

UNOFFICIAL COPY



Doc#: 0826639095 Fee: \$72.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/22/2008 11:45 AM Pg: 1 of 19

3-17
Kara via Neighbors

This document prepared by
and after recording return to:
CAROL SATELLI
Community Investment Corporation
222 South Riverside Plaza
Chicago, IL 60605

GRANT #: 4440-81037
GRANT AMOUNT: \$20,000.00

GRANT AGREEMENT AND MORTGAGE

This Grant Agreement and Mortgage (the "Agreement") is dated 8/22/2008, by and between Community Investment Corporation, an Illinois not-for-profit corporation ("CIC"), and CHICAGO TITLE LAND TRUST COMPANY not personally but as Trustee under Trust Agreement dated 8/14/2008, and known as Trust Number 8002351491 and JONES & OTTO NEIGHBORHOOD DEVELOPMENTS, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, (jointly "Grantee").

Recitals

WHEREAS, CIC desires to make a grant of funds (a "Grant") to the Grantee hereunder, and the Grantee desires to use such funds to make eligible repairs and renovations to its property described herein; and

WHEREAS, the funds being granted by CIC to the Grantee hereunder are a conditional grant, and are subject to a repayment obligation which will arise upon the occurrence of certain events described herein, and the repayment obligation is to be secured by the lien on the Property (defined below) created by this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

SN3365987
CT

ARTICLE I

REPRESENTATIONS, WARRANTIES AND COVENANTS

1.1 Representations and Warranties of Grantee. In connection with the executions and delivery of this Agreement, the Grantee represents and warrants to CIC that:

- (a) the Grantee owns good, indefeasible and merchantable title to the Property;
- (b) the Grantee is not in default on any contract or loan awarded to the Grantee by CIC at the time of the execution of this Agreement.
- (c) the Grantee has carefully examined and analyzed the provisions and requirements of this Agreement

Box 334

19 pgs

UNOFFICIAL COPY

and, from this analysis, the Grantee has satisfied itself as to the nature of all things needed for the performance of this Agreement; and the time available to the Grantee for such examination, analysis, inspection and investigation has been adequate;

(d) except only for those representations, statements or promises expressly contained in this Agreement and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by CIC, its officials, agents or employees, has induced the Grantee to enter into this Agreement or has been relied upon by the Grantee including any with reference to: (A) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (B) the general conditions which may in any way affect this Agreement or its performance; (C) the compensation provisions of this Agreement; or (D) any other matters, whether similar to or different from those referred to in (A) through (C) immediately above, affecting or having any connection with this Agreement, the negotiation hereof, any discussions hereof, the performance hereof or those employed herein or connected or concerned herewith;

(e) there are no actions or proceedings by or before any court or governmental commission, board, bureau or other administrative agency pending or, to the knowledge of the Grantee, threatened, against or affecting the Grantee which if adversely determined could materially and adversely affect the ability of the Grantee to perform hereunder or which might result in any material, adverse change to the financial condition of the Grantee or may materially affect the property or assets of the Grantee; and

1.2 Covenants of the Grantee. In connection with the execution and delivery of this Agreement, the Grantee covenants to CIC that:

(a) it will obtain the approval of CIC for any contractor selected to perform the Renovation Work, and shall deliver a copy of the contract(s) between the Grantee and any contractors to CIC for its review.

(b) all statements, certifications and information made or provided to CIC in the Application or in this Agreement are true, accurate and complete, and shall survive the execution, delivery and acceptance hereof by the parties hereto for the length of this Agreement;

(c) the Grant funds will be used only to pay for Eligible Costs;

(d) the Renovation Work shall begin within six months of the date hereof; and

ARTICLE II

Funding and Recapture

2.1 Grant Funds. CIC shall provide Grant funds to the Grantee hereunder, subject to the following conditions:

2.2 Recapture Provisions. The Grant funds provided hereunder are subject to Recapture if, at any, (i) an Event of Default has occurred (subject to any applicable cure periods) with respect to such unit or (ii) if the mortgaged premises is sold. The amount subject to Recapture shall be calculated as follows, (subject to cure periods as indicated above) or when the sale occurs: if the event of noncompliance or sale takes place within the first year after the Grant funds have been fully disbursed, then the full amount of the Grant will be subject to Recapture; on the first anniversary of the date that the Grant was fully disbursed, the amount so subject to Recapture will be reduced by 20% of the amount of the Grant; and the amount subject to Recapture will be reduced by a like amount each succeeding anniversary, so that on the fifth anniversary the amount subject to Recapture will be zero.

ARTICLE III

Mortgage Provisions

UNOFFICIAL COPY

3.1 Defined Terms. For purposes of this Article III, the Grantee is referred to herein as the "Mortgagor" and CIC is referred to herein as the "Mortgagee".

3.2 Granting Provision. In order to secure the Recapture obligations of the Mortgagor set forth in Section 2.2 hereof, Mortgagor does hereby grant, assign, warrant, convey and mortgage to Mortgagee, its successors and assigns, and grants to Mortgagee, its successors and assigns forever a continuing security interest in and to, all of the following rights, interests, claims and property:

- (A) the Property, together with all easements, water rights, hereditaments, mineral rights and other rights and interests appurtenant thereto (the "Real Property");
- (B) all buildings, structures and other improvements of every kind and description now or hereafter erected, situated or placed upon the Real Property, together with any fixtures or attachments now or hereafter owned by Mortgagor and located in or on, forming part of, attached to, used or intended to be used in connection with or incorporated in the Real Property, including all extensions, additions, betterments, renewals, substitutions and replacements of any of the foregoing (the "Improvements");
- (C) any interests, estates or other claims of every name, kind or nature, both at law and in equity, which Mortgagor now has or may acquire in the Real Property, the Improvements, the Equipment (as hereinafter defined) or any of the property described in clauses (D), (F), (G), (H) or (I) hereof;
- (D) all of Mortgagor's interest and rights as lessor in and to all leases, subleases and agreements, written or oral, now or hereafter entered into, affecting the Real Property, the Improvements, the Equipment or any part thereof, and all income, rents, issues, proceeds and profits accruing therefrom (provided that the assignment hereby made shall not diminish or impair the obligations of Mortgagor under the provisions of such leases, subleases or agreements, nor shall such obligations be imposed on Mortgagee);
- (E) all right, title and interest of Mortgagor in and to all fixtures, personal property of any kind or character now or hereafter attached to, contained in and used or useful in connection with the Real Property or the Improvements, together with all furniture, furnishings, apparatus, goods, systems, fixtures and other items of personal property of every kind and nature, now or hereafter located in, upon or affixed to the Real Property or the Improvements, or used or useful in connection with any present or future operation of the Real Property or the Improvements, including, but not limited to, all apparatus and equipment used to supply heat, gas, air conditioning, water, light, power, refrigeration, electricity, plumbing and ventilation, including all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing, and all proceeds therefrom (the "Equipment");
- (F) all of the estate, interest, right, title or other claim or demand which Mortgagor now has or may acquire with respect to (i) proceeds of insurance in effect with respect to the Real Property, the Improvements or the Equipment, and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding of all or any portion of the Real Property, the Improvements or the Equipment;
- (G) all intangible personal property, accounts, licenses, permits, instruments, contract rights, and chattel paper of Mortgagor, including, but not limited to cash, accounts receivable, bank accounts, certificates of deposit, rights (if any) to amounts held in escrow, deposits, judgments, liens and causes of action, warranties and guarantees, relating to the Real Property, the Equipment or the Improvements;
- (H) all other property rights of Mortgagor of any kind or character related to all or any portion of the Real Property, the Improvements or the Equipment; and
- (I) the proceeds from the sale, transfer, pledge or other disposition of any or all of the property

UNOFFICIAL COPY

described in the preceding clauses.

All of the property referred to in the preceding clauses (A) through (I) shall be called, collectively, the "Premises."

IT IS FURTHER agreed, intended and declared that all the aforesaid property rights and interests shall, so far as permitted by law, be deemed to form a part and parcel of the Premises and be covered by this Agreement.

The Premises are hereby granted unto Mortgagee and its successors and assigns, forever, for the purposes and uses herein set forth.

If Mortgagor hereunder is described as a trustee under a trust agreement, said trust arrangement constitutes a "land trust" as said term is defined in Section 5/15-1205 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq, as amended, supplemented and restated from time to time (the "Act").

3.3 Preservation, Restoration and Use of Premises. Mortgagor shall:

- (a) promptly repair, restore, replace or rebuild any portion of the Premises which may become damaged, destroyed, altered, removed, severed or demolished, whether or not insurance proceeds are available or sufficient for the purpose, with replacements at least equal in quality and condition as existed prior thereto, free from any security interest in, encumbrance on or reservation of title thereto except Permitted Encumbrances);
- (b) keep and maintain the Premises in good condition and repair, without waste, and free from mechanics' liens, materialmen's liens or other liens and claims except Permitted Encumbrances;
- (c) complete, within a reasonable time, any construction of improvements now or hereafter constructed upon the Premises;
- (d) comply with all statutes, rules, regulations, orders, decrees and other requirements of any federal, state or local governmental body having jurisdiction over the Premises and the use thereof and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions that are applicable to the ownership, renovation, use and occupancy of the Premises;
- (e) upon completion of the Renovation Work, make no material alterations in the Premises (except those required by law) without Mortgagee's prior written consent;
- (f) upon completion of the Renovation Work, suffer or permit no change in the general nature of the occupancy or use of the Premises without Mortgagee's prior written consent;
- (g) pay all operating costs of the Premises when due, including all utility charges and all other assessments or charges of a similar nature;
- (h) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Mortgagee's prior written consent;
- (i) not abandon the Premises, nor do anything whatsoever to depreciate or impair the value of the Premises or the security of this Mortgage;
- (j) refrain from any action and correct any condition which would increase the risk of fire or other hazard to all or any portion of the Premises;
- (k) not permit any unlawful use or nuisance to exist upon the Premises; and

UNOFFICIAL COPY

(l) comply with all instruments and documents of record or otherwise affecting the use or occupancy of all or any portion of the Premises.

3.4 Taxes and Charges. Mortgagor agrees to pay or cause to be paid, prior to delinquency, all Charges (as hereinafter defined) which are assessed or imposed upon the Premises or become due and payable, and which create, may create or appear to create a lien upon the Premises or any part thereof; provided, however, that if by law any such Charge is payable or, at the option of Mortgagor, may be paid in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Charge in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. ("Charge" shall mean and include all federal, state, county, city, municipal or other governmental (or any instrumentality, division, agency, body or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances related to the Premises or Mortgagor.)

If Mortgagee requests Mortgagor shall furnish Mortgagee within 30 days after the date upon which any Charge is due and payable by Mortgagor, official receipts of the appropriate authority, or other proof satisfactory to Mortgagee, evidencing the payment thereof.

Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Charge by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay collection of the contested Charge and prevent the imposition of a lien or the sale or forfeiture of the Premises to collect the same; provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Charge at the time and in the manner provided in this Mortgage unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to contest or object to a Charge and, unless at Mortgagee's sole option, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that legal proceedings instituted by Mortgagor contesting or objecting to such Charge shall conclusively operate to prevent a lien against or the sale or forfeiture of the Premises or any part thereof as satisfaction of such Charge prior to final determination of such proceedings, and (ii) Mortgagor shall furnish to Mortgagee or Senior Lender, if any, (and if to Senior Lender, notice thereof to Mortgagee) a good and sufficient bond or surety, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, in an amount (x) not less than 125% of such Charge and (y) adequate fully to pay all such contested Charges and all interest and penalties upon the adverse determination of such contest.

3.5 Insurance. Mortgagor shall procure and maintain, or cause to be maintained, at all times, at Mortgagor's own expense, until final repayment of the Recapture obligation secured hereby, the types of insurance specified below, with insurance companies licensed to do business in the State of Illinois covering all operations contemplated in connection with the Renovation Work, whether performed by Mortgagor or any contractor or others.

The kinds and amounts of insurance required are as follows:

(a) Workers Compensation and Occupational Disease Insurance

Workers compensation and occupational disease insurance, in accordance with the laws of the State of Illinois, or any other applicable jurisdiction, covering all employees who are to provide a service in connection with the Renovation Work and employer's liability coverage with limits of not less than \$100,000 per each accident or illness.

(b) Commercial Liability Insurance (Primary and Umbrella)

Commercial liability insurance or equivalent with limits of not less than \$1,000,000 per occurrence, combined single limit, for bodily injury, personal injury and/or property damage liability. Coverage extensions shall include the following: all premises and operations,

UNOFFICIAL COPY

products/completed operation, independent contractors, cross liability and contractual liability coverages (with no limitation endorsement). Mortgagee, its employees, elected officials, agents and representatives shall be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Renovation Work.

(c) All Risk Property Damage

Mortgagor shall obtain an all risk property policy in the amount of full replacement value, including improvements and betterments, covering damage to or loss of the Premises. The insurance shall include the following extensions: business interruption/loss of rents, and boiler and machinery, if applicable. The policy shall list Mortgagee as loss payee as their interest may appear.

(d) All Risk Builders Risk Insurance

When Mortgagor or any contractor undertakes any construction, including improvements, betterments and/or repairs, to the Premises, all risk builder's risk insurance shall be procured and maintained to cover materials, supplies, equipment, machinery and fixtures that are or will be part of the Premises. Mortgagee shall be named as loss payee as their interest may appear.

Mortgagor shall furnish Mortgagee original certificates of insurance evidencing the required coverages to be in force on the date hereof, and renewal certificates of insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term hereof.

The receipt of any certificate does not constitute agreement by Mortgagee that the insurance requirements of this Section have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements. The failure of Mortgagee to obtain certificates or other insurance evidence from Mortgagor shall not be deemed to be a waiver by Mortgagee. Mortgagor shall advise all insurers of the provisions of this Section regarding insurance. Non-conforming insurance shall not relieve Mortgagor of its obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions of this Section may constitute an Event of Default.

All insurance policies shall provide that Mortgagee shall be given 30 days' prior written notice of any modification, nonrenewal or cancellation.

If Mortgagor fails to obtain or maintain any of the insurance policies required under this Mortgage or to pay any premium in whole or in part when due, Mortgagee may (without waiving or releasing any obligation or Event of Default by Mortgagor hereunder) obtain and maintain such insurance policies and take any other action which Mortgagee deems advisable to protect its interest in the Premises. All sums so disbursed by Mortgagee, including reasonable attorneys' fees, court costs and expenses, shall be reimbursed by Mortgagor upon demand by Mortgagee.

Mortgagor shall require all contractors working on the Renovation Work to carry the insurance required herein, or Mortgagor may provide the coverage for any or all of the contractors, and, if so, the evidence of insurance submitted shall so stipulate.

Any and all deductibles or self-insured retention on the insurance coverages required herein shall be borne by Mortgagor or the appropriate contractor, as applicable.

Mortgagor agrees and shall cause any contractor to agree that all insurers shall waive their rights of subrogation against Mortgagee, its employees, elected officials, agents or representatives.

Mortgagor expressly understands and agrees that any insurance or self-insurance programs maintained with respect to the Premises by Mortgagee shall apply in excess of and not contribute with insurance provided by

UNOFFICIAL COPY

Mortgagor or any contractor under this Section.

The insurance required hereunder to be carried shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

If Mortgagor or any contractor desires additional coverage, higher limits of liability, or other modifications for its own protection, Mortgagor or such contractor, as appropriate, shall be responsible for the acquisition and cost of such additional protection.

Mortgagee maintains the right to modify, delete, alter or change these requirements.

3.6 Inspection of Premises and of Books and Records. Mortgagor shall permit Mortgagee and/or its agents to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose. Mortgagor shall keep and maintain full and correct records at Mortgagor's office showing in detail the income and expenses of the Premises and shall make such books, records and all supporting vouchers, data and other documents available for inspection, copying (including excerpts and transcriptions), audit and examination upon request by Mortgagee and its agents, successors and assigns until the fifth anniversary of the date of payment of the Recapture obligation in full.

3.7 Insurance Proceeds. In the event of any damage to, or destruction of the Premises, Mortgagor will give written notice to Mortgagee of such damage or destruction within five business days thereafter and authorize Mortgagee to proceed as follows:

(a) In the event of any loss covered by insurance policies, Mortgagee is hereby authorized at its option to either (i) settle and adjust any claim under such policies without the consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. Mortgagee shall, and is hereby authorized to, collect any such insurance proceeds, and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be deemed additional indebtedness secured by this Mortgage and shall be reimbursed to Mortgagee by Mortgagor upon demand.

(b) In the event of any insured damage to, or destruction of, the Premises or any part thereof, Mortgagee shall apply the proceeds of insurance to reimburse or, at the option of Mortgagee, pay directly Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises if (i) an Event of Default hereunder shall not have occurred and be continuing; (ii) such insurance proceeds shall be in an amount sufficient to restore the Premises to at least the same value and substantially the same character as the Premises had immediately prior to such damage or destruction, or if such proceeds are not so sufficient, Mortgagor shall promptly deposit with Mortgagee funds equal to the amount of such deficiency; (iii) Mortgagor shall obtain all required governmental approvals with respect to such restoration, repair, replacement or rebuilding; (iv) prior to such restoration, repair, replacement or rebuilding, Mortgagee shall receive and approve plans and specifications and a detailed budget and cost breakdown with respect to such work; and (v) such restoration, repair, replacement or rebuilding is reasonably susceptible to completion not less than six months prior to the fifth anniversary of the date of the Grant.

(c) In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the restoration, repair, replacement or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to at least equal value, and substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications submitted to and approved by Mortgagee, and to expend all such proceeds and any funds deposited by Mortgagor pursuant to Section 3.7(b)(ii) hereof.

(d) If all of the conditions described in paragraph (b) of this Section with respect to the application of proceeds of insurance shall not be met, Mortgagee may, in its sole discretion, apply such proceeds to the Recapture obligation secured hereby in such order or manner as Mortgagee may elect.

UNOFFICIAL COPY

3.8 Condemnation/Eminent Domain. Mortgagor shall give Mortgagee prompt notice of any proceedings, pending or threatened, seeking condemnation or taking by eminent domain or any like process ("Taking"), of all or any portion of the Premises or affecting any easement thereon or appurtenance thereto and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings, and Mortgagor hereby assigns and transfers to Mortgagee, subject to the rights granted to Senior Lender, if any, under the Senior Mortgage, if any, the entire proceeds of all awards resulting from any Taking. Mortgagee is hereby authorized to collect and receive from the condemnation authorities said awards and is further authorized to give appropriate receipts therefor. In the event of any such Taking, but subject to any rights granted to Senior Lender, if any, under the Senior Mortgage, if any, Mortgagee may, in its sole discretion, (i) apply the proceeds of all awards resulting from such Taking to the Recapture obligation secured hereby in such order or manner as Mortgagee may elect, or (ii) apply such proceeds to reimburse or, at the option of Mortgagee, pay directly Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises. In the event that such proceeds, if any, shall be made available to Mortgagor for the restoration, repair, replacement or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to at least equal value and substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications submitted to and approved by Mortgagee. If the amount of such proceeds shall be in excess of \$50,000, such proceeds shall be disbursed through an escrow pursuant to an escrow agreement approved by Mortgagee.

3.9 Transfer and Encumbrance of Premises. Mortgagor shall not create, effect, contract for, commit to, consent to, suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing, directly or indirectly, by willful act, by operation of law or otherwise, of all or any portion of the Premises or any interest therein, other than Permitted Encumbrances, or any interest in Mortgagor (each of the foregoing being referred to herein as a "Prohibited Transfer"), without Mortgagee's prior written consent. If Mortgagor shall do or allow any of the foregoing Prohibited Transfers without Mortgagee's prior written consent, Mortgagee at its option, has the right to declare the full amount of the Recapture obligation immediately due and payable without notice to Mortgagor. Any waiver by Mortgagee of the provisions of this paragraph shall not be deemed to be a waiver of the right of Mortgagee to insist upon strict compliance with the provisions of this paragraph in the future.

3.10 Mortgagee's Options; Subrogation. (a) In case of an Event of Default hereunder by Mortgagor, Mortgagee may (but is not obligated to) make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may (but is not obligated to) make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem the Premises from any tax sale or forfeiture affecting the Premises or contest any tax or assessment thereon. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be deemed additional indebtedness secured hereby, and shall become immediately due and payable, with interest thereon at a rate of the lesser of 15% per annum or the maximum amount permitted by law. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

(b) To the extent that Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or Mortgagor or any other person or entity pays any such sum with the proceeds of the Grant, Mortgagee shall have and be entitled to a lien or other interest on the Premises equal in priority to the lien or other interest discharged and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the Recapture obligation secured hereby.

3.11 Acceleration, Etc. Upon the occurrence of an Event of Default hereunder, Mortgagee may elect to declare the full amount of the Recapture obligation, together with all other amounts then due and owing by Mortgagor to Mortgagee hereunder, to become immediately due and payable at the place of payment as aforesaid,

UNOFFICIAL COPY

and Mortgagee may proceed to foreclose this Mortgage and to exercise any rights and remedies available to Mortgagee under this Mortgage and to exercise any other rights and remedies against Mortgagor which Mortgagee may have at law, in equity or otherwise; provided, however, that upon the occurrence of an Event of Default under Section 4.1(c) or (d) hereof, the entire unpaid amount of the Recapture Obligation shall, without any declaration, notice or other action on the part of Mortgagee, be immediately due and payable, anything herein to the contrary notwithstanding.

3.12 Remedies. Mortgagee's remedies as provided in this Mortgage shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Mortgagee and may be exercised as often as occasion therefor shall arise, and shall not be exclusive but shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. Failure of Mortgagee, for any period of time or on more than one occasion, to exercise any such remedy shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent Event of Default. No act of omission or commission of Mortgagee, including specifically any failure to exercise any right or remedy, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by Mortgagee and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of Mortgagee's rights or remedies hereunder.

3.13 Additional Indebtedness. In the event that: (a) an attorney is retained to represent Mortgagee in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim hereunder; (b) an attorney is retained to protect or enforce the lien of this Mortgage; or (c) an attorney is retained to represent Mortgagee in any other proceedings whatsoever in connection with this Agreement, then Mortgagor shall pay to Mortgagee all reasonable attorneys' fees and all costs and expenses incurred in connection therewith.

3.14 Waiver. Mortgagee's failure to require strict performance by Mortgagor of any provision of this Mortgage shall not waive, affect or diminish any right of Mortgagee thereafter to demand strict compliance and performance therewith, nor shall any waiver by Mortgagee of an Event of Default waive, suspend or affect any other Event of Default under this Mortgage, whether the same is prior or subsequent thereto, or of the same or a different type. Mortgagee's delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights hereunder, shall not operate as a waiver of such rights or limit them in any way so long as an Event of Default shall be continuing.

3.15 Right of Possession. To the extent permitted by law, in any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the institution of such proceedings or before or after sale thereunder, Mortgagor shall, at the option of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of all or any portion of the Premises personally or by its agents or attorneys, and Mortgagee, in its sole discretion, may enter upon, take and maintain possession of all or any portion of the Premises.

Upon taking possession of the Premises, Mortgagee may make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Premises as it may deem judicious to insure, protect and maintain the Premises against all risks incidental to Mortgagee's possession, operation and management thereof, and may receive all rents, issues and profits therefrom. Mortgagee shall have, in addition to any other power provided herein, all powers and duties.

3.16 Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may, upon application, appoint a receiver of the Premises. Such appointment may be made either before or after foreclosure sale, without notice, without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Recapture obligation hereby secured, without regard to the value of the Premises at such time and whether or not the same is then occupied as a homestead, and without bond being required of the applicant. Mortgagee or any employee or agent

UNOFFICIAL COPY

thereof may be appointed as such receiver. The receiver shall have the power to take possession, control and care of the Premises and to collect all rents and profits thereof during the pendency of such foreclosure suit, and all powers as the court may direct.

3.17 Foreclosure Sale. The Premises or any interest or estate therein sold pursuant to any court order or decree obtained under this Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by Illinois law. At any such sale, Mortgagee may bid for and acquire, as purchaser, all or any portion of the Premises and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Recapture obligation the amount of Mortgagee's bid.

3.18 Application of Proceeds from Foreclosure Sale. Proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, (ii) all other items which, under the terms hereof, constitute secured obligations additional to the Recapture obligation, with interest thereon, (iii) the Recapture obligation, and (iv) any surplus or remaining funds to Mortgagor, its successors or assigns, as their rights may appear.

3.19 Insurance Upon Foreclosure. Wherever provision is made in this Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale. Upon confirmation of sale, Mortgagee shall be empowered to assign all policies of insurance to the purchaser at the sale. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the Premises, shall be used to pay the amount due in accordance with any foreclosure decree that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

3.20 Waiver of Statutory Rights. To the extent permitted by law, Mortgagor shall not apply for or avail itself of any appraisal, valuation, redemption, reinstatement, stay, extension or exemption laws or any so-called "Moratorium Laws" now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage and 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 Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. To the extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement, on its own behalf and on behalf of each and every person having a beneficial interest in Mortgagor, it being the intent hereof that any and all such rights of redemption or reinstatement of Mortgagor and of all other persons are and shall be deemed to be hereby waived.

3.21 Partial Payments. Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the amount then remaining unpaid immediately due and payable without notice, or any other rights of Mortgagee at that time or any subsequent time, without its express written consent, except and to the extent otherwise provided by law.

3.22 Rescission of Election. Acceleration of the Recapture obligation, once made by Mortgagee, may at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed. In either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and powers of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

3.23 Further Assurances. Mortgagor will perform, execute, acknowledge and deliver every act, deed,

UNOFFICIAL COPY

conveyance, transfer and assurance necessary or proper, in the sole judgment of Mortgagee, for assuring, conveying, mortgaging, assigning and confirming to Mortgagee all property mortgaged hereby or property intended so to be, whether now owned or hereafter acquired by Mortgagor, and for creating, maintaining and preserving the lien and security interest created hereby on the Premises. Upon any failure by Mortgagor to do so, Mortgagee may make, execute and record any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee and its agents as attorney-in-fact for that purpose. Mortgagor will reimburse Mortgagee for any sums expended by Mortgagee in making, executing and recording such documents including attorneys' fees and court costs.

3.24 Indemnification. In addition to all other indemnities in favor of Mortgagee specifically provided in this Mortgage, Mortgagor shall indemnify Mortgagee and save Mortgagee harmless from and against any and all losses, damages and judgements (collectively, a "Loss") incurred by Mortgagee in any claim, action, suit or proceeding brought by reason of any such Loss, excluding, however, any Loss arising out of Mortgagee's gross negligence or willful misconduct following Mortgagee's acquisition of title to or control of the Premises.

3.25 Junior Mortgage. This is a junior mortgage on the Premises and is subject and subordinate in each and every respect to any and all rights of any kind created by: the "Senior Mortgage". So long as the Senior Mortgage is in effect, in the event of any conflict between the provisions of this Mortgage and the Senior Mortgage, the provisions of the Senior Mortgage shall prevail. Any waiver or forbearance by the Senior Lender under the Senior Loan Documents shall not impair the priority of its lien under the Senior Loan Documents. Notwithstanding any other provision herein to the contrary, the failure by Mortgagor to provide to Mortgagee any dollar amounts or any documents as may be required herein because such amounts or documents are required to be deposited with Senior Lender pursuant to the provisions of the Senior Mortgage shall not be deemed an "Event of Default" hereunder; provided, however, that Mortgagor shall promptly provide to Mortgagee written notice of the deposit of such amounts or documents with Senior Lender (together with copies of such documents). Notwithstanding any other provision herein to the contrary, the failure by Mortgagor to comply with any provision hereof (other than the payment of amounts or the provision of documents to Mortgagee) due to conflict between the provisions of the Senior Mortgage and the provisions hereof shall not be deemed an "Event of Default" hereunder; provided, however, that Mortgagor shall promptly provide to Mortgagee written notice of such conflict and of the actions taken by Mortgagor pursuant to the Senior Mortgage.

3.26 Protective Advances; Maximum Amount of Indebtedness. All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act herein below referred to:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Premises; (ii) preserve the lien of this Mortgage or the priority thereof;

(b) payments by Mortgagee of: (i) when due, installments of principal, interest or other obligations in accordance with the terms of the Senior Mortgage, if any, or other prior lien or encumbrance; (ii) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

UNOFFICIAL COPY

(d) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure;

(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vii) pursuant to any lease or other agreement for occupancy of the Premises; and (viii) if this Mortgage is insured, payments of FHA or private mortgage insurance.

All Protective Advances shall be so much additional obligations secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest described herein.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded.

The maximum amount secured by this Mortgage shall be the amount of the Grant plus interest, plus any disbursements for the payment of taxes and insurance on the Premises, plus interest thereon, and any other sums advanced in accordance with the terms hereof to protect the security of this Mortgage.

ARTICLE IV

Events of Default; Remedies

4.1 Events of Default Defined. The following, subject to the notice and cure provisions of Section 4.2 hereof, shall each constitute an Event of Default hereunder:

(a) any misrepresentation, whether negligent or willful and whether in the inducement or in the performance of this Agreement, made by the Grantee to CIC;

(b) failure by the Grantee to perform any of its duties or obligations under this Agreement;

(c) the dissolution of the Grantee or the entry of a decree or order for relief by a court having jurisdiction with respect to the Grantee in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a

UNOFFICIAL COPY

receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) of the Grantee or for any substantial part of the property thereof or ordering the winding-up or liquidation of the affairs of the Grantee and the continuance of any such decree or order unstayed and in effect for a period of 30 consecutive days;

(d) the commencement by the Grantee of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by the Grantee to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of the Grantee or of any substantial part of the property of the Grantee or of any royalties, revenues, rents, issues or profits therefrom, or the making by the Grantee of any assignment for the benefit of creditors or the failure of the Grantee generally to pay its respective debts as such debts become due or the taking of action by the Grantee in furtherance of any of the foregoing;

(e) a final judgment for the payment of money shall be rendered by a court of competent jurisdiction against the Grantee, and the Grantee shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof, within 60 days from the date of entry thereof, or such longer period during which execution of such judgment shall have been stayed; or

(f) default by the Grantee under any other agreement which the Grantee may currently have or may enter into with CIC during the term of this Agreement.

4.2 **Remedies.** If any event referred to in Section 4.1 hereof cannot reasonably be cured within 30 days after receipt of notice given in accordance with the terms of this Agreement, or, following such 30-day cure period, if the Grantee has failed, in the sole opinion of CIC, to commence and continue diligent efforts to cure such event, CIC may, at its sole option, declare an Event of Default hereunder. Whether to declare an Event of Default hereunder is within the sole discretion of CIC. Written notification of, or that results in, an Event of Default, and any intention of CIC to terminate this Agreement, shall be provided to the Grantee and such decision shall be final and effective upon receipt of such notice and failure to cure within the stated applicable cure period. Upon the giving of such notice, CIC may invoke any or all of the following remedies:

- (a) the right to terminate this Agreement as to any or all of the services yet to be performed effective at a time specified by CIC;
- (b) the right of specific performance, an injunction or any other appropriate equitable remedy;
- (c) the right to money damages;
- (d) the right to withhold further disbursements of Grant funds hereunder; and
- (e) subject to the provisions of Section 2.2 hereof, the right to receive funds under the Recapture obligation.

If CIC considers it to be in its best interests, it may elect not to declare an Event of Default hereunder or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of CIC and that if CIC permits the Grantee to continue to provide the services despite one or more Events of Default, the Grantee shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall CIC waive or relinquish any of its rights thereby.

UNOFFICIAL COPY

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or failure to exercise any right or power accruing upon any Event of Default shall impair any such right or power nor shall it be construed as a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE V

General Provisions

5.1 Duration of the Agreement. This Agreement shall commence on the date of execution and delivery hereof and shall terminate five years from the date of execution hereof.

5.2 Recording. This Agreement will be recorded by CIC, in the Office of the Recorder of Deeds in the County (in which the property resides) in the state of Illinois.

5.3 Successors and Assigns. Subject to the provisions of Section 5.6, This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the Grantee and CIC and their respective successors and assigns (including, without limitation, each and every record owner of the Premises or any other person having an interest therein), and shall inure to the benefit of the Grantee and CIC and their respective successors and assigns.

5.4 Assignment. The Grantee may not assign, sell, transfer or delegate any of its duties or obligations under this Agreement without the prior written consent of CIC.

5.5 Savings Clause. In case any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

5.6 Entire Agreement. This Agreement and the incorporated Exhibits constitute the entire Agreement and may not be modified, altered or amended unless agreed to by both parties in writing. Any waiver or any provision of this Agreement must be executed in writing by the party granting the waiver and such waiver shall not affect any other rights of the party granting the waiver or act to affect any other duty or obligation of the party receiving the waiver.

5.7 Notices. Unless otherwise specified, any notice, demand or request hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier; or (d) registered or certified mail, return receipt requested.

IF TO GRANTEE:

MARY LAURA JONES & KEN OTTO
JONES & OTTO NEIGHBORHOOD DEVELOPMENT, LLC
~~4700 N. SHERRIDAN ROAD~~ 1454 W. Fargo Avenue
CHICAGO, IL 60626

IF TO CIC:

Community Investment Corporation
222 South Riverside Plaza
Suite 2200
Chicago, Illinois 60606
Attn: President

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the business day immediately following deposit with the overnight courier and any notice, deemed or request sent pursuant to clause (d) above shall be deemed received two business days

UNOFFICIAL COPY

following deposit in the mail.

5.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State without regard to its conflict of laws principles.

IN WITNESS WHEREOF, the Grantee and CIC have executed this Agreement as of the date first set forth above.

COMMUNITY INVESTMENT CORPORATION

GRANTEE
JONES & OTTO NEIGHBORHOOD DEVELOPMENTS, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY

BY: 
JOHN G. MARKOWSKI

BY: 
MARY LAURA JONES

ITS: PRESIDENT

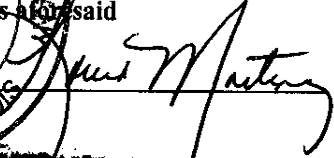
ITS: MANAGER

BY: 
KENNETH D. OTTO

ITS: MANAGER



CHICAGO TITLE LAND TRUST COMPANY
CORPORATE SEAL
Trustee as aforesaid

BY: 
ITS: VICE PRESIDENT

ATTEST: **Attestation not required pursuant to corporate by-laws.**

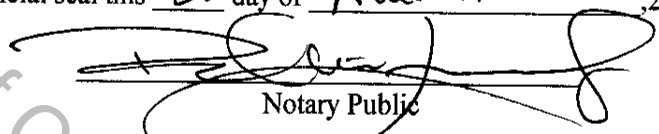
This instrument is executed by the undersigned Land Trustee not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that: MARY LAURA JONES(name) MANAGING MEMBER (title) and KENNETH D. OTTO(name) MANAGING MEMBER (title) of JONES & OTTO NEIGHBORHOOD DEVELOPMENTS, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, are personally known to me to be the same person whose names are subscribed to the foregoing instrument as such MANAGER (title) and MANAGER (title) respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts of said JONES & OTTO NEIGHBORHOOD DEVELOPMENTS, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 28 day of AUGUST, 2008.


Notary Public



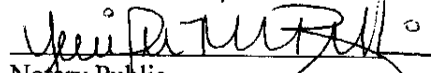
County Clerk's Office

UNOFFICIAL COPY

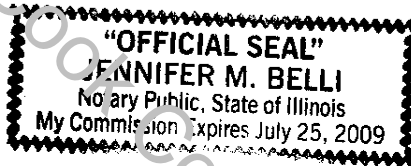
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that **JOHN G. MARKOWSKI**, personally known to me to be the **PRESIDENT** of **Community Investment Corporation, an Illinois not-for-profit corporation** (the "Mortgagee"), personally known to me to be the same person whose name is subscribed to the foregoing agreement, appeared before me this day in person and acknowledged that as such **PRESIDENT**, he/she signed and delivered the said agreement to be affixed thereto, pursuant to authority given by the Board of Directors of the Mortgagee as his/her free and voluntary act and as the free and voluntary act and deed of the Mortgagee for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 22nd day of August, 2008.


Notary Public

(SEAL) My Commission Expires: _____



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

Legal Description of the Property

THE WEST ½ LOT OF 7 IN BLOCK 7 IN BIRCHWOOD SUBDIVISION IN SECTION 29, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY COMMONLY KNOWN AS: 1454 W. FARGO AVENUE, CHICAGO, IL 60625

PERMANENT INDEX NUMBER(S): 11-29-307-009-0000

Property of Cook County Clerk's Office