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0317733135

Eugene "Gene" Moore Fee: \$50.00  
Cook County Recorder of Deeds  
Date: 06/26/2003 10:39 AM Pg: 1 of 14

*Deal*

## MORTGAGE

THIS MORTGAGE ("Mortgage") is made as of this 17<sup>th</sup> day of June, 2003 by LAVIVIENDA HOUSING DEVELOPMENT CORPORATION, having its principal office at 3421 West Armitage Street, Chicago, Illinois 60647 ("Developer" or "Mortgagor") in favor and for the benefit of the CITY OF CHICAGO, an Illinois municipal corporation, having its principal office at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 ("City").

## RECITALS

WHEREAS, the City Council of the City, by ordinance adopted June 7, 1990, as amended, established the New Homes for Chicago Program ("New Homes Program") to facilitate the construction of new single family housing within the City which shall be affordable to many families; and

WHEREAS, pursuant to the objectives of the New Homes Program, the City and Developer executed that certain "Redevelopment Agreement, New Homes for Chicago Program, LaVivienda Housing Development Corporation" dated as of May 1, 2002 and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on May 31, 2002 as document #0020513644 ("Redevelopment Agreement"), whereby Developer acquired that certain real property from the City which is legally described on Exhibit A attached hereto ("Land") by constructing a single family housing unit or a two-flat building, consisting of an owner-occupied housing unit and a rental housing unit, improving the Land; and

WHEREAS, for purposes of this Mortgage, the single family housing unit or two-flat building, as the case may be, is hereafter referred to as the "Unit"; and

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WHEREAS, pursuant to the terms and conditions of the Redevelopment Agreement, the purchase price for the Land paid for by Developer to the City had been reduced from its fair market value to nominal consideration; and

WHEREAS, the fair market value of the Land will not be reflected in the sales price paid at closing by the purchaser ("Homebuyer") of the Unit and Land from Developer, thus enabling potential homebuyers of low and moderate income levels to become homeowners; and

WHEREAS, the fair market value for the Land is Forty Six Thousand Eight Hundred Seventy Five Dollars (\$46,875); and

WHEREAS, \$20,000 of the aggregate fair market value of the Land may be potentially due and owing the City by the initial homebuyer purchasing the Unit and Land from Developer, while the excess amount of fair market value in the amount of Twenty Six Thousand Eight Hundred Seventy Five Dollars (\$26,875) may be potentially due and owing the City pursuant to this Mortgage; and

NOW, THEREFORE, to secure the performance and observance by Mortgagor of all the terms, covenants and conditions described in the Mortgage, 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 the City and its successors and assigns forever, all of the following described property (which is hereinafter sometimes referred to as "Mortgaged Property"):

(A) The Land;

(B) All structures and improvements of every nature whatsoever now or hereafter situated on the Land, including, without limitation, the Unit, all fixtures of every kind and nature whatsoever which are or shall be attached to said buildings, structures or improvements, and now or hereafter owned by Developer, 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 Developer, in and to the same;

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the City, its successors and assigns, to its own

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proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions herein;

WITHOUT limitation of the foregoing, Developer hereby further grants unto the City, pursuant to the provisions of the Uniform Commercial Code of the State of Illinois, a security interest in all of the above-described property, which are or are to become fixtures.

THIS MORTGAGE IS GIVEN TO SECURE: (a) payment of the recapture provision evidenced in Article III below of this Mortgage, and (b) performance of each and every of the covenants, conditions and agreements contained in this Mortgage, and in any other agreement, document or instrument to which reference is expressly made in the Mortgage.

## ARTICLE I

### INCORPORATION OF RECITALS

The recitals set forth above constitute an integral of the Mortgage and are 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

Developer and its successors and assigns covenant and agree with the City that:

#### 2.01 Taxes and Assessments.

(a) Developer and its successors and assigns will pay when due all general taxes and assessments, special assessments, water charges and all of the charges against the Mortgaged Property and shall, upon written request, furnish to the City receipts evidencing payment thereof, provided that Developer, 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) Developer and its successors and assigns 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 Mortgaged Property. Developer may contest such lien, provided that Developer shall first post a bond in the amount of the contested lien, or provide title insurance over such

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contested lien, and further provided that Developer shall diligently prosecute the contested lien and cause the removal of the same.

## 2.02 Insurance.

Developer and its successors and assigns shall keep the Mortgaged Property continuously insured, paying the premiums for said insurance as they become due. Policies of insurance shall name the City 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 the City.

## 2.03 Maintenance of the Property.

(a) Developer and its successors and assigns shall preserve and maintain the Mortgaged 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. Developer and its successors and assigns shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Property or any part thereof.

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

(c) The City or its representatives shall have the right to inspect the Mortgaged Property to assure compliance with the terms of the Mortgage.

(d) Developer and its successors and assigns shall promptly comply, and cause the Mortgaged Property to comply, with all present and future laws, ordinances, orders, rules and regulations and other requirements of any governmental authority affecting the Property or any part thereof and with all instruments and documents of record or otherwise affecting the Mortgaged Property or any part thereof.

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

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## 2.04 Mortgage Lien Position.

Developer and its successors and assigns shall not create, suffer, or permit to be created or filed against the Mortgaged Property, or any part thereof, any mortgage lien or other lien superior or inferior to the mortgage lien created pursuant to this instrument; provided, however, that Developer may be permitted to obtain a mortgage solely to obtain construction financing with regard to the construction of the Unit, and the Homebuyer (and the Eligible Homebuyer, if any, as such is defined in Section 3.03 below) may be permitted to obtain a mortgage from a permanent lender facilitating the purchase of the Mortgaged Property by the Homebuyer or the Eligible Homebuyer. For purposes of this Mortgage, the mortgage in favor of the construction lender or the permanent lender, as the case may be, shall be hereafter referred to as the "Lender Mortgage". Any Lender Mortgage shall be superior to the mortgage lien created pursuant to this Mortgage. Notwithstanding anything to the contrary contained herein, the Homebuyer is permitted to execute at closing a mortgage, security and recapture agreement in favor of the City as such is provided for pursuant to the City's New Homes Program, which shall be junior and subordinate to the mortgage lien created pursuant to this Mortgage.

## ARTICLE III

### RECAPTURE OF LAND VALUE

## 3.01 Amount and Term of the Mortgage.

The principal amount of fair market value for the Land due and owing the City pursuant to this Mortgage is the sum of Twenty Six Thousand Eight Hundred Seventy Five and no/100 Dollars (\$26,875.00) ("Principal Amount"). The term of the Mortgage ("Term") shall be for a period of thirty (30) years commencing with the date of conveyance of the Mortgaged Property from Developer to the Homebuyer. During the Term, the Principal Amount shall bear interest at the annual rate of three percent (3%).

## 3.02 Assumption of Mortgage to Homebuyer.

At the closing for the conveyance of the Mortgaged Property from Developer to the Homebuyer, Developer and Homebuyer shall execute an Assumption of Mortgagor's obligations as described in this Mortgage ("Assumption"). The Assumption shall be in recordable form. In the event the Mortgaged Property is conveyed to an Eligible Homebuyer (as such term is defined in Section 3.03 below), then the Homebuyer and the Eligible Homebuyer shall

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execute an Assumption, which Assumption shall also be in recordable form.

### 3.03 Recapture.

In the event that during the Term, the Homebuyer seeks to sell the Mortgaged Property, the Principal Amount and accrued interest shall become due and payable to the City; provided, however, that if said subsequent purchaser ("Eligible Homebuyer") meets the income eligibility requirements of the New Homes Program, said subsequent purchaser shall assume the obligations of the Homebuyer for the balance of the Term.

### 3.04 Release of Mortgage.

During the Term, if: (a) Developer, until the time in which it conveys the Mortgaged Property to the Homebuyer, pays to the City the sums described in Section 3.01 above, (b) the Homebuyer, upon its acquisition of the Mortgaged Property, or if applicable, the Eligible Homebuyer retains ownership of the Mortgaged Property and use of the Unit as its primary residence for the remainder of the Term, or (c) the Homebuyer or if applicable, the Eligible Homebuyer, conveys the Mortgaged Property to a subsequent homebuyer and the City receives the appropriate Principal Amount and accrued interest in accordance with Section 3.03 above, then Developer, the Homebuyer, or the Eligible Homebuyer, as the case may be, shall be deemed to have fully complied with the provisions contained in the Mortgage, and such party shall be under no further obligation to the City. In such event, within thirty (30) days of receipt of written request, the City shall execute a release of the Mortgage. Said release shall be in recordable form.

## 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 Developer or its successors and assigns to duly observe or perform any material term, covenant, condition, or agreement of the Mortgage after the expiration of all cure periods as provided herein); or



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(b) A default continuing beyond all applicable cure periods under any Lender Mortgage affecting the Mortgaged Property 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 Lender Mortgage or the Mortgage, and shall have continued for ten (10) days following notice thereof from the City to Developer, the entire amount of City funds described herein and secured hereby, at the City'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 Lender Mortgage or the Mortgage, and shall have continued for sixty (60) days following the receipt of notice thereof from City to Developer, the City funds secured hereby, at the City'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 Developer or its successors and assigns has commenced efforts to cure, then 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 the City's written consent, any sale, partial sale, refinancing, syndication or other disposition of the Mortgaged Property shall entitle the City to declare the City funds 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 Developer, 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 Developer and its successors and assigns executes such documents as may be necessary to assure the City of a continuing perfected secured interest in such replacement or substituted machinery, equipment or fixtures.

## 4.03 Remedies.

(a) When the City funds hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, the City 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

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foreclosure of any Lender Mortgage, and may be foreclosed successively and in parts, until all of the Mortgaged Property has been foreclosed against. In any such foreclosure, or upon the enforcement of any other remedy of the City under the Mortgage, there shall be allowed and included as additional indebtedness, all expenditures and expenses which may be paid or incurred by or on behalf of the City for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs involved in title insurance and title 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 Mortgaged Property and the maintenance of the lien of the Mortgage, including the reasonable fees of any attorney employed by the City in any litigation or proceeding affecting the Mortgage 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 Developer, with interest thereon at the lesser of the highest rate permitted by law or fifteen percent (15%) per annum, and shall be secured by the Mortgage. The proceeds of any foreclosure sale of the Mortgaged 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 Lender Mortgage and the Mortgage; (iii) all principal and interest remaining to be paid pursuant to the recapture provisions described in the Mortgage; and (iv) any remaining amounts due to Developer, its successors or assigns, as their rights may appear.

(b) Developer 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. Developer, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety.

(c) Upon any other entering upon or taking of possession of the Mortgaged 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, the City may hold, use, manage and control the Mortgaged Property and, from time to time



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(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 Mortgaged Property insured; (iii) manage the Mortgaged Property and exercise all the rights and powers of Developer to the same extent as Developer 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 the City, all as the City from time to time may reasonably determine to be to its best advantage. The City 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 Mortgaged 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 the City may determine to pay; (ee) other proper charges upon the Mortgaged Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the City, shall apply the remainder of the moneys and proceeds so received by the City 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 Mortgage) shall be paid to Developer.

#### 4.04 Receiver.

If an Event of Default shall have occurred and be continuing after an applicable cure period has expired, the City, 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 Mortgaged 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 City.

Upon any foreclosure sale, the City 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.

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## 4.06 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the City 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 the City or of any holder of the Mortgage 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 construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by the Mortgage to the City may be exercised from time to time as often as may be deemed expedient by the City. No consent or waiver, expressed or implied, by the City to or of any breach or Event of Default by Developer 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 Developer hereunder. Failure on the part of the City 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 the City of its rights hereunder or impair any rights, powers or remedies on account of any breach or default by Developer.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

## 5.01 Successors and Assigns.

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

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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. The City 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 the City by the Mortgage or any other agreement.

## 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. Developer and its successors and assigns shall have no right to convey the Land into a land trust without obtaining the prior written consent of the City.

## 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 the City acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by the City 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.

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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.

LaVIVIENDA HOUSING DEVELOPMENT CORPORATION,  
an Illinois not for profit corporation

By:   
Victor Hernandez

Prepared by and to be returned to:

Mark Lenz  
Assistant Corporation Counsel  
City of Chicago  
30 North LaSalle Street  
Room 1610  
Chicago, Illinois 60602  
312/744-1041

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STATE OF ILLINOIS)  
 )  
COUNTY OF COOK )

I, Connie A. Sanchez, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Victor Hernandez, personally known to me to be the Executive Officer of LaVivienda Housing Development Corporation, an Illinois not for profit corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that as such Executive Officer, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act and deed of said organization, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17th day of June, 2003.

  
\_\_\_\_\_  
Notary Public



My commission expires \_\_\_\_\_

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## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

LOT 28 IN BLOCK 1 IN H.M. THOMPSON'S SUBDIVISION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common address: 1509 North Talman Ave., Chicago, Illinois

PIN: 16-01-203-019-0000

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