

# UNOFFICIAL COPY

1991 JUN 16 PM 3:20

91353308

REF: Granville Apartments  
CHA Project No. 071-10932  
90596584

## SECOND MORTGAGE AND SECURITY AGREEMENT

\$ 28

THIS SECOND MORTGAGE AND SECURITY AGREEMENT ("Mortgage"), made as of July 15, 1991, by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but as Trustee under Trust Agreement dated May 1, 1991 and known as Trust No. 113911-09, having its principal office at 33 North LaSalle Street, Chicago, Illinois 60690, Mortgagor Trustee and 6230 North Kenmore Apartments Limited Partnership, an Illinois Limited Partnership, Mortgagor Beneficiary (hereinafter collectively referred to as "Mortgagor") and DEVON BANK, an Illinois banking association, having its principal office at 6445 North Western Avenue, Chicago, Illinois 60645 (the "Mortgagee").

### W I T N E S S E T H:

WHEREAS, Mortgagor concurrently herewith executed and delivered to Mortgagee an Installment Note of even date herewith in the principal sum of Four Hundred Thousand Dollars (\$400,000) payable to the order of Mortgagee, with interest thereon at the rates provided in said Note, in installments with final balloon payments of principal and interest due July 15, 1996 (the "Note") to be paid at such place as the holder(s) of the Note may, from time to time, in writing appoint, and in the absence of such appointment, then at the office of Mortgagee at 6445 North Western Avenue, Chicago, Illinois 60645; and

WHEREAS, Mortgagor Trustee and Mortgagor Beneficiary concurrently herewith have executed and delivered to Mortgagee certain agreements and instruments of even date herewith, including an Environmental Indemnity Agreement (which agreements and instruments of Mortgagor together with the Note, are herein sometimes referred to collectively as the "Loan Documents");

NOW, THEREFORE, to secure the payment of the aforesaid principal sums and interest according to the Note, and any and all other indebtedness now or hereafter owing to Mortgagee in accordance with the terms, provisions and limitations of this Mortgage and the performance of the covenants and agreements of Mortgagor herein and in the Loan Documents contained and in consideration and as a condition of the making of the loan evidenced by the Note and any advance by Mortgagee for the benefit of Mortgagor in connection therewith and for other good and valuable consideration, the receipt of which is hereby acknowledged, Mortgagor does by these presents grant, remise, release, alien, assign and convey and warrant to the Mortgagee and to its successors and assigns, with power of sale, all the estate, right, title and interest of Mortgagor in, to and under, or derived from:

- (i) that certain parcel of real estate situate, lying and being in the County of Cook and State of Illinois, and legally described in Exhibit A attached hereto and by this reference made a part hereof, together with all buildings, improvements and fixtures now or hereafter located on said real estate, including without limitation all building and construction materials and equipment to be delivered to and to become incorporated in any real estate and all fixtures, equipment, machinery, appliances, pipes, conduits and furnishings of every kind and description which may be used or useful in connection with the operation of said real estate and/or used to supply heat, gas, air conditioning,

91353308

73-34-157-02 Cont'd (1)

(207)07

# UNOFFICIAL COPY

water, light, power, refrigeration and ventilation to said real estate; all tenements, hereditaments, easements, licenses and privileges at any time appertaining or belonging to said real estate; all right, title and interest of Mortgagor, whether now or hereafter acquired, in or to any street, road, highway or alley adjoining said real estate, and all proceeds and products from any of the foregoing and from said real estate, including but not limited to insurance proceeds and condemnation or eminent domain awards (the "Real Estate"); and

- (ii) all building materials, goods, construction materials, furnishings, fixtures, and equipment, inventory and all other tangible property of Mortgagor, wherever located, which are now or hereafter used or useful in connection with the construction or operation of any improvements now or hereafter located on the Real Estate including without limitation that used or useful in the operation of the apartment building now being operated on the Real Estate; and all additions and accessions to and replacements of any such property and all proceeds therefrom (the "Equipment"); and
- (iii) all right, title and interest of Mortgagor in the Real Estate and all rights and benefits accruing to Mortgagor thereunder, and all other issues and profits from the Real Estate,

(hereinafter referred to collectively as the "Premises"); and

- (iv) all of which are subject to the terms of a prior First Mortgage and FHA/HUD Regulatory Agreements of record as identified in the Rider attached hereto.

TO HAVE AND TO HOLD the Premises unto the Mortgagee and the Mortgagee's successors and assigns forever, for the purposes, and upon the uses herein set forth.

AND, subject to the aforesaid prior First Mortgage and FHA/HUD Regulatory Agreements, Mortgagor covenants with the Mortgagee that:

1. All of the terms, provisions, covenants, conditions, representations, warranties and agreements of the Loan Documents are hereby fully incorporated into this Mortgage to the same extent as if fully set forth herein. All advances made and indebtedness arising or occurring under the Loan Documents, from time to time, shall be secured by this Mortgage and the occurrence of any event of default under any of the Loan Documents not cured by the time permitted therein, if any, shall constitute a default under this Mortgage entitling Mortgagee to all of the rights and remedies conferred upon Mortgagee by the terms of this Mortgage, the Loan Documents and by law, including but not limited to the right to declare the whole of the indebtedness secured hereby, together with accrued interest thereon, immediately due and payable, including without limitation all fees and charges due under the Loan Documents. In the event of any conflict between the terms of this Mortgage and the terms of any of the Loan Documents (including, but not limited to, provisions relating to notice or waiver thereof), at the option of Mortgagee, those of the Loan Documents shall govern and prevail over those of this Mortgage.

2. This Mortgage shall operate as a security agreement under the provisions of the Illinois Uniform Commercial Code with respect to the Equipment and such of the Premises as are or may become fixtures and with Mortgagor as Debtor and Mortgagee as Secured Party. This Mortgage shall be filed in the real estate records of Cook County, Illinois and such other places as may be required to perfect the

91353308

interests herein granted. Mortgagor Trustee is the record owner of the Real Estate.

3. This Mortgage secures the Note and any renewal, modification or extension of the Note, the payment of any and all indebtedness and monies, including interest, owned to Mortgagee under the Note, this Mortgage and the Loan Documents, whether presently existing or incurred subsequent hereto, and the performance, payment and observance by Mortgagor of each agreement, term, provision and condition contained herein of the Loan Documents, or other security instrument relating to the loans evidenced by the Note. This Mortgage is granted and is intended to secure all such indebtedness and obligations hereunder and under the Loan Documents.

4. All indebtedness secured by this Mortgage shall be paid when due at the times and in the manner provided herein and in the Loan Documents. So long as Mortgagor is not in default under the Loan Documents or hereunder, Mortgagor shall have the right to prepay the principal of the Note in whole at any time or in part from time to time as provided and subject to the terms and conditions contained therein.

5. Mortgagor is the legal and beneficial owner of the Premises subject only to the First Mortgage, Security Agreement and Regulatory Agreements referenced and identified in the Rider attached hereto (hereinafter collectively referred to as "Permitted Encumbrances") and Mortgagor has the right to mortgage and to assign and grant the interests herein granted. None of the rights or property hereby mortgaged, assigned or granted are subject to any prior mortgage, assignment, or other encumbrance other than permitted Encumbrances; in the case of property and improvements to be acquired in the future, Mortgagor covenants that, when so acquired, such property will not be subject to any mortgage, assignment or other encumbrance except Permitted Encumbrances and Mortgagor's rights hereunder. Mortgagor does and will warrant and forever defend the right, title and interest in the Premises herein granted against all persons claiming by, through or under Mortgagor.

6. The Equipment was or will be acquired for use in connection with the Real Estate, will be kept on the Real Estate and Mortgagor will not sell, lease, encumber, remove or otherwise dispose of such property without the prior written consent of Mortgagee and any net cash proceeds received from any permitted disposition shall be paid to Mortgagee to be applied to the indebtedness payable pursuant to the Note in such order and manner as Mortgagee shall elect. Except for such financing statements, if any, as are permitted Encumbrances, no financing statement covering all or any portion of the Equipment is on file in any public office and Mortgagor authorizes Mortgagee at the expense of Mortgagor to execute and file in its behalf any financing statement or statements or continuations or amendments thereof in those public offices deemed necessary by Mortgagee to protect its security interest in the Equipment. Mortgagor will at all times keep the Equipment free from any adverse lien, security interest or encumbrance other than permitted Encumbrances and the security interest herein granted; and Mortgagor shall furnish to Mortgagee at the request of Mortgagee from time to time a certificate executed and sworn to by a duly authorized officer of Mortgagor setting forth (i) that no Equipment has been removed from the Premises except in connection with a sale or other disposition permitted by this Mortgage, (ii) a list in reasonable detail of any Equipment which has been sold or disposed of or placed in or upon the Premises during the preceding twelve month period, (iii) the cost of all personal property substituted for Equipment sold or disposed of and that the same are of the same or similar character and of utility and value at least equal to the Equipment sold or disposed of, and (iv) that title to all personal property acquired during such twelve month period whether in substitution or replacement for Equipment sold or disposed of or in addition to existing Equipment is vested in Mortgagor free of title retention.

91353308

10. In the event of fire or other destruction or condemnation or taking by exercise of the power of eminent domain of any of the premises, all insurance proceeds and condemnation or eminent domain awards which are not paid to the holder of the first mortgage or HUD shall, at the option of Mortgagee, be paid and applied to the repair or restoration of the premises or to the indebtedness secured hereby. The premises and the equipment at all times shall be insured against loss or damage by fire and other casualties to such extent as may or hereafter reasonably be required by Mortgagee and in amounts approved by Mortgagee but in no event less than the replacement value thereof. In addition, Mortgagee shall maintain

of the facility now existing on the premises. force and effect all licenses and permits necessary to the operation located thereon and will maintain or cause to be maintained in full authority applicable to the premises and conduct of the facilities all laws, rules, regulations and orders of any governmental and Mortgagee at all times will comply in all material respects with Mortgagee which shall be in force during the term of this mortgage; their terms every agreement of any kind between Mortgagee and on not more than 30 days' notice; and shall perform according to contracts respecting the premises unless terminated without penalty covenants, access agreements, licenses, or any service or operating shall not enter into, grant, or agree to any easements, restrictive first obtained; without the prior written consent of Mortgagee is required by law, unless the prior written consent of Mortgagee is alterations, additions or improvements to the premises except as liens or claims; shall not demolish or make any material to Mortgagee on demand; shall keep the premises free from mechanical premises existing as of the date hereof; shall exhibit the premises join in or consent to any change in the permitted uses of the state, municipal, or other law, statute or ordinance or initiate, not permit the premises to be used in violation of any federal, improvements or equipment that may be damaged or destroyed; shall without waste, and promptly replace, repair or restore any request; shall keep the premises in good condition and repair provide proper receipts evidencing such payments to Mortgagee upon contest thereof is permitted under the Loan Agreement) and shall premises (which payment may be made under protest in the event incurred with respect to the premises or may become a lien on the limitation, utility charges) that shall be levied, assessed or special assessments and other charges (including, without when due and before any penalty attaches all taxes and general or Mortgagee shall pay or cause to be paid to the proper officers

9. Mortgagee shall pay or cause to be paid to the proper officers when due and before any penalty attaches all taxes and general or special assessments and other charges (including, without limitation, utility charges) that shall be levied, assessed or incurred with respect to the premises or may become a lien on the premises (which payment may be made under protest in the event contest thereof is permitted under the Loan Agreement) and shall provide proper receipts evidencing such payments to Mortgagee upon request; shall keep the premises in good condition and repair without waste, and promptly replace, repair or restore any improvements or equipment that may be damaged or destroyed; shall not permit the premises to be used in violation of any federal, state, municipal, or other law, statute or ordinance or initiate, join in or consent to any change in the permitted uses of the premises existing as of the date hereof; shall exhibit the premises to Mortgagee on demand; shall not demolish or make any material alterations, additions or improvements to the premises except as required by law, unless the prior written consent of Mortgagee is first obtained; without the prior written consent of Mortgagee, shall not enter into, grant, or agree to any easements, restrictive covenants, access agreements, licenses, or any service or operating contracts respecting the premises unless terminated without penalty on not more than 30 days' notice; and shall perform according to all laws, rules, regulations and orders of any governmental authority applicable to the premises and conduct of the facilities located thereon and will maintain or cause to be maintained in full force and effect all licenses and permits necessary to the operation of the facility now existing on the premises.

7. Mortgagee shall perform every obligation of the lessor and shall enforce every obligation of the lessees with respect to any lease and tenancy of the premises. Except in the ordinary course of Mortgagee's business, Mortgagee shall not enter into or permit any lease, sublease or tenancy without the prior written consent of Mortgagee and shall not amend, terminate, cancel, accept surrender of or otherwise modify any permitted lease or tenancy.

8. Until occurrence of a default hereunder, Mortgagee shall be entitled to possession of the premises, and to operate the same, and to receive the rents, issues, and profits therefrom. After the occurrence of a default, Mortgagee shall be entitled to exercise all the rights and have all the remedies provided in the Loan documents, by any agreement between the parties, this mortgage, and by law, without limiting the generality of the foregoing and pursuant to the provisions of the Illinois Mortgage Foreclosure Law set forth in Chapter 110 of Illinois Revised Statutes 1987, as amended as of the date hereof, Mortgagee hereby authorizes the taking of possession of the premises as Mortgagee in possession during foreclosure and at such times thereafter as it or may be permitted by applicable law.

agreements and of all security interests except this mortgage and permitted encumbrances.



91353308

12. Should mortgagee make any payment or advance or incur any cost or expense, including but not limited to costs of suit and attorneys' fees hereunder or under the loan documents, to cure any default hereunder or under the loan documents, or to protect its security or should there accrue or become due any collection costs

11. In the event Mortgagee fails to make any payment or do any act required herein, Mortgagee, without obligation to do so, and without any notice to, or demand on Mortgagee, and without releasing Mortgagee from any obligation hereunder, may make such payment or do such act in the manner and to the extent Mortgagee deems necessary to protect its security including but not limited to discharging, compromising or settling any lien or other claim or redeeming from any tax sale or foreclosure affecting the premises. The making of any such payment or the doing of any such act shall be prima facie evidence of the necessity thereof and Mortgagee will indemnify, defend and hold Mortgagee harmless from any claim or threat thereof by any third party respecting such act or payment.

If Mortgagee fails, for any reason, to maintain insurance as herein specified or to provide Mortgagee with evidence of such insurance when requested, Mortgagee shall have the right to obtain the same and to charge any costs incurred by Mortgagee in connection therewith to Mortgagee, but Mortgagee shall not be obliged to do so nor to ascertain the solvency of any insurer, the adequacy of coverage, or to pursue the collection of claims. Mortgagee shall not cancel or modify any insurance required hereunder without the prior consent of Mortgagee and, if requested by Mortgagee, shall furnish to Mortgagee when requested by Mortgagee shall furnish to Mortgagee when requested estimates or appraisals of the insurable value of the subject property prepared by insurers reasonably acceptable to Mortgagee. If Mortgagee acquires any of such subject property as a result of Mortgagee's default, all such policies of casualty and liability insurance and any proceeds payable thereunder shall be transferred to Mortgagee.

Mortgagee further agrees that, if the first mortgage security and FHA/HUD Regulatory Agreements shall be released and HUD shall no longer own, control or insure any of the premises, then Mortgagee shall be named in all such policies as an additional insured with loss payable to Mortgagee as its interest may appear, and such insurance policies shall contain such other clauses and provisions as Mortgagee may reasonably require to protect its interest in the premises, shall require the insurer to give Mortgagee at least thirty (30) days prior written notice of modification or cancellation, regardless of the reason for such modification or cancellation, and shall provide that the interest of Mortgagee shall not be impaired or invalidated by any act or omission of Mortgagee.

All such insurance shall name Mortgagee, the holder of the first mortgage and HUD as insureds, as their interests may appear, and Mortgagee hereby expressly agrees that any and all proceeds of such insurance remaining after such dispositions as the holder of the first mortgage Security and HUD are entitled to receive under the terms of the first mortgage Security and FHA/HUD Regulatory Agreements shall be paid to Mortgagee to be applied as hereinabove provided.

All such insurance shall be maintained with insurers of recognized responsibility and shall be evidenced by policies of insurance, and copies of such policies or certificates thereof, the option of the Mortgagee, shall be delivered to Mortgagee.

or cause to be maintained such other insurance in such amounts and with such coverage (including workmen's compensation, employer's liability, boiler, and other coverage) as is customary for facilities of established reputation and comparable size engaged in the same or similar business as that conducted on the premises and/or otherwise similarly situated.

91353308

16. The taking or acceptance of this mortgage by Mortgagee shall, in no event, be considered as a waiver of, or in any wise affecting or impairing any other security which Mortgagee may have, or acquire simultaneously herewith, or hereafter acquire for the payment of the indebtedness secured hereby, nor shall the taking at any time by Mortgagee of any such additional security be construed as a waiver of, or in any wise affecting or impairing, the security of this mortgage; and Mortgagee may, in any order and manner as it may think fit, and Mortgagee for itself

15. Mortgagee and its agents shall have the right and license to go in and upon the premises at any time and to inspect the premises and to protect and care for the premises and enforce any right of Mortgagee hereunder.

14. Without affecting the obligation of Mortgagor to pay and perform as herein required and without affecting the personal liability of any person or for payment of the indebtedness secured hereby and without affecting the lien hereof or its priority, Mortgagee may, at its option, extend the time for payment of the indebtedness secured hereby or any part thereof, reduce the payments thereon, release any person liable on any such indebtedness, accept a renewal not or note therefor, modify the terms of such indebtedness, release from this mortgage any of the premises, take or release other or additional security, reconvey any part of the premises, consent to any map or plat thereof, grant any easement, or join in any extension or subordination agreement relating in any way or manner to the premises. Any such action by Mortgagee may be taken without the consent of any junior lienholder and shall not affect the priority of this mortgage over any junior lien.

13. Mortgagee shall be subrogated to the rights of any person having a prior lien or encumbrance on the premises to the extent such lien or encumbrance is paid out of the proceeds of the loan evidenced by the Note or any advances by the Mortgagee hereunder or under the loan documents and even though such lien or encumbrance is released or record.

Mortgage and those provided by law. Otherwise exercised all rights reserved to Mortgagee under this indebtedness secured hereby immediately due and payable, and may, at its option, and without notice, declare the whole of the Mortgagee fails to pay or satisfy any such deficiency, Mortgagee shall be due and payable immediately and, if amount of an installment or payment after the payment of such costs, such deficiency shall be due and payable immediately and, if third, in payment of principal. In the event of a deficiency in the second, or the satisfaction of any accrued and unpaid interest; and of record of funds by Mortgagee, together with interest thereon; Mortgagee under the loan documents that has not paid as of the date collection costs or other advance or expenditures incurred by Mortgagor, to apply the same first, in satisfaction of any thereunder or upon receipt of any other funds from or on behalf of right upon receipt of any installment of interest or principal due any provisions of the Note to the contrary, Mortgagee shall have the agrees to pay the same to Mortgagee upon demand. Notwithstanding additional indebtedness secured by this mortgage and Mortgagor All such advances, payments, costs and expenses constitute on the date of such change in said prime rate (the "Maturity Rate"). rate of interest due to a change in said prime rate to take effect from time to time (which does not purport to be the most favorable rate offered to its borrowers by Mortgagee), with any change in such any time, the rate of interest then most recently announced by five percent (5%) above the prime rate ("prime rate" shall mean, at non-negotiable rate permitted by law or (ii) the rate per annum of interest from any date at the rate of the lesser of (i) the maximum and payable when made or incurred by Mortgagee and shall bear documents, such advances, payments, costs and expenses shall be due or other debts of any kind arising under this mortgage, or the loan

91353308

21. If (a) default be made in the due and punctual payment of said Note, or any installment due in accordance with the terms thereof, either of principal or interest and such default shall not be cured within the earlier of ten (10) days following the sending of notice thereof to Mortgagor or as otherwise provided in said note; or (b) Mortgagor shall file a petition in bankruptcy or under Chapter 7, Chapter 11, or Chapter 13 of the Federal Bankruptcy Code or any similar law, state, or federal, whether now or hereafter existing, or an answer admitting insolvency or inability to pay its debts within ten (10) days; or (c) Mortgagor shall fail to obtain a vacation or stay of said proceedings within sixty (60) days, as hereinafter provided; or (d) Mortgage or shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for Mortgagor or for all or its property or the major part thereof in any said proceeding, or any court shall have taken jurisdiction of the property for the reorganization, dissolution, liquidation or winding up of Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or

20. Any payment made in accordance with the terms of this Mortgage by any person at any time liable for the payment of the whole or any part of the indebtedness now or hereafter secured by this Mortgage, or by any subsequent owner of the premises, or by any other person whose interest in the premises might be prejudiced in the event of a failure to make such payment, or by any stockholder, officer or director of a corporation which at any time may be liable for such payment or may own or have such an interest in the premises, shall be deemed, as between Mortgages and all persons who at any time may be liable as aforesaid or may own the premises to have been made on behalf of all such persons.

19. In the event of the passage after the date of this Mortgage of any law of the state of Illinois deducting from the value of real property for the purposes of taxation any lien thereon or changing in any way the taxation of mortgages or debts secured by mortgage for state or local purposes or the manner of the collection of any such taxes and imposing a tax, either directly or indirectly, on this Mortgage or the indebtedness secured hereby or imposing upon Mortgages the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, Mortgages shall have the right to declare the whole of the principal sum and accrued interest due on a date to be specified by not less than 30 days' written notice to be given to Mortgagor by Mortgages, provided, however, that such election shall be ineffective if Mortgagor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder and if, prior to such specified date, does pay such tax and agrees to pay any such tax when thereafter levied or assessed and such agreement, if made, shall constitute a modification of this Mortgage.

18. In case of any sale under this Mortgage, by virtue of judicial proceedings or otherwise, the premises may be sold in one parcel and as an entirety or in such parcels, manner or order as Mortgages in its sole discretion may elect.

17. Mortgagor upon request, made either personally or by mail, shall certify, by a writing duly acknowledged, to Mortgages or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on this Mortgage and whether any offsets or defenses exist against the indebtedness secured hereby, within 5 days in case the request is made personally, or within 10 days after the mailing of such request in case the request is made by mail.

16. To this end, Mortgages may treat all security as one entity and, to the extent permitted by law, foreclose the same under this Mortgage. Mortgages shall have the right to assign and legal representatives hereby expressly waive all rights, if any, to a marshalling of such securities, including without limitation the premises and those premises subject to the lien of the mortgage hereabove described.







91353308

33. To the extent permitted by law, Mortgagor waives any and all rights of redemption from sale under any order or decree of foreclosure of this mortgage for itself, the trust estate and all persons interested beneficially therein and each and every person acquiring any interest in or title to the premises subsequent to the date of this mortgage, and with respect thereto, Mortgagor hereby expressly waives the right of redemption provided in the Illinois Mortgage Foreclosure Law heretofore referred to.

34. Mortgages shall release this Mortgage and lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Mortgages for the execution of such release.

35. Upon a change in the present ownership or control of Mortgagor (other than as permitted under the Loan Documents) or if, without the prior written consent of Mortgages, all or any part of the premises or an interest therein or the beneficial interest in the trust holding title to the premises is sold, assigned, encumbered or otherwise transferred, voluntarily or as a result of a foreclosure or other involuntary transfer or transfer by operation of law, or in the event of a condemnation or taking under the power of eminent domain or all or any substantial part of the premises, Mortgages may, at its option, declare the whole of the indebtedness secured by this Mortgage immediately due and payable, including without limitation any fees and charges to the extent specified in the Loan Documents.

36. In case any one or more of the provisions contained in this Mortgage or in the Loan Documents shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained therein shall not in any way be affected or impaired thereby. This Mortgage cannot be changed except by an agreement in writing signed by the party against whom enforcement of the change is sought.

37. All rights and obligations hereunder shall extend to and be binding upon the several successors and assigns of the parties to this Mortgage. When applicable, use of the singular form of any word also shall mean or apply to the plural and masculine form shall mean and apply to the feminine or the neuter.

38. All notices or statements that either party may be required or may desire to serve upon the other shall be in writing and shall be deemed to have been given or made when delivered personally, or deposited in the U.S. Mail, postage prepaid, by registered or certified mail, addressed to the party at the address hereinabove set forth, or at such other address as either party may from time to time designate in writing to the other.

39. By accepting this Mortgage, Mortgages does not assume nor become liable for any of Mortgagor's obligations with respect to any of the property and rights assigned or mortgaged hereby.

40. Mortgagor at its expense will execute, acknowledge and deliver all such instruments, documents, assignments, security agreements and other agreements and writings and take all such action as Mortgages from time to time may reasonably request for assuring to the Mortgages the premises, properties, rights and interests now or hereafter subjected, or intended to be subjected, to the lien hereof and in order to secure, perfect, protect or enforce Mortgages's rights under this Mortgage.

41. Mortgages will execute, acknowledge and deliver all such instruments, documents, assignments, security agreements and other agreements and writings and take all such action as Mortgages from time to time may reasonably request for assuring to the Mortgages the premises, properties, rights and interests now or hereafter subjected, or intended to be subjected, to the lien hereof and in order to secure, perfect, protect or enforce Mortgages's rights under this Mortgage.

91353308

11\082\200861\MEN\MPC04310

38. This Mortgage is executed by American National Bank and Trust Company of Chicago, not personally but as trustee as aforesaid in its exercise of the power and authority conferred upon and vested in it as such trustee (and said American National Bank hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said American National Bank personally to pay any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by any person now or hereafter claiming any right or security hereunder, and that so far as said American National Bank is concerned, the legal holder or holder of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created in the manner herein and in the loan documents provided or by action to enforce the personal liability of beneficiary or any guarantor theretofore.

37. If requested by Mortgagee and (until the first Mortgage and FHA/HUD Regulatory Agreements identified herein are released, if permitted by the holder of such first Mortgage and approved by HUD in writing) Mortgagee will, to the extent that Mortgagee at any time is not required to deposit or does not deposit an amount equal to 1/12th of the latest ascertainable annual general real estate taxes on the Real Estate monthly with the holder of the first Mortgage identified herein or HUD (Monthly Tax Escrow Requirement) or is not required to deposit with such holder or HUD (Monthly Tax Escrow Requirement) or is not required to deposit with such holder or HUD additional amounts sufficient to pay such taxes when due (Additional Tax Escrow Requirement), and to be applied to the payment of general real estate taxes on the Real Estate when and as such taxes become due and payable. Such deposits shall be held in a separate account and invested in such investments as Mortgagee shall direct, provided such investments are acceptable to Mortgagee, with any earnings received thereon to be paid to Mortgagee unless an event of default hereunder or under the Loan Documents is existing. All such deposits and earnings shall constitute additional security for the indebtedness secured by this Mortgage and in the event of any default hereunder or under the Loan Documents, all or any part thereof may be applied at the option of Mortgagee to pay such indebtedness.

36. This Mortgage shall for all purposes be governed by and construed in accordance with the laws of the State of Illinois, and unless the context otherwise requires, all terms used herein which are defined in Articles 1 through 9 of the Uniform Commercial Code, as in effect in Illinois, shall have the meanings therein stated.

Property

# UNOFFICIAL COPY

39. This Mortgage is subject to the additional terms and conditions contained in the Rider attached hereto which by this reference is incorporated herein and made a part hereof.

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

AMERICAN NATIONAL BANK and TRUST COMPANY, as Trustee aforesaid

ATTEST:

By: [Signature]  
Title: [Signature]

By: [Signature]  
Title: [Signature]

ACCEPTED:  
DEVON BANK

ATTEST:

By: [Signature]  
Title: [Signature]

By: [Signature]  
Title: [Signature]

6230 North Kenmore Apartments  
Limited Partnership, an Illinois  
Limited Partnership

By: Banner Equities, Limited  
Partnership, an Illinois Limited  
Partnership, its general partner

By: Banner Investments, Inc. an  
Illinois Corporation, its general  
partner

ATTEST:

By: [Signature]  
Title: [Signature]

By: [Signature]  
Title: [Signature]



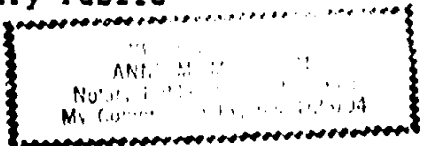
# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

ANNE M. WYK

I, ANNE M. WYK, a Notary Public in and for said County in the State aforesaid, do hereby certify that IR WINDSLEY WYK and ... who is (are) personally known to me to be the same person(s) whose name(s) (is) (are) subscribed to the foregoing instrument as Vice President and ... of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, and personally known to be such officer(s), appeared before me this day in person and each acknowledged that, as such officer, (he) (she) signed and delivered said instrument pursuant to authority given by the Board of Directors of said corporation and as (his) (her) free and voluntary act and the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this JUL 15 1991 day of JULY, A.D. 1991.


Anne M. Wyk  
Notary Public  


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

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, NANCY R. CASTRO, a Notary Public in and for said County in the State aforesaid, do hereby certify that Milton Park and ... who is (are) personally known to me to be the same person(s) whose name(s) (is) (are) subscribed to the foregoing instrument as President and ... of BANNER INVESTMENTS, INC., an Illinois Corporation which is the General Partner of Banner Equities Limited Partnership an Illinois Limited Partnership which is the General Partner of 6230 North Kenmore Apartments Limited Partnership an Illinois Limited Partnership, and personally known to be such officer(s), appeared before me this day in person and each acknowledged that, as such officer, (he) (she) signed and delivered said instrument pursuant to authority given by the Board of Directors of said corporation and as (his) (her) free and voluntary act and the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 15th day of JULY, A.D. 1991.

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

Nancy R. Castro  
Notary Public

91353308

# UNOFFICIAL COPY

## RIDER

Rider attached to and made a part of Second Mortgage and Security Agreement dated as of \_\_\_\_\_, 1991 by and between Devon Bank, Mortgagee, and American National Bank and Trust Company of Chicago as Trustee under Trust No. 113911-090, et al., Mortgagor.

Mortgagee and Mortgagor hereby further acknowledge, covenant and agree as follows:

40. This Mortgage is subordinate to (i) that certain mortgage dated March 2, 1987, and recorded in the Office of the Recorder of Cook County, Illinois as Document No. 87114477 made by American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated December 1, 1986 and known as Trust No. 100016-00 to DRG Funding Corporation, and assigned to Reilly Mortgage Group, Inc., pursuant to an Assignment recorded December 30, 1988 in said Office as Document No. 88599868, and (ii) security interest disclosed by Financing Statements executed by the aforesaid Trustee and amendments thereto and filings thereof in the aforesaid Office as Nos. 874U0559 and 894U0056 (collectively, the "First Mortgage Security"), and is subordinate to a Regulatory Agreement with the Secretary of Housing and Urban Development ("HUD") recorded March 3, 1987, in the aforesaid Office as Document No. 87114478 and a Regulatory Agreement with HUD recorded \_\_\_\_\_, 1991, in the aforesaid office as Document No. \_\_\_\_\_ ("FHA/HUD Regulatory Agreements").

41. With respect to the First Mortgage Security and the FHA/HUD Regulatory Agreements, Mortgagor covenants that there exists as of the date hereof no default or any event which, upon the giving of notice or lapse of time or both, would constitute a default thereunder and there exists no agreement in writing or otherwise respecting such First Mortgage Security and FHA/HUD Regulatory Agreements or the indebtedness secured thereby other than the Note or Notes described therein and security instruments hereinabove described.

42. If an event of default occurs under the First Mortgage Security or FHA/HUD Regulatory Agreements or hereunder, Mortgagee may, at its option, make any payment or perform any act required under the First Mortgage Security or FHA/HUD Regulatory Agreements, in any form or manner deemed expedient by Mortgagee, and may make full or partial payments of principal or interest on the indebtedness secured by the First Mortgage Security, and purchase, discharge, compromise or settle any obligations under the First Mortgage Security or FHA/HUD Regulatory Agreements, all amounts so expended shall constitute additional indebtedness secured hereby and Mortgagee shall be subrogated to the rights of such holder or FHA/HUD against Mortgagor or the property which is subject to the First Mortgage Security. Any such subrogation rights are effected only upon full payment of the first mortgage.

43. Mortgagee, as such and as a Secured Party and Assignee hereunder, for itself and its successors and assigns, covenants and agrees that all of its rights and powers under this Mortgage, Assignment, Security Agreement and Financing Statement are subordinate and subject to the rights of the holder of the First Mortgage Security and to the rights of the Secretary of Housing and Urban Development under the FHA/HUD Regulatory Agreements hereinabove described.

44. Mortgagor hereby represents and covenants that:

- (a) This mortgage is lawfully executed and delivered in conformity with the First Mortgage Security and that all approvals hereof required under the First Mortgage Security and FHA/HUD Regulatory Agreements have been obtained.

# UNOFFICIAL COPY

- (b) Mortgagor shall promptly pay, when due and payable, installments of interest and principal and all other sums and charges mentioned in and made payable by the First Mortgage Security and shall promptly perform and observe all of the covenants, terms and conditions required to be performed and observed by Mortgagor under the First Mortgage Security and FHA/HUD Regulatory Agreements within the periods provided therein.
- (c) Mortgagor shall (i) promptly notify the Mortgagee in writing of the receipt by Mortgagor of any notice from the mortgagee under the First Mortgage Security ("First Mortgagee") or any notice under the FHA/HUD Regulatory Agreements noting or claiming any default by Mortgagor in the performance or observance of any of the covenants, terms or conditions on the part of Mortgagor to be performed or observed under the First Mortgage Security or FHA/HUD Regulatory Agreements, and (ii) promptly cause a copy of each such notice received by Mortgagor to be delivered to Mortgagee, and (iii) shall advise Mortgagee by telephone or in person immediately upon receipt of any such notice.
- (d) Mortgagor shall not, without prior written notice to Mortgagee, enter into any agreement or accept the benefit or any arrangement whereby the holder of the First Mortgage Security, FHA or HUD waives, postpones, extends, reduces or modifies the payment of any installment of principal and interest or any other item or amount now required to be paid under the terms of the First Mortgage Security or the FHA/HUD Regulatory Agreements or modifies any provision thereof.
- (e) Mortgagor shall, within ten (10) days after written demand from Mortgagee, use its best efforts to obtain from the mortgagee under the First Mortgage Security and deliver to Mortgagee a certificate stating that such First Mortgage Security is in full force and effect, is unmodified, that no notice of default thereunder has been served on Mortgagor thereunder and stating whether or not there are any defaults thereunder, specifying the nature of such defaults, if any.
- (f) Mortgagor shall furnish to Mortgagee, upon demand, proof of payment of all items which are required to be paid by Mortgagor pursuant to the First Mortgage Security and proof of payment of which is required to be given to the Mortgagee under the First Mortgage Security.
- (g) Mortgagor shall execute and deliver, on request of Mortgagee, such instruments as Mortgagee may deem useful or required to permit Mortgagee to cure any default under the First mortgage Security or FHA/HUD Regulatory Agreements or to permit Mortgagee to take such other action as Mortgagee considers desirable to cure or remedy the matter in default or to make payment thereof as elsewhere provided herein, or to preserve the interest of Mortgagee in the Premises.
- (h) Mortgagor shall notify Mortgagee in writing, if Mortgagor intends to issue to the mortgagee of the First Mortgage Security, FHA or HUD or its successors assigns any forms of Deed or assignment of beneficial interest or other instrument transferring any of the Premises in lieu of foreclosure, and shall give such notice not less than thirty (30) days prior to taking such action.

45. Mortgagor and Mortgagee, each for itself and its successors and assigns, further covenants and agrees that:

# UNOFFICIAL COPY

- (a) in the event of the appointment of a receiver or of the appointment of Mortgagee as Mortgagee-in-Possession in any action by Mortgagee, its successors or assigns, to foreclose this Mortgage, no rents, revenue or other income of the Premises collected by the receiver or by the Mortgagee-in-Possession shall be utilized for the payment of interest, principal or any other charges due and payable under this Mortgage, except from surplus cash, if any, as the term is defined in the FHA/HUD Regulatory Agreements and, further, the receiver or Mortgagee-in-Possession shall operate the Premises in accordance with all the provisions of the First Mortgage Security and the FHA/HUD Regulatory Agreements; and
- (b) the lien of this Mortgage will automatically terminate if HUD acquires title to the Premises by deed, foreclosure or a transfer in lieu of foreclosure, unless Mortgagee cures all existing defaults or pays in full the entire unpaid indebtedness (whether or not then due) under the First Mortgage Security and becomes the first Mortgagee prior to HUD acquiring title; provided, however, that the Secretary of Housing and Urban Development, his successors and assigns, is under no obligation to give notice of default under the First Mortgage Security to Mortgagee.

46. The Premises are presently insured by FHA/HUD and are subject to the rules, regulations and conditions set forth in the FHA/HUD Regulatory Agreements. In the event that any provision of this Mortgage or Rider or the Loan Documents is contradictory of or in opposition to any requirements under any provision of the FHA/HUD Regulatory Agreements or any FHA/HUD rule or regulation applicable to the ownership and operation of the aforesaid project, the latter shall prevail and control; provided that, nothing herein contained shall be deemed or construed to excuse any default hereunder or under the Note or any other Loan Documents, including without limitation a default caused by the failure of the undersigned to pay the indebtedness evidenced by the Note, nor, in any case, to limit, modify or discharge the personal liability of any guarantor of this Note or limit the exercise of any rights of acceleration under the Loan Documents.



# UNOFFICIAL COPY

EXHIBIT A  
to  
SECOND MORTGAGE AND SECURITY AGREEMENT  
dated as of \_\_\_\_\_  
by and between  
DEVON BANK and  
AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO  
as Trustee under Trust No. 113911-09

## LEGAL DESCRIPTION

Lots 5 and 6 in Block 6 in Cochran's Second Addition to Edgewater being a Subdivision of the East fractional half of Section 5, Township 40 North, Range 14, East of the Third Principal Meridian (except the West 1,320 feet of South 1,913 feet thereof and the right of way of the Chicago, Evanston and Lake Superior Railroad), according to the plat thereof recorded December 21, 1888 as Document No. 1042704, in Cook County, Illinois.

6230 N. Kenmore Ave  
Chicago, Illinois

PNW 14-03-205-013

mail to  
Devon Bank  
6445 N. Western Ave.  
Chgo. Ill. (colats)