" when used herein shall also include all persons or parties liable for the Liabilities secured hereby or any part thereof, whether or not such persons or parties shall have executed the Note or this Mortgage, including their respective heirs, estates, personal representative, successors and assigns. Each Mortgagor shall be jointly and severally obligated hereunder. The singular shall include the plural, the plural shall mean the singular and the use of any gender shall be applicable to all genders. The word "Mortgagee" includes the successors and assigns of Mortgagee.

## MISCELLANEOUS

6.1 Mortgagee shall release this Mortgage by a proper release after payment and satisfaction in full of the Note and all Liabilities.

6.2 MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE

# UNOFFICIAL COPY

or sublease for any cause or on any ground which would entitle Mortgagor to cancel that lease or sublease, and to elect to disaffirm any lease or sublease made subsequent to the Mortgage or subordinated to the lien of the Mortgage. Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Premises or from any other act or omission of Mortgagee in managing the Premises unless caused by the willful misconduct or bad faith of Mortgagee, nor shall Mortgagee be obligated to perform or discharge any obligation, duty or liability under any lease or by reason of any other written instrument. Mortgagor hereby agrees to indemnify, hold harmless and defend Mortgagee from and against any liability, loss or damage incurred by Mortgagee under any lease or under any other written instrument as a result of Mortgagee's exercise of rights, powers, options, elections or remedies under this Mortgage or other written instrument. Should Mortgagee incur any such liability, the amount thereof shall be secured by this Mortgage and Mortgagor shall reimburse Mortgagee immediately upon demand. Mortgagor hereby grants Mortgagee the full power and authority to make necessary or proper repairs, decorating, renewals, replacements, alterations, additions and improvements to the Premises that may seem judicious to Mortgagee, in Mortgagee's discretion. Mortgagor hereby grants Mortgagee the full power and authority to insure and reinsure the Premises for all risks, incidental to Mortgagee's possession, operation and management of the Premises and to receive all such avails, rents, issues and profits. Mortgagee shall not be required to take possession of the Premises, whether upon application made by Mortgagor or otherwise. Whenever Mortgagee so requests, the court in which the complaint for foreclosure is filed shall appoint a receiver. The failure of Mortgagee to request possession of the Premises or appointment of a receiver shall not preclude Mortgagee from making such a request at any future time. The request for appointment of a receiver or the appointment of a receiver shall not preclude Mortgagee from thereafter exercising Mortgagee's right to take actual physical possession of the Premises. Whenever a receiver is requested to be appointed, Mortgagee shall be entitled to designate the receiver. Mortgagee agrees that Mortgagee shall not lease the Premises without the consent of the City of Chicago.

4.6 Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such suit is filed may appoint a receiver of the Premises or a Mortgagee in possession pursuant to paragraph 4.5 of this Mortgage. The appointment of the receiver or Mortgagee in possession may be made either before or after entry of judgment of foreclosure, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for the receiver or Mortgagee in possession and without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead or not. Mortgagee may be appointed as the receiver or a Mortgagee in possession pursuant to paragraph 4.5 of this Mortgage. Such receiver or Mortgagee in possession shall have power to collect the rents, issues and profits of the Premises during the pendency of the foreclosure suit and, in case of an entry of judgment of foreclosure, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of the receiver or the Mortgagee in possession, would be entitled to collect the rents, issues and profits. Such receiver or Mortgagee in possession shall also have all other powers which may be necessary or are usual for the protection, possession, control, management and operation of the Premises. The court in which the foreclosure suit is filed may from time to time authorize the receiver or Mortgagee in possession to apply the net

11017904

# UNOFFICIAL COPY

or defendant, by reason of this Mortgage or any indebtedness secured hereby; or (b) any preparation for the commencement of any suit for the foreclosure of this Mortgage after accrual of the right to foreclose whether or not actually commenced or preparation for the commencement of any suit to collect upon or enforce the provisions of the Note or any instrument which secures the Note after Default, whether or not actually commenced; or (c) any preparation for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

4.4 The proceeds of any foreclosure sale shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all the items that are mentioned in the immediately preceding paragraph; second, all other items which under the terms of this Mortgage constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note and the Liabilities (first to interest and then to principal); fourth, any surplus to Mortgagor or Mortgagor's heirs, legal representatives, successors or assigns, as their rights may appear.

4.5 Upon any Default hereunder, whether before or after the Liabilities are declared to be immediately due or upon expiration of notice and grace periods, if any, whether before or after institution of legal proceedings to foreclose this Mortgage, or before or after sale thereunder, immediately upon demand or request of Mortgagee, Mortgagor agrees to surrender to Mortgagee and Mortgagee shall be entitled to take actual physical possession of all or any part of the Premises or any part thereof to the same extent to which the Mortgagor would be entitled to actual physical possession, personally, or by Mortgagee's agents or attorneys, and Mortgagee in Mortgagee's sole discretion may, without interference from Mortgagor, with or without force and with or without process of law, enter upon and take and maintain actual physical possession of all or any part of the Premises, together with all the documents, books, records, papers and accounts of Mortgagor, or then owner of the Premises, relating to the Premises, and may wholly exclude Mortgagor and Mortgagor's agents or servants from the Premises. If necessary to obtain actual physical possession as provided for in this Mortgage or other written instrument, Mortgagee may, without exposure to liability from Mortgagor or any other persons, invoke any and all legal or equitable remedies to dispossess Mortgagor and Mortgagor's agents and servants, including, without limitation, one or more civil actions for forcible entry and detainer, trespass and restitution. Mortgagee, as attorney-in-fact or agent of Mortgagor or in Mortgagee's own name, and under the powers granted herein or by other written instrument, may, without limitation, hold, operate, manage and control the Premises and conduct the business of Mortgagor, if any, either personally, through a hired professional property manager, or by Mortgagee's agents, successors, assigns or attorneys, with full power to use such measures, legal or equitable, as in Mortgagee's discretion may be deemed proper or necessary to enforce the payment of the avails, rents, issues and profits of the Premises, including actions for the recovery of rent, actions in forcible entry and detainer and actions in distress of rent. Mortgagor grants Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers granted to the Mortgagee pursuant to this Mortgage or other written instrument at any and all times hereafter, without notice to Mortgagor, and with full power to cancel or terminate any lease

11017904