

PURCHASE MONEY MORTGAGE

Married to Bonnie Smith

THIS MORTGAGE is made this 9<sup>th</sup> day of December, 1988, between WILLIAM HARRIS SMITH, whose address is c/o Creative Construction, Ltd., 325 West Huron, #804, Chicago, Illinois 60610 (hereinafter referred to as "Borrower") and C. PHILIP SMILEY, whose address is c/o The Great Ace, 2818 North Broadway, Chicago, Illinois 60657, doing business in Chicago, Illinois (hereinafter referred to as "Lender").

The property covered by this mortgage is not homestead property.

WITNESSETH

Borrower is justly indebted to Lender in the principal sum of Nine hundred ninety thousand dollars----- AND 00 /100 (\$ 990,000.00 ) DOLLARS, as evidenced by that Note of Borrower dated on even date herewith, made payable to Lender, providing for mandatory payments of principal and interest until said Note is fully paid, with a final payment of the balance of all principal and interest due thereunder, if not sooner paid due and payable on the 3rd day of January, 1989.

To secure the payment of the principal sum of money evidenced by the Note, with interest thereon as provided therein, and the payment of all other sums advanced to protect the security of this Mortgage with interest thereon, and the performance by Borrower of all of the covenants and conditions contained herein and in said Note and all other sums due and owing by Borrower to Lender and in further consideration of one dollar (\$1.00) in hand paid, the receipt of which is acknowledged, the Borrower does hereby by these presents GRANT, MORTGAGE AND CONVEY to Lender, its successors and assigns the following described real estate and all of its estate, right, title and interest therein, situated, lying and being in the City of Chicago, County of Cook, State of Illinois and, legally described on Exhibit "A" attached hereto and by this reference incorporated herein, together with all improvements, tenements, easements, hereditaments and appurtenances thereunto belonging and all rents, issues and profits thereof for so long and during all such times as the Borrower may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all the structures, buildings, additions and improvements, and replacements thereof, erected upon said realty, including any on-site energy systems providing power, electricity, heating, air conditioning, refrigeration, lighting, ventilation, water, and all plants, equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures or buildings or of any structures or buildings heretofore or hereafter standing on the realty or on any part thereof or now or hereafter used in connection with the use and enjoyment of said realty, whether or not physically attached thereto, excluding a trash compactor described in Paragraph R-8 of that certain Real Estate Contract dated November 1, 1988 by and between Lender, as Seller, and Borrower, as Purchaser (said contract is hereinafter referred to as the "Purchase Contract"), and together with all of Borrower's rights further to encumber said property for debt. All of the above-mentioned and described real estate, property and rights are hereinafter referred to as "Property".

TO HAVE AND TO HOLD the Property unto the said Lender, its successors and assigns forever, for the purposes and uses therein set forth.

## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Obligations Relating to Property. Borrower shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Property which may become damaged or be destroyed; (b) keep said Property in good condition and repair, without waste and free from mechanics' liens or other

Mail to:

RAYMOND S. McGAUGH  
BURKE, HILSON & McELVAINE  
303 E. WACKER DR.  
SUITE 1000  
CHICAGO, IL 60601

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liens or claims for lien not expressly subordinated to the lien hereof; (c) pay when due any indebtedness which may be secured by a lien or charge on the Property superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to lender; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon said Property; (e) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Property and the use thereof; (f) make no material alterations to said Property except as required by law or municipal ordinance; (g) not use or suffer or permit use of the Property for any purpose other than that for which the same is now used; (h) not initiate or acquiesce in any zoning reclassification without Lender's written consent; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note; (j) not demolish the Property; and (k) pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgement of this Mortgage and all other documents securing the indebtedness secured hereby and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the indebtedness secured hereby, this Mortgage and all other documents securing the indebtedness secured hereby and all assignments thereof.

2. Taxes. Borrower shall pay before any penalty attaches all general taxes, special taxes, special assessments, water charges, sewer service charges and other charges against the Property when due, and shall, upon written request, furnish to Lender duplicate receipts therefor. In the event, as owner of the Property, Borrower shall be entitled to the benefits of membership in any homeowner's association, or similar organization affording recreational or other facilities for the use of Borrower and other property owners or occupants in the vicinity of the Property, or to the use, in common with others, of any such facilities located beyond the Property by any arrangement whereby the cost of such facilities is to be shared by the users thereof, Borrower agrees to become a member of such association (incorporated or unincorporated) and to perform all obligations of membership, including the payment of any and all dues, assessments, service fees or other obligations incurred, to maintain such membership.

3. Insurance. Borrower shall keep all buildings and improvements now or hereafter situated on said Property insured against loss or damage by fire and such other hazards as may reasonably be required by Lender, including without limitation on the generality of the foregoing, war damage insurance whenever in the opinion of Lender such protection is necessary. The property damage insurance shall provide for full replacement cost coverage, and any public liability and property damage insurance shall contain a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of either the Borrower or Lender because of the negligence or other acts of the other. All insurance required under this Section shall name the Lender as an additional insured. Borrower shall also provide liability insurance with such limits for personal injury and death and property damage as Lender may require. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Lender, with mortgage clauses attached to all policies in favor of and in form satisfactory to Lender, including a provision requiring the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Lender. Borrower shall deliver all policies, including additional and renewal policies, to Lender on or before the closing as set forth in the Purchase Contract, and, in the case of insurance about to

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expire, shall deliver renewal policies not less than ten (10) days prior to their respective dates of expiration. Whenever any loss, cost, damage or expense resulting from fire or other casualty or occurrence is incurred by either of the parties to this Mortgage in connection with the Property, and such party is covered, or is required hereunder to be covered, in whole or in part, by insurance with respect to such loss, cost, damage or expense, then the party so insured or required to be insured hereby releases the other party from any liability it may have on account of such loss, cost, damage or expense to the extent of any amount which is or could have been recovered by reason of such insurance and waive any right of subrogation which might otherwise exist in or accrue to any person or account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage.

4. Damage to Property. In case of loss, Lender (or after entry of decree of foreclosure, the purchaser at the sale or the decree creditor, as the case may be) is hereby authorized either (a) to settle and adjust any claim under such insurance policies without consent of Borrower, or (b) to allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss. In either case Lender is authorized to collect and receipt for any such insurance money. The insurance proceeds may be applied to restoration or repair of the Property damaged provided such restoration or repair is economically feasible. The determination of economic feasibility shall be made solely by Lender. If such restoration or repair is not economically feasible, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower or if Borrower fails to respond to Lender within fifteen (15) days after notice by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

5. Variation. If the payment of the indebtedness or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in said Property, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation or release.

6. Rights of Lender. In case of default herein, Lender may, but need not, make any payment or perform any act herein required of Borrower in any form and manner deemed expedient, and may, but need not, 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 from any tax sale or forfeiture affecting said premises or contest any tax or assessment. 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 Lender to protect the Property and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon from the date of the disbursement at the Default Rate stated in the Note\*.

7. Duties When Paying Property Obligations. Lender in making any payment hereby authorized: (a) relating to taxes and

\*-, provided that the aggregate amount of the indebtedness secured hereby together with all such additional sums advanced shall not exceed two hundred (200%) percent of the amount of the original indebtedness secured hereby. Inaction of Lender shall never be considered as a waiver of any right accruing to it on account of any default on the part of Borrower.

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assessments or insurance premiums, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

8. Default. If (a) default be made in the due and punctual payment of the Note, or any installment due in accordance with the terms hereof, either of principal or interest or in any payment required to be made under the terms of said Note or this Mortgage; or (b) a petition shall be filed by or against the Borrower in voluntary or involuntary bankruptcy or under Chapters XI, XII or XIII of the Federal Bankruptcy Act or any similar law, state or federal, whether now or hereafter existing; or (c) the Borrower shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for the Borrower or for all Borrower's property or the major part thereof in any proceeding, or any court shall have taken jurisdiction of the property of the Borrower or the major part thereof in any proceeding for the arrangement, liquidation or winding up of the affairs of the Borrower; or (d) the Borrower shall make an assignment for the benefit of creditors, or shall admit in writing inability to pay Borrower's debts generally as they become due; or (e) default shall be made in the due observance or performance of any other of the covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by the Borrower and the same shall continue for five (5) days, then and in every such case the whole of said principal sum hereby secured shall, at once, at the option of Lender become immediately due and payable, together with accrued interest thereon, without notice to Borrower.

9. Foreclosure. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) for procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and similar data and assurances with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property.

All expenditures and expenses of the nature in this Paragraph mentioned, and such expenses and fees as may be incurred in the protection of said Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Note or said Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Borrower, with interest from the date of disbursement at the Default Rate stated in the Note and shall be secured by this Mortgage.

The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: first,

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on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the note secured hereby; fourth, any overplus to Borrower, its heirs, legal representatives or assigns, as its rights may appear.

10. Assignment of Rents. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under Paragraph 11 hereof or abandonment of the Property, has the right to collect and retain such rents as they become due and payable.

Upon acceleration under Paragraph 11 hereof or abandonment of the Property, and at any time prior to the expiration of any period of redemption following judicial sale, Lender, in person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All rents collected by Lender, or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received.

11. Inspection. Lender shall have the right to inspect the Property at all reasonable times and access thereto shall be permitted for that purpose.

12. Condemnation. Borrower hereby assigns, transfers and sets over unto Lender the entire proceeds of any award or any claim for damages for any of the mortgaged Property taken or damaged under the power of eminent domain or by condemnation. Lender may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or to require Borrower to restore or rebuild. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of Lender, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto. If the Property is abandoned by Borrower or if after notice by Lender to Borrower that the condempnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within five (5) days of the date of such notice, Lender is authorized to collect and apply the proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

13. Release. Lender shall release this Mortgage and the Lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Lender for the execution of such release.

14. Notice. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof by certified mail addressed to the Borrower or Lender at the address set forth above, or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder. Copies of all notices to Lender shall be sent to Richard W. Burke, Burke, Wilson & McIlvaine, 303 E. Wacker Drive, Suite 1000, Chicago, Illinois 60601. Copies of all notices to Borrower shall be sent to Benjamin J. Randall, Katz Randall & Weinberg, 200 North LaSalle Street, Suite 2300, Chicago, Illinois 60601.

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15. Forbearance. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.

16. Waivers. Borrower waives the benefit and agrees not to invoke any appraisement, valuation, stay, extension or exemption laws, or any so-called "moratorium laws," not existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage. Borrower for Borrower and all who may claim through or under Borrower waives any and all rights to have the property and estates comprising the mortgaged Property marshalled upon any foreclosure of the lien hereof and agree that any court having jurisdiction to foreclose such lien may order the mortgaged Property sold as an entirety. Borrower hereby waives and releases all rights and benefits under and by virtue of the homestead exemption laws of the State of Illinois.

17. Binding. This Mortgage and all provisions hereof shall extend to and be binding upon Borrower and all persons claiming under or through Borrower, and the word "Borrower" when used herein shall include all such persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage, and shall include the singular or plural as the context may require. All obligations of Borrower hereunder shall be joint and several if more than one party comprise the Borrower. The word "Lender" when used herein shall include the successors and assigns of Lender named herein, and the holder or holders, from time to time, of the Note secured hereby.

18. Captions. The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting in any way the scope or intent of the provisions hereof. Wherever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders.

19. Unauthorized Transfer. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the note hereby secured. Any sale, conveyance, assignment, pledge, hypothecation, encumbrance or other transfer of title to, or any interest in, or the placing of any lien upon the premises or any portion of any entity owning any interest therein (whether voluntary or by operation of law) without lender's prior written consent shall be an event of default hereunder. Any consent by lender to, or any waiver of any event which is prohibited under this Paragraph 19 shall not constitute a consent to, or waiver of, any right, remedy or power of Lender upon a subsequent event of default.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

x   
\_\_\_\_\_  
WILLIAM HARRIS SMITH

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BJR 885021/1452R

STATE OF )  
                  ) SS  
COUNTY OF )

I, Lisa O'Keefe, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that WILLIAM HARRIS SMITH appeared before me this day in person and acknowledged that he signed and sealed the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 9th day of December, 1988.

Lisa O'Keefe  
Notary Public

My Commission Expires Dec. 12, 1989

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## EXHIBIT A

The North 159 feet of the South 553 feet of the West 212 feet of Lot 7 in the Subdivision of Lot 1 in Joseph Sheffields Subdivision of Block 45 in Sheffields Addition to Chicago, in the West 1/2 of the Southwest 1/4 of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN 14-29-302-075  
2147 N. GREENVIEW  
CHICAGO, IL

Prepared by:

Katz, Radell & Weinberg  
200 North La Salle  
Suite 2300  
Chicago, Illinois



DEPT-01 \$18.25  
T03333 TRAN 8860 12/09/88 15:10:00  
#2163 # C #-88-569896  
COOK COUNTY RECORDER

-88-569896

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