



0030172680



Prepared by/
Return to:
Erica Pascal
Hispanic Housing Development Corp.
205 W. Wacker Drive, Ste 2300
Chicago, IL 60606

259439

JUNIOR MORTGAGE, SECURITY AND RECAPTURE AGREEMENT

THIS MORTGAGE, SECURITY AND RECAPTURE AGREEMENT ("Mortgage") in the amount of Fifteen Thousand Dollars (\$15,000.00) is made as of this 23 of January, 2003 ("Closing Date") from Carlos Cuevas ("Mortgagor"), to HISPANIC HOUSING DEVELOPMENT CORPORATION, an Illinois not for profit corporation, having its principal office at 205 W. Wacker Drive, Chicago, Illinois 60606 ("Mortgagee").

STEWART TITLE OF ILLINOIS
2 NORTH LaSALLE STREET, SUITE 1920
CHICAGO, IL 60602

RECITALS

WHEREAS, Mortgagor has entered into a contract with the US Department of Housing and Urban Development ("HUD") under an Asset Control Area Agreement dated May 1, 2000, to facilitate the rehabilitation of one-to-four unit properties previously owned by HUD, with the stated intention to make such homes affordable to moderate income families; and

WHEREAS, Mortgagor qualifies for the assistance provided by this mortgage under the terms of the above-mentioned agreement; and

WHEREAS, Mortgagor will forgo a portion of the sales price in exchange for such covenants and promises as Mortgagee shall make herein, in exchange for such recapture provisions as are herein described;

NOW, THEREFORE, to secure the performance and observance by Mortgagor of all the terms, covenants and conditions described herein, and in order to charge the properties, interests and rights hereinafter described with such consideration, Mortgagor has executed and delivered the Mortgage and does hereby grant, convey, assign, mortgage, grant a security interest in, and confirm unto Mortgagee and its successors and assigns forever, all of the following described Property, as further described in Exhibit A attached hereto:

- (A) The Land;
- (B) All structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing ("Improvements");
- (C) All rents and issues of the Land and Improvements from time to time and all of the estate, right, title, interest, property, possession, claim and demand at law, as well as in equity of Mortgagor, in and to the same;

TO HAVE AND TO HOLD the Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions herein;

THIS MORTGAGE IS GIVEN TO SECURE: (a) payment of the recapture provision as described herein, and (b) performance of each and every of the covenants described herein.

UNOFFICIAL COPY

ARTICLE I INCORPORATION OF RECITALS

The recitals set forth above constitute an integral of the Mortgage and are hereby incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

ARTICLE II COVENANTS, REPRESENTATIONS AND WARRANTIES

Mortgagor covenants and agrees with Mortgagee that:

2.01 Taxes and Assessments.

(a) Mortgagor will pay when due all general taxes and assessments, special assessments, water charges and all of the charges against the Property and shall, upon written request, furnish to Mortgagee receipts evidencing payment thereof, provided that Mortgagor, in good faith and with reasonable diligence, may contest the validity or amount of any such taxes, assessments or charges, provided that during any such contest the enforcement of the lien of such taxes, assessments or charges is stayed.

(b) Mortgagor will not suffer (unless bonded or insured over) any mechanic's, laborer's, materialmen's, or statutory lien to remain outstanding upon any of the Property. Mortgagor may contest such lien, provided that Mortgagor shall first post a bond in the amount of the contested lien, or provide title insurance over such contested lien, and further provided that Mortgagor shall diligently prosecute the contested lien and cause the removal of the same.

2.02 Insurance.

Mortgagor shall keep the Property continuously insured in such amounts and against such risks as required of Mortgagor by the Senior Lender (as hereinafter defined), paying the premiums for said insurance as they become due. Policies of insurance shall name Mortgagee as an additional insured. All policies of insurance shall provide that the same shall not be cancelled, except upon thirty (30) days prior written notice to Mortgagee.

2.03 Maintenance of the Property.

(a) Mortgagor shall preserve and maintain the Property in good condition and repair, will not commit or suffer any waste thereof, and will keep the same in a clean, orderly and attractive condition. Mortgagor shall not do or suffer to be done anything that will increase the risk of fire or other hazard to the Property or any part thereof.

(b) If the Property or any part thereof is damaged by fire or any other cause, Mortgagor will immediately give written notice of the same to Mortgagee.

(c) Mortgagee or its representatives shall have the right to inspect the Property to assure compliance with the terms of the Mortgage and the Covenant of Residency.

(d) Mortgagor shall promptly comply, and cause the Property to comply, with all present and future laws, ordinances, orders, rules and regulations and other requirements of governmental authority affecting the Property or any part thereof and with all inst: and documents of record or otherwise affecting the Property or any part thereof;

(e) If all or any part of the Property shall be damaged by fire or other casualty, Mortgagor, subject to the rights of co-insurer, will promptly restore the Property equivalent of its condition prior to the casualty, to the extent of any insurance proceeds available to Mortgagor for that purpose.

2.04 Subordination.

The Mortgage shall be subject and subordinate in all respects to that certain mortgage dated as of January 23 2003, between Mortgagor and Charter One Bank ("Senior Lender"), recorded with the Office of the Recorder of Deeds of Cook County, Illinois on as document # _____ to secure indebtedness in the original principal amount of \$ 141,750.00.

30172680

UNOFFICIAL COPY

and shall also be subordinate to any subsequent mortgage of equal or lesser amount that replaces the Senior Mortgage.

2.05 Income Eligibility.

Mortgagor covenants to Mortgagee that it meets the income eligibility requirements established by Mortgagee in order to participate as a homebuyer under the ACA Agreement.

2.06 Income Eligibility of Households Which Rent the Rental Unit.

With regard to the rental of the housing unit ("Rental Unit") of the Two-Flat Building that is not occupied by the Mortgagor, the Mortgagor hereby covenants to Mortgagee that each Rental Unit shall be affordable to a family earning not more than 115% of Area Median Income, adjusted for family size, as defined by the HUD. "Affordable" means that the unit cost does not exceed the fair market rent for the area, or cost the family occupying the unit more than 30% of their annual income. Notwithstanding this provision, Mortgagor shall use its best efforts to rent such units to families earning less than 80% of Area Median Income. Mortgagor shall verify rent levels to Mortgagee at Mortgagee's request, by presentation of a copy of the lease or a rent receipt. This provision shall be in effect for a period of three (3) years commencing with the closing date.

2.7 Covenant of Residency

Mortgagor covenants that they will occupy the Property as their personal residence for a minimum period of three (3) years. Failure to continuously occupy the Property as a personal residence shall subject the Property to the recapture provisions of this instrument.

ARTICLE III RECAPTURE OF PROFIT PROVISIONS

3.01 Generally.

Mortgagor covenants to Mortgagee that it shall own the Property and utilize the Unit improving the Property as its primary residence for a period of three (3) years commencing with the Closing Date as described above.

3.02 Recapture.

If Mortgagor conveys the Property, or executes a deed in lieu of foreclosure, prior to the expiration of said three (3) year period at a price in excess of the purchase price paid for the Property by Mortgagor to Mortgagee on the Closing Date, Mortgagee shall be entitled to recapture, and Mortgagor shall be obligated to pay, such amount equal to the lesser of the following sums:

- (a) the difference between the original purchase price for the Property paid by Mortgagor to Mortgagee and the resale price; or
- (b) \$15,000.00, provided that this amount shall decline by \$5,000.00 on the anniversary of each year subsequent to the Closing Date.

3.03 Release of Mortgage.

If, during the three (3) year period commencing with the Closing Date, Mortgagor: (a) retains ownership of the Property and use of the Unit as its primary residence, (b) conveys the Property for a purchase price less than or equal to the purchase price that Mortgagor paid to Mortgagee for the Property on the Closing Date, or (c) conveys the Property for a price in excess of said purchase price and pays Mortgagee the amount it is entitled to receive pursuant to the provisions described in section 3.02 above, then Mortgagor shall be deemed to have fully complied with the provisions contained in the Mortgage, and Mortgagor shall be under no further obligation to Mortgagee. In such event, within thirty (30) days of receipt of a written request from Mortgagor, Mortgagee shall execute a release of the Mortgage. Said release shall be in recordable form.

30172680

UNOFFICIAL COPY

ARTICLE IV DEFAULT

4.01 Events of Default.

The terms "Event of Default" or "Events of Default", wherever used in the Mortgage, shall mean any one or more of the following events:

(a) Failure by Mortgagor to duly observe or perform any material term, covenant, condition, or agreement of the Covenant of Residency or the Mortgage after the expiration of all cure periods as provided herein); or

(b) A default continuing beyond all applicable cure periods under the Senior Financing and permitting foreclosure thereunder.

4.02 Acceleration of Maturity.

(a) If an Event of Default due to a failure to make any payment when the same is due and owing ("Monetary Event of Default") shall have occurred under the Senior Lender's security documents, the Covenant of Residency or the Mortgage, and shall have continued for ten (10) days following notice thereof from Mortgagee to Mortgagor, the entire amount described herein and secured hereby, at Mortgagee's sole option, shall become immediately due and payable without further notice or demand.

(b) If an Event of Default (other than a Monetary Event of Default), shall have occurred under the Senior Lender's security documents, and shall have continued for sixty (60) days following the receipt of notice thereof from Mortgagee to Mortgagor, the sum secured hereby, at Mortgagee's sole option, shall immediately become due and payable without further notice or demand; provided, however, that in the event such default cannot reasonably be cured within such sixty (60) day period and if Mortgagor has commenced efforts to cure, the time to cure shall be extended so long as said party diligently continues to cure such default.

(c) Except as otherwise permitted by the terms of the Mortgage and as evidenced by Mortgagee's written consent, any sale, partial sale, refinancing, syndication or other disposition of the Property shall entitle the Mortgagee to declare sum secured hereby immediately due and payable without further notice or demand; provided, however, the replacement or substitution of any machinery, equipment or fixtures, now owned or hereafter acquired by Mortgagor, with machinery or equipment of like kind and value, whether or not such machinery or equipment is deemed a fixture under applicable provisions of the Illinois Uniform Commercial Code, will not be an Event of Default under the Mortgage, provided Mortgagor executes such documents as may be necessary to assure Mortgagee of a continuing perfected secured interest in such replacement or substituted machinery, equipment or fixtures.

4.03 Remedies.

(a) Subject to the rights of the Senior Lender, when the sum hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. The Mortgage and the right of foreclosure hereunder shall not be impaired or exhausted by any foreclosure of the Senior Mortgage, and may be foreclosed successively and in parts, until all of the Property has been foreclosed against. In any such foreclosure, or upon the enforcement of any other remedy of Mortgagee under the Mortgage or the Covenant of Residency, there shall be allowed and included as additional indebtedness, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs involved in title insurance and tide examinations. All expenditures and expenses of the nature in this section 4.03 mentioned, and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of the Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting the Mortgage, the Covenant of Residency or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the lesser of the highest rate permitted by law or

1017-003

UNOFFICIAL COPY

fifteen percent (15%) per annum, and shall be secured by the Mortgage. The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incidental to the foreclosure proceedings, including all such items as are mentioned in this section; (ii) all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Covenant of Residency and the Mortgage; (iii) all principal and interest remaining to be paid pursuant to the recapture provisions described in the Covenant of Residency; and (iv) any remaining amounts due to Mortgagor, its successors or assigns, as their rights may appear.

(b) Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of the Mortgage on its behalf and on behalf of each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the Property subsequent to the date of the Mortgage.

(c) Upon any other entering upon or taking of possession of the Property after the occurrence of an Event of Default and the expiration of the applicable cure period and other than by means of a foreclosure, Mortgagee, subject to the rights of the Senior Lender, may hold, use, manage and control the Property and, from time to time i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property required in connection therewith; (ii) insure or keep the Property insured; (iii) manage the Property and exercise all the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may reasonably determine to be to its best advantage. Mortgagee may collect and receive all the rents, issues, profits and revenues of the same, including those past due as well as those accruing thereafter, and, after deducting to the extent reasonable: (aa) expenses of taking, holding and managing the Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other similar charges as Mortgagee may determine to pay; (ee) other proper charges upon the Property or any part thereof and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Mortgagee, shall apply the remainder of the monies and proceeds so received by Mortgagee first to payment of accrued interest; and second to the payment of principal. The balance of such funds, if any, after payment in full, of all of the aforesaid amounts including, without limitation, the entire outstanding principal balance under the Covenant) shall be paid to Mortgagor.

4.04 Receiver.

Subject to the rights of the Senior Lender, if an Event of Default shall have occurred and be continuing after an applicable cure period has expired, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall otherwise have all of the rights and powers to the fullest extent permitted by law.

4.05 Purchase by Mortgagee.

30172680

UNOFFICIAL COPY

Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit to the purchase price; provided, however, that the Senior Lender has been paid in full.

4.06 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to Mortgagee by the Mortgage is intended to be exclusive of any other right, power or remedy, but each and every right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law, in equity or by statute.

4.07 Waiver.

No delay or omission of Mortgagee or of any holder of the Covenant to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be constituted to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by the Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. No consent or waiver, expressed or implied, by Mortgagee to or of any breach or Event of Default by Mortgagor in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies on account of any breach or default by Mortgagor.

ARTICLE V MISCELLANEOUS PROVISIONS

5.01 Successors and Assigns.

The Mortgage shall inure to the benefit of and be binding upon Mortgagor and Mortgagee and their respective legal representatives, successors and assigns. Whenever a reference is made in the Mortgage to Mortgagor or to Mortgagee, such reference shall be deemed to include a reference to legal representatives, successors and assigns of Mortgagor or Mortgagee, as applicable.

5.02 Terminology.

All personal pronouns used in the Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and sections are for convenience only and neither limit nor amplify the provisions of the Mortgage, and all references herein to articles, sections or paragraphs shall refer to the corresponding articles, sections or paragraphs of the Mortgage unless specific reference is made to such articles, sections or paragraphs of another document or instrument.

5.03 Severability.

If any provision of the Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of the Mortgage and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by law.

5.04 Security Agreement.

The Mortgage shall be construed as a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Mortgaged Property which constitutes fixtures. Mortgagee shall have all the rights with respect to such fixtures afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Mortgagee by the Mortgage or any other agreement.

30172680

UNOFFICIAL COPY

5.05 Modification.

No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns. Mortgagor shall have no right to convey the Land into a land trust without obtaining the prior written consent of Mortgagee.

5.06 No Merger.

It being the desire and intention of the parties that the Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by Mortgagee as evidenced by an appropriate document duly recorded, the Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

5.07 Applicable Law.

The Mortgage shall be interpreted, construed and enforced under the laws of the State of Illinois.

IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be executed as of the day and year first above written.

Carlos C 01/23/03 _____
Mortgagor Mortgagor

Mortgagor

STATE OF ILLINOIS)

COUNTY OF COOK)

I, Hee Undersigned at Notary Public in and for said County, in the State aforesaid, do hereby certify that Carlos Cveras, personally known to me as the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this 23 day of January, 2003

[Signature]
Notary Public

30172680

UNOFFICIAL COPY

LEGAL DESCRIPTION

Lot 37 in Block 11 in Beebe's Subdivision of the East ½ of the Northwest ¼ Section 2, Township 39 North, Range 13, East of the Third Principal Meridian (except 5 Acres on the Northeast Corner thereof) in Cook County, Illinois.

PIN: 16-02-121-035
Common Address: 1318 N. Monticello, Chicago, IL

Property of Cook County Clerk's Office

30172680