

2 of 9

UNOFFICIAL COPY

92147895

1992 MAR - 6 PM 4: 08

92147895

58802/001

77

MORTGAGE, SECURITY AGREEMENT
AND FINANCING STATEMENT

THIS MORTGAGE made as of this 1st day of February, 1992, by and between QUINCY HOMES LIMITED PARTNERSHIP, an Illinois limited partnership, having an office at c/o City Lands Corp., 5100 West Harrison, Chicago, Illinois ("Borrower" or "Mortgagor"), and COMMUNITY INVESTMENT CORPORATION, an Illinois not-for-profit corporation, Suite 300, 600 South Federal Street, Chicago, Illinois 60605 ("Mortgagee").

WITNESSETH: That, in consideration a revolving credit loan (the "Loan") in the amount of THREE MILLION THREE HUNDRED TWENTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$3,328,000.00) to be paid by Mortgagee to Mortgagor, the receipt and sufficiency of which sum is hereby acknowledged, Mortgagor does by these presents GRANT, BARGAIN, SELL, CONVEY and MORTGAGE unto Mortgagee, its successors and assigns, its estate in fee simple, forever, in the real estate situated in the City of Chicago, County of Cook, State of Illinois (the "real estate") as more fully described on the attached Exhibit A, which is incorporated herein by this reference and made a part hereof.

TOGETHER with all and singular the easements, rights-of-way, licenses, privileges, and appurtenances now or hereafter belonging, and all the rents, issues, income, revenues and profits therefrom; and also all the estate, right, title and interest of Mortgagor, either at law or in equity, of, in and to the real estate, and every part thereof;

TOGETHER with all right, title and interest, if any, of Mortgagor, in and to the land lying within any street or roadway adjoining the real estate; and all right, title and interest, if any, of Mortgagor in and to any strips and gores adjoining the real estate;

TOGETHER with all homes, buildings, structures, replacements, and improvements now or hereafter located or erected thereon; and, also, all fixtures, replacements, and improvements now or hereafter located or erected thereon; and, also, all fixtures, machinery, apparatus, equipment, and articles of personal property of every kind and nature whatsoever belonging to Mortgagor, now or hereafter located in, upon, or affixed to the real estate, or any part thereof, and used or usable in connection with any present or future operation of the real estate, and now owned or hereafter acquired by Mortgagor, including, but without limitation of the generality of the foregoing, all heating, lighting, incinerating, refrigerating, ventilating, air-conditioning, air-cooling, lifting, fire extinguishing, plumbing, cleaning, communications, power equipment; and all elevators, escalators, switchboards, engines, motors, tanks, pumps,

73-28-288, 73-28-199, 73-28-272, 72-20-918, 02, MEN

92147895

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

screens, storm doors, storm windows, shades, awnings, floor coverings, carpeting, ranges, stoves, refrigerators, dishwashers, washers, dryers, wall beds, cabinets, partitions, conduits, ducts and compressors; it being understood and agreed that all such fixtures, machinery, apparatus, equipment, and articles of personal property are a part of the real estate and are declared to be a portion of the security for the indebtedness secured hereby (whether in single units or centrally controlled, and whether physically attached to the real estate or not) (all of the real estate, improvements of every kind and nature as hereinabove described, and any other property that is real estate under applicable law, is sometimes referred to collectively herein as the "Premises"); it being the intention of Mortgagor that this Mortgage shall also operate as a security agreement under the Uniform Commercial Code and this Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Premises are located with respect to any and all fixtures included within the term "Premises" as used herein and with respect to any other personal property that may now be or hereafter become such fixtures;

TO HAVE AND TO HOLD the Premises with the privileges and appurtenances thereunto belonging, and all rents, issues and profits therefrom, unto Mortgagee, its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under or by virtue of any and all statutes and laws of the State or other jurisdiction in which the Premises is located providing for the exemption of homesteads from sale or an execution or otherwise, and for the uses and purposes herein expressed. Mortgagor covenants to Mortgagee and with the purchaser at any foreclosure sale that at the execution and delivery of this Mortgage, Mortgagor is well seized of the Premises, in fee simple, and has good right and full power to grant, bargain, sell, convey, mortgage the Premises in the manner and form written; that the Premises are free from all liens and encumbrances whatsoever (and any claim of any other person thereto), excepting only the encumbrances as set forth on the attached Exhibit B or as defined in any Joinder Agreement (the "Permitted Exceptions"); and that Mortgagor will warrant and defend the Premises, with the privileges and appurtenances thereunto belonging to Mortgagee, its successors and assigns, forever, against all claims and demands whatsoever.

THIS MORTGAGE SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF IMPROVEMENTS ON THE REAL ESTATE MORTGAGED HEREIN, AND CONSTITUTES A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF SECTION 9-313(1)(c) OF THE ILLINOIS UNIFORM COMMERCIAL CODE.

THIS MORTGAGE IS GIVEN TO SECURE: (a) Payment of the indebtedness evidenced by that certain Revolving Credit Promissory Note a copy of which is attached hereto and incorporated herein by this reference, (herein, such mortgage note, together with any and all amendments or supplements thereto, extensions thereof and notes

UNOFFICIAL COPY

which may be taken in whole or partial renewal, substitution or extension thereof, or, which may evidence any of the indebtedness secured hereby, shall be called the "Note", of even date herewith, made and delivered by Mortgagor to Mortgagee, payable to the order of Mortgagee at Chicago, Illinois, subject to acceleration as provided in the Note, in the principal sum of THREE MILLION THREE HUNDRED TWENTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$3,328,000.00) (the "Loan Amount"). The Note bears interest, as provided in the Note, on the principal amount thereof from time to time outstanding; all principal and interest on the Note are payable in lawful money of the United States of America at the office of the Mortgagee in Chicago, Illinois, or at such place as the holder thereof may from time to time appoint in writing. The Loan will be advanced to Mortgagor from time to time under that certain Revolving Construction Line of Credit Loan Agreement (herein, together with any and all amendments, supplements or extensions, thereof, called the "Loan Agreement"), of even date herewith, by and between Mortgagor and Mortgagee (which is incorporated herein by this reference and made a part hereof). Mortgagor is or will become justly indebted to the Mortgagee in the Loan Amount in accordance with the terms of the Note, the Loan Agreement and this Mortgage; (b) Payment by Mortgagor to Mortgagee as herein provided of all sums expended or advanced by Mortgagee pursuant to any term or provision of this Mortgage; (c) Performance of each and every one of the covenants, conditions, and agreements contained in this Mortgage, the Loan Agreement and the Note; (d) Performance of each and every one of the covenants, conditions, and agreements contained in any and all loan agreements, pledge agreements, the Environmental Indemnity Agreement (as identified in the Loan Agreement), supplemental agreements, assignments and all instruments of indebtedness or security in addition to the Note, the Loan Agreement and this Mortgage now or hereafter executed by Mortgagor in connection with all obligations of Mortgagor to Mortgagee, or for the purpose of supplementing or amending this Mortgage, as the same may be amended, modified or supplemented from time to time (referred to collectively herein as the "Loan Instruments"). The maximum of all obligations secured by this Mortgage is THREE MILLION THREE HUNDRED TWENTY EIGHT THOUSAND AND NO/100 DOLLARS (\$3,328,000.00).

AND, MORTGAGOR HEREBY COVENANTS AND AGREES THAT:

1. Payment of Indebtedness. Mortgagor shall pay, timely and in the manner required in the appropriate documents or instruments, the principal of and interest on the Note, and any other indebtedness secured hereby, as evidenced by the Loan Agreement, the Mortgage and the other Loan Instruments at the times and in the manner therein provided. All sums payable by Mortgagor hereunder shall be paid without demand, counterclaim, offset, deduction or defense. Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2. Payment of Taxes. Mortgagor shall pay before delinquent, all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, and other similar charges, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Premises, and will promptly deliver to Mortgagee receipts of the proper officers, showing payment of all such taxes, assessments and charges. In default thereof, Mortgagee may, but shall not be obligated to, pay such taxes, assessments, and other similar charges, including, without limitation, any penalties or interest thereon (of which payment, amount and validity thereof, the receipt of the proper officer shall be conclusive evidence) and any amount so paid by Mortgagee shall become immediately due and payable by Mortgagor with interest at the default rate specified in the Note and payment thereof shall be secured by this Mortgage.

3. Escrows for Taxes and Insurance. [Intentionally Left Blank].

4. Other Taxes. [Intentionally Left Blank].

5. Insurance. Mortgagor will procure, deliver to and at all times maintain for the benefit of Mortgagee during the continuance of this Mortgage and until the same is fully satisfied and released, a policy or policies of insurance insuring the buildings and improvements now existing or hereafter erected on the Premises against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, and such other hazards, casualties, and contingencies as Mortgagee may designate, provided same are consistent with the then prevailing commercial insurance industry practices for similar risks. All policies of insurance required hereunder shall be in such form, companies, and amounts as may be reasonably acceptable to Mortgagee, or as required in the Loan Agreement, and shall contain a mortgage clause acceptable to Mortgagee, with loss payable to Mortgagee. Mortgagor will promptly pay when due any premiums on any policy or policies of insurance required hereunder and shall deliver to Mortgagee renewals of such policy or policies at least thirty (30) days prior to the expiration date(s) thereof, the said policies and renewals to be marked "paid" by the issuing company or agent. Upon Mortgagor's failure to comply with the requirements of this paragraph, Mortgagee may, but shall not be obligated to, in its discretion, effect any insurance required hereunder and pay the premiums due therefor, and any amounts so paid by Mortgagee shall become immediately due and payable by Mortgagor with interest at the default rate specified in the Note and payment thereof shall be secured by this Mortgage.

In the event of any loss or damage, Mortgagor will give immediate notice thereof to Mortgagee, and Mortgagee may thereupon make proof of such loss or damage, if the same is not promptly made

UNOFFICIAL COPY

by Mortgagor. All proceeds of insurance, in the event of such loss or damage, shall be payable to Mortgagee, and any affected insurance company is authorized and directed to make payment thereof directly to Mortgagee. Such proceeds shall be held by Mortgagee in accordance with the terms hereof. Mortgagee is authorized and empowered to settle, adjust, or compromise any claims for loss, damage, or destruction under any policy or policies of insurance if Mortgagor is in default hereunder, under the Note, or any other Loan Instruments. Mortgagee may at its option, either retain and apply, in whole or in part, all such proceeds to and in reduction of any indebtedness secured hereby (whether or not then due and payable) in such order as Mortgagee may determine, or all such proceeds may, at Mortgagee's option be applied in whole to the restoration, repair, or replacement, or rebuilding of the Premises, provided that such restoration, repair or replacement is deemed by Mortgagee, in Mortgagee's sole discretion, to be economically feasible, that all such insurance proceeds shall be disbursed as required by Mortgagee, in Mortgagee's sole discretion, and any excess proceeds shall be applied, without prepayment premium as a credit upon any portion, as selected by Mortgagee, of the indebtedness secured hereby. The delivery to Mortgagee of any policy or policies of insurance hereunder, or renewals thereof, shall constitute an assignment to Mortgagee of all unearned premiums with respect to the Premises, as further security for the payment of the indebtedness secured hereby. In the event of any foreclosure action or other transfer of title to the Premises in extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor in and to any policy or policies of insurance with respect to the Premises then in force shall pass to the purchaser or grantee.

Notwithstanding anything to the contrary contained herein, if the zoning, building or other land use ordinances then in effect governing the Premises do not permit the rebuilding or restoration of all of the Premises which has been damaged or destroyed, then Mortgagor hereby agrees that any loss paid under any insurance policy insuring the Premises shall be applied to the payment or prepayment of any indebtedness secured hereby in such order as Mortgagee may determine in its sole discretion.

In addition to the above, but in compliance with the terms of the foregoing, Mortgagor covenants and agrees that during the continuance of this Mortgage and until the same is fully satisfied and released, Mortgagor will procure and maintain a policy or policies of comprehensive general liability insurance in such form, companies and amounts as may be acceptable to Mortgagee. Upon request of Mortgagee, Mortgagor shall furnish Mortgagee with evidence of such coverage as is acceptable to Mortgagee. During construction, remodeling, or land development said liability insurance shall include, but not be limited to, owner's protective liability coverage.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6. Maintenance and Repair; Governmental Requirements; Access by Mortgagee; Utilities. Mortgagor will maintain the Premises in good condition and repair and will not commit or suffer any waste thereof, reasonable wear and tear excepted. Mortgagor will at all times fully comply with, or cause to be complied with, all statutes, ordinances, regulations, requirements, rules, orders and decrees of any kind whatsoever of any governmental authority relating to the Premises or Mortgagor, and will promptly repair, restore, replace, or rebuild any part of the Premises now or hereafter subject to the lien of this Mortgage that may be damaged or destroyed by any casualty or as the result of any condemnation proceeding or exercise of the right of eminent domain, or by an alteration of the grade of any street affecting the Premises. None of the buildings, structures, or improvements now or hereafter erected or located on the Premises shall be removed, demolished, substantially, or structurally altered in any respect without the prior written consent of Mortgagee, except in accordance with the Plans and Specifications. Mortgagee, and any person authorized by Mortgagee, shall have the right to enter upon and inspect the Premises at all reasonable times. Mortgagor will pay promptly when due all charges for utilities, supplies or services, including but not limited to, electricity, gas, sewer and water, and upon failure so to pay, Mortgagee may, at its option but without obligation to, after notice to Mortgagor, make such payment or payments, and any amounts so paid by Mortgagee shall become immediately due and payable and shall be secured by the lien of this Mortgage with interest at the default rate specified in the Note.

7. Environmental Laws. Mortgagor represents and warrants: to the best of Mortgagor's knowledge that the Premises are in compliance with all Environmental Laws; that there are no conditions existing currently or likely to exist during the term of the Note which would subject Mortgagor to damages, penalties, injunctive relief or cleanup costs under any Environmental Laws or assertions thereof, or which require or are likely to require cleanup, removal, remedial action or other response pursuant to Environmental Laws by Mortgagor; that Mortgagor is not a party to any litigation or administrative proceeding, nor so far as is known by Mortgagor is any litigation or administrative proceeding threatened against it, which asserts or alleges Mortgagor has violated or is violating Environmental Laws or that Mortgagor is required to clean up, remove or take remedial or other responsive action due to the disposal, depositing, discharge, leaking or other release of any hazardous substances or materials; that neither the Premises nor Mortgagor is subject to any judgment, decree, order or citation related to or arising out of Environmental Laws and has not been named or listed as a potentially responsible party by any governmental body or agency in a matter arising under any Environmental Laws; that no permits, licenses or approvals are required under Environmental Laws relative to the Premises; and that there are not now, nor to Mortgagor's knowledge after reasonable investigation have there ever been materials stored, deposited, treated, recycled or disposed of on, under or at the

92147895

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Premises (or tanks or other facilities thereon containing such materials) which materials or contained materials if known to be present on the Premises or present in soils or groundwater, would require cleanup, removal or some other remedial action under Environmental Laws.

The term "Environmental Laws" shall mean all federal, state and local laws including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or hazardous substances including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility Cleanup and Liability Act of 1980, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect. Mortgagor covenants and agrees to comply with all applicable Environmental Laws; provide to Mortgagee, immediately upon receipt, copies of any correspondence, notice, pleadings, citation, indictment, complaint, order, decree, or other document from any source asserting or alleging a circumstance or condition which requires or may require a financial contribution by Mortgagor or a cleanup, removal, remedial action, or other response by or on the part of Mortgagor under Environmental Laws or which seeks damages or civil, criminal or punitive penalties from Mortgagor for an alleged violation of Environmental Laws; and to advise Mortgagee in writing as soon as Mortgagor becomes aware of any condition or circumstance which makes the environmental warranties contained in this Mortgage incomplete or inaccurate. In the event of any such circumstance, Mortgagor agrees, at its expense and at the request of Mortgagee to permit an environmental audit solely for the benefit of Mortgagee, to be conducted by Mortgagee or an independent agent selected by Mortgagee and which may not be relied upon by Mortgagor for any purpose. This provision shall not relieve Mortgagor from conducting its own environmental audits or taking any other steps necessary to comply with Environmental Laws. If in the opinion of Mortgagee there exists any uncorrected violation by Mortgagor of an Environmental Law or any condition which requires, or may require, a cleanup, removal or other remedial action by Mortgagor under any Environmental Laws, and such a cleanup, removal or other remedial action is not completed within ninety (90) days from the date of written notice from Mortgagee to Mortgagor, the same shall at the option of Mortgagee constitute a default hereunder.

8. Sales; Liens. Mortgagor will not create, permit or suffer to be created any charge, lien, encumbrance, mortgage, claim, security interest, charge or other right or claim of any kind whatsoever upon the Premises, or any part thereof, excepting the lien hereof, Permitted Encumbrances the lien of general and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

special taxes duly levied and assessed and, except as contemplated by the Loan Agreement, shall not sell, assign, transfer or convey, or permit to be transferred or conveyed, the Premises, or any interest or estate therein or part thereof, nor shall Mortgagor acknowledge or execute or permit to be acknowledged or executed any assignment or attempted assignment of all or any part of the beneficial interest (including the power of direction) in Mortgagor, without in each and every case the prior written consent of Mortgagee. The creation of any such charge, lien or encumbrance or transfer, whether voluntary (including any attempted sale, transfer or conveyance by means of an installment sales contract or articles of agreement for deed), involuntary or by operation of law, or in the event Mortgagor acknowledges or executes any assignment or attempted assignment, without the prior written consent of Mortgagee, shall, at Mortgagee's option, constitute a default under the terms of this Mortgage, with full right to accelerate the maturity of the indebtedness secured hereby, unless the creation of any such charge, lien, encumbrance or lease or transfer or assignment, is not a permissible event of default under federal law. Mortgagee may, upon notice to Mortgagor, deal with any successor owner in the same manner as with Mortgagor, without in any way discharging the liability of Mortgagor hereunder or upon the debt hereby secured. Mortgagor shall reimburse Mortgagee for all costs and expenses, including without limitation attorneys' fees, incurred by Mortgagee in connection with its review of Mortgagor's request for Mortgagee's consent to a sale or other transfer or further encumbrance of all or part of the Premises, or any interest therein (other than sales of Units to prospective homebuyers as contemplated by the Loan Agreement), pursuant to this Paragraph 8.

9. Eminent Domain. If all or any part of the Premises, or any interest therein, is damaged, taken, or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, or by the alteration of the grade of any street affecting the Premises, the amount of any award or other payment for such taking or damages made in consideration thereof may, at Mortgagee's option, be retained and applied, in whole or in part, to and in reduction of any indebtedness secured hereby (whether or not then due and payable) in such order as Mortgagee may determine, or, at Mortgagee's option, such proceeds may be used for the purpose of altering, restoring, or rebuilding any part of the Premises that may have been altered, damaged, or destroyed as the result of such taking, alteration, or proceeding, but Mortgagee shall not be obligated to see to the application of any amounts so released and any unused proceeds shall be applied in part payment of the indebtedness secured hereby in such order as Mortgagee may determine. Mortgagor hereby empowers Mortgagee, in Mortgagee's absolute discretion, to settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the Premises or any portion thereof.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

10. Expenses. Mortgagor agrees to indemnify Mortgagee, if Mortgagee shall incur or expend any sums or suffer any loss, damage or expenses, including without limitation attorney's fees, whether in connection with any action or proceeding or not, by reason of this Mortgage or to sustain the lien of this Mortgage or its priority, or to protect or enforce any of Mortgagee's rights hereunder, or to recover any indebtedness hereby secured, and all such sums shall become immediately due and payable by Mortgagor with interest thereon at the default rate specified in the Note. All such sums, with interest, shall be secured by this Mortgage and be a lien on the Premises prior to any right, title, interest, or claim, in, to, or upon the Premises attaching or accruing subsequent to the lien of this Mortgage. Notwithstanding the foregoing, the non-default rate of interest under the Note shall be applicable to such sums with respect to expenditures that are not occasioned by Mortgagor's default hereunder, under the Loan Agreement, under the Note, or any other Loan Instruments.

11. No Assignment. Mortgagor will not assign, in whole or in part, income, or profits arising from the Premises, or any lease thereof, without the prior written consent of Mortgagee, or in any other manner impair the security of this Mortgage for the payment of the indebtedness secured hereby.

12. Leases. [Intentionally Left Blank].

13. Financial and Operating Statements. With respect to the Premises and the operations thereof, Mortgagor shall keep or cause to be kept proper books of record and account in accordance with generally accepted (or cash basis) accounting principles consistently applied. Mortgagee shall have the right to examine said books of record and account at such reasonable times and intervals as Mortgagee may elect. Mortgagor shall furnish to Mortgagee Financial Statements and such other financial information as required to be furnished under the Loan Agreement.

14. No Release. In the event that Mortgagee: (a) grants any extension of time or forbearance with respect to the payment of any indebtedness secured by this Mortgage; (b) takes other or additional security for the payment thereof; (c) waives or fails to exercise any right granted herein or under any note secured hereby; (d) grants any release, with or without consideration, of the whole or any part of the security held for the payment of the indebtedness secured hereby or the release of any person liable for payment of said indebtedness; (e) amends or modifies in any respect with the consent of Mortgagor any of the terms and provisions hereof or of the Note (including substitution of another note); then and in any such event, such act or omission to act shall not release Mortgagor, or any co-makers, sureties, or guarantors of this Mortgage or of the Note, under any covenant of this Mortgage, the Loan Agreement, the Note, or any other Loan Instruments, nor preclude Mortgagee from exercising any right, power, or privilege herein granted or intended to be granted in the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

event of any other default then made or any subsequent default and without in any way impairing or affecting the lien or priority of this Mortgage.

15. Use; Alterations; Liens; Continuing Priority. Mortgagor will not make, suffer, or permit, without the written consent of Mortgagee first had and obtained, (a) any use of the Premises for any purpose other than that for which the same are now used or intended to be used; (b) any alterations of the buildings, improvements, fixtures, apparatus, machinery, and equipment owned by Mortgagor now or hereafter erected or located upon the Premises; (c) any purchase or conditional sale, lease or agreement under which title is reserved in the vendor of any such fixtures, apparatus, machinery, equipment, or personal property to be placed in or upon any of the buildings or improvements on the Premises. Mortgagor will execute and deliver, from time to time, such further instruments as may be requested by Mortgagee to confirm the lien of this Mortgage on any fixtures, property, machinery, apparatus and equipment described herein.

16. No Mechanics' Liens. Mortgagor will not do or permit to be done any act or thing (except as contemplated by the Loan Agreement), and no person shall have any right or power to do any act or thing, whereby any mechanics' or other construction lien under the laws of the State where the Premises are located can arise against or attach to the Premises or any part thereof, including without limitation, any and all rights that a property manager of the Premises, its subcontractors, successors and assigns and all parties claiming by, through or under said property manager may have now or hereafter to a mechanic's lien. In addition, it is further expressly made a covenant and condition hereof that the lien of this Mortgage shall extend to any and all improvements and fixtures now or hereafter on the Premises, prior to any other lien thereon that may be claimed by any person, so that subsequently accruing claims for lien on the Premises shall be junior and subordinate to this Mortgage. All contractors, subcontractors, property managers, and other parties dealing with the Premises, or with any parties interested therein, are hereby required to take notice of the above provisions.

17. Right to Contest. Notwithstanding any of the foregoing covenants or agreements of Mortgagor to the contrary, Mortgagor may contest or object to the legal validity or amount of any taxes or charges for labor or materials for any construction, repairs or improvements with respect to the Premises and may institute appropriate proceedings as Mortgagor considers necessary with respect thereto, provided that any such contest or objection is in good faith and Mortgagor gives Mortgagee written notice thereof. Except where Mortgagor is objecting to or contesting taxes prior to the taxing authority's delinquency date and has given written notice of such objection or contest to Mortgagee as aforesaid, Mortgagor shall not carry on or maintain any contest or objection to any tax or charge for labor or materials unless

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagor: (i) in the case of taxes, gives written notice to Mortgagee of such contest or objection at least thirty (30) days before the delinquency date of such taxes; (ii) either (a) shall have duly paid the full amount of the tax or charge(s) for labor or materials under protest; (b) posts with Mortgagee cash or a bond in an amount equal to not less than one and one-half (1-1/2) times the full amount of the tax or charge(s) for labor or materials under contest plus all interest, costs, expenses and penalties, from a surety company qualified to do business in Illinois, securing payment of said tax or charge(s), said company and the form, contents, and amount of the bond to be subject to the written approval of Mortgagee, which approval shall not be unreasonably withheld; or (c) at Mortgagor's expense obtains title insurance in favor of Mortgagee insuring over any lien which may arise by reason of non-payment of such taxes or charge(s) for labor or materials; and (iii) procures and maintains a stay of all proceedings to enforce any judgment for collection of the tax or charge(s) for labor or materials or any lien which may arise by reason of such tax or charge(s). If Mortgagor seeks a reduction of the taxes or contests such taxes or charges for labor or materials, the failure on Mortgagor's part to pay the taxes before delinquency or to suffer or permit any mechanics' or other construction lien to arise against or attach to the Premises shall not constitute a default so long as Mortgagor complies with the provisions of this paragraph. Mortgagor, promptly after the final determination of such proceeding or contest, shall pay or discharge any decision or judgment rendered, together with all costs, charges, interest and penalties incurred or imposed or assessed in connection with such proceeding or contest.

18. Notify Mortgagee of Default. Mortgagor shall notify Mortgagee in writing within five (5) days of the occurrence of any default or other event which, upon the giving of notice or the passage of time or both, would constitute a default, other than the failure by Mortgagor to make any payment of principal or interest upon the Note as and when the same becomes due and payable in accordance with the terms thereof.

19. Mortgagee's Performance. If Mortgagor fails to pay or perform any of its obligations herein contained (including without limitation payment of expenses of foreclosure and court costs), Mortgagee may (but need not), as agent or attorney-in-fact of Mortgagor, make any payment or perform (or cause to be performed) any obligation of Mortgagor hereunder, in any form and manner deemed expedient by Mortgagee, and any amount so paid or expended (plus reasonable compensation to Mortgagee for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the rate applicable after maturity as provided in the Note, shall be added to the principal debt hereby secured and shall be repaid to Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, Mortgagee may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any lien,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

encumbrance or charge on any of the collateral secured hereby; complete construction; make repairs; collect rents; prosecute collection of the collateral secured hereby or proceeds thereof; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Premises. In making any payment or securing any performance relating to any obligation of Mortgagor hereunder, Mortgagee shall (as long as it acts in good faith) be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes a default.

20. Subrogation. 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 pays any such sum with the proceeds of the loan secured hereby, Mortgagee shall have and be entitled to a lien or other interest on the collateral secured hereby equal in priority to the lien of 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 indebtedness secured hereby.

21. Power and Authority. Mortgagor hereby represents and warrants that Mortgagor, and if Mortgagor is more than one party, each party constituting Mortgagor (and, if Mortgagor or any constituent party of Mortgagor is a partnership, each of Mortgagor's and any constituent party's general partners) is duly organized and validly existing (and if Mortgagor is a corporation, qualified to do business and in good standing in the state in which the Premises are located, and in good standing in the State of its incorporation) and has full power and due authority to execute, deliver and perform this Mortgage, the Loan Agreement, the Note, and the other Loan Instruments in accordance with their terms. Such execution, delivery and performance has been duly authorized by all necessary corporate or partnership action and approved by each required governmental authority or other party, and the obligations of Mortgagor and every other party thereto under each are the legal, valid and binding obligations of each, enforceable by Mortgagee in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws applicable to the enforcement of creditors' rights generally.

22. No Default or Violations. Mortgagor hereby represents and warrants that no default or event which, with notice or passage of time or both, would constitute a default ("Unmatured Event of Default") has occurred and is continuing under this

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Mortgage, the Loan Agreement, the Note, or any of the other Loan Instruments. Neither Mortgagor, nor any party constituting Mortgagor, nor any general partner in any such party, is in violation of any governmental requirement (including, without limitation, any applicable securities law) or in default under any agreement to which it is bound, or which affects it or any of its property, and which would in Lender's reasonable opinion materially adversely affect the ability of such party to perform its obligations under the Loan Instruments. The execution, delivery and performance of this Mortgage, the Note, or any of the other Loan Instruments in accordance with their terms and the use and occupancy of the Premises will not violate any governmental requirement (including, without limitation, any applicable usury law), or conflict with, be inconsistent with or result in any default under, any of the representations or warranties, covenants, conditions or other provisions of any indenture, mortgage, deed of trust, easement, restriction of record, contract, document, agreement or instrument of any kind to which any of the foregoing is bound or which affects it or any of its property, except those which would not in Lender's reasonable opinion adversely affect the ability of such party to perform its obligations under the Loan Instruments or except as identified in writing and approved by Mortgagee.

23. No Litigation or Governmental Controls. Mortgagor hereby represents and warrants that there are no proceedings of any kind pending, or, to the knowledge of Mortgagor, threatened against or affecting Mortgagor, the collateral secured hereby (including without limitation any attempt or threat by any governmental authority to condemn or rezone all or any portion of the Premises), any party constituting Mortgagor or any general partner in any such party, or involving the validity, enforceability or priority of this Mortgage, the Note or any of the other Loan Instruments, or enjoining or preventing or threatening to enjoin or prevent the use and occupancy of the Premises or the performance by Mortgagor of its obligations hereunder, and there are no rent controls, governmental moratoria or environment controls presently in existence, or, to the knowledge of Mortgagor, threatened, affecting the Premises, except as identified in writing to, and approved by, Mortgagee.

24. Liens. Mortgagor hereby represents and warrants that, to the best knowledge of Mortgagor, title to the Premises, or any part thereof, is not subject to any liens, encumbrances or defects of any nature whatsoever, whether or not of record, and whether or not customarily shown on title insurance policies, except as shown on the title insurance policies delivered to and approved by Mortgagee.

25. Financial and Operating Statements. Mortgagor hereby represents and warrants that, to the best knowledge of Mortgagor, all financial and operating statements submitted to Mortgagee in connection with this loan secured hereby are true and correct in all material respects, have been prepared in accordance

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

with generally accepted accounting principals (applied, in the case of any unaudited statement, on a basis consistent with that of the preceding fiscal year) and fairly present the respective financial conditions of the subjects thereof and the results of their operations as of the respective dates shown thereon. No materially adverse changes have occurred in the financial conditions and operations reflected therein since their respective dates, and no additional borrowings have been made since the date thereof other than the borrowing made under this Mortgage and any other borrowing approved in writing by Mortgagee.

26. Other Statements to Mortgagee. Mortgagor hereby represents and warrants that neither this Mortgage, the Loan Agreement, the Note, any other Loan Instruments, nor any document, agreement, report, schedule, notice or other writing furnished to Mortgagee by or on behalf of any party constituting Mortgagor, or any general partner of any such party, contains any omission or misleading or untrue statement of any fact material to any of the foregoing.

27. Third Party Agreements. Mortgagor hereby represents and warrants that each agreement with any and all third parties that is material to Mortgagor's performance of its obligations under the Loan Instruments in the reasonable judgement of the Lender is unmodified and in full force and effect and free from default on the part of each party thereto, and all conditions required to be (or which by their nature can be) satisfied by any party to date have been satisfied. Mortgagor has not done or said or omitted to do or say anything which would give any obligor on any such third party agreement any basis for any claims against Mortgagor or any counterclaim to any claim which might be made by Mortgagor against such obligor on the basis of any such third party agreement; which claims would, if adversely determined against Mortgagor, materially adversely affect Mortgagor's ability to perform its obligations under the Loan Instruments in the reasonable judgement of the Lender.

28. Leases. [Intentionally Left Blank].

29. Default. It shall constitute a default under this Mortgage if Mortgagor shall fail to make any payment under the Note, whether at maturity or by acceleration or otherwise, under the Mortgage, or under any of the other Loan Instruments (it being agreed that on default in the payment of any tax or assessment or insurance premium, or any payment on account thereof, or in the payment of any cost or expense of litigation, Mortgagee may pay the same and all sums so advanced with interest at the default rate set forth in the Note, shall immediately attach as a lien hereunder and be payable on demand), or if Mortgagor shall fail to perform any of the covenants and agreements herein, in the Loan Agreement, in the Note, the Loan Agreement, or in any other Loan Instruments, other than a default in payment, and such failure continues for thirty (30) days after notice thereof from Mortgagee; and in any

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

such event, the entire indebtedness evidenced by the Note and all other obligations of Mortgagor under this Mortgage, the Loan Agreement or any other Loan Instruments, together with interest thereon at the rate applicable after maturity as provided in the Note, shall thereupon at the option of Mortgagee become and be immediately due and payable, and shall thereupon be collectible in a suit at law, or by foreclosure of this Mortgage, in the same manner as if the entire indebtedness evidenced by the Note had been made payable at the time when any such default shall occur as aforesaid. Each of the following shall also constitute a default hereunder: (i) Any action in bankruptcy, receivership, or reorganization filed by or against Mortgagor, or guarantor, if any, which shall not have been discharged within sixty (60) days of the filing thereof, or if Mortgagor, or guarantor, if any, or Borrower shall make any general assignment for the benefit of creditors, or shall fail generally to pay debts as they become due or shall take any action in furtherance of any of the foregoing; (ii) The appointment, pursuant to an order of the court of competent jurisdiction, of a trustee, receiver or a liquidator of the Premises or any part thereof, or of Mortgagor, or any termination or voluntary suspension of the transaction of business of Mortgagor, or any attachment, execution or other judicial seizure of all or any substantial portion of Mortgagor's assets which attachment, execution or seizure is not discharged within thirty (30) days; (iii) Any representation, warranty, or disclosure made to Mortgagee by Mortgagor in connection with or as an inducement to the making of the loan evidenced by the Note this Mortgage, the Loan Agreement, or any other, if any, Loan Instruments, proving to be false or misleading in any material respect as of the time the same was made, whether or not such representation or disclosure appears as a part of this Mortgage; (iv) The occurrence of any final, non-appealable judgment against Mortgagor or the Premises in excess of \$50,000.00; (v) Any proceeding to foreclose any lien on the Premises, exclusive of any such proceeding that is being defended by the title insurance company insuring Mortgagee as to the priority of the lien of this Mortgage and said company shall agree to insure third party purchasers or mortgagees over the consequence of such foreclosure; (vi) Any other event occurring which, under this Mortgage, under the Loan Agreement, under the Note, or under any other Loan Instruments, constitutes a default by Mortgagor hereunder or thereunder or gives Mortgagee the right to accelerate the maturity of the indebtedness evidenced by the Note.

30. Remedies Cumulative. No remedy or right of Mortgagee hereunder, under the Note, under the Loan Agreement, or any other Loan Instruments or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default

UNOFFICIAL COPY

Property of Cook County Clerk's Office

or an acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee. All obligations of Mortgagor, and all rights, powers and remedies of Mortgagee, expressed herein shall be in addition to, and not in limitation of, those provided by law or in the Note, the Loan Agreement, any other Loan Instruments, or any other written agreement or instrument relating to any of the obligations of Mortgagor or any security therefor.

31. Possession of Premises; Remedies under Note, Loan Agreement and other Loan Instruments. Mortgagor hereby waives all right to the possession, income, and rents of the Premises from and after the occurrence of any default, and Mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, and during the continuance thereof, and subject to the applicable terms of the Redevelopment Agreement: to enter into and upon and take possession of the Premises or any part thereof, to complete any construction in progress thereon at the expense of Mortgagor, to lease the same, to collect and receive all rents and to apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the Premises or, at the election of Mortgagee in its sole discretion, to a reduction of such indebtedness secured hereby and any and all expenses or costs incurred by Mortgagee hereunder, under the Loan Agreement, or under any other Loan Instruments in such order as Mortgagee may elect. Mortgagee, in addition to the rights provided under the Note, the Loan Agreement and any other Loan Instruments is also hereby granted full and complete authority to enter upon the Premises, employ watchmen to protect and preserve the Premises from depredation or injury, and to continue any and all outstanding contracts for the erection and completion of improvements to the Premises, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Mortgagor. All such expenditures by Mortgagee shall be secured hereby. Upon the occurrence of any default, Mortgagee may also exercise any or all rights or remedies under the Note, the Loan Agreement and any other Loan Instruments.

32. Foreclosure; Receiver. Upon the occurrence of any default, Mortgagee shall also have the right immediately to foreclose this Mortgage. Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of Mortgagee or at any time thereafter, either before or after foreclosure sale, and without notice to Mortgagor or to any party claiming under Mortgagor and without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of any of the indebtedness secured hereby and any and all expenses or costs incurred by Mortgagee hereunder, under the Loan Agreement or under any other Loan Instruments, without regard to the then value of the Premises

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without regard to any bond from the complainant in such proceedings, appoint a receiver for the benefit of Mortgagee, with power, subject to the applicable terms of the Redevelopment Agreement: to take possession, charge, and control of the Premises, to lease the same, to keep the buildings thereon insured and in good repair, and to collect all rents during the pendency of such foreclosure suit, and, in case of foreclosure sale and a deficiency, during any period of redemption. The court may, from time to time, authorize said receiver to apply the net amounts remaining in his hands, after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of the indebtedness secured hereby and any and all expenses or costs incurred by Mortgagee hereunder, under the Loan Agreement, or under any other Loan Instruments, including without limitation the following, in such order of application as Mortgagee may elect: (i) amounts due upon the Note, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Premises, (iv) insurance premiums, repairs, taxes, current installments of special assessments, water charges and interest, penalties and costs, in connection with the Premises, (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same and (vi) all moneys advanced by Mortgagee to cure or attempt to cure any default by Mortgagor in the performance of any obligation or condition contained in the Loan Agreement, this Mortgage or in any other Loan Instrument, or otherwise, to protect the security hereof provided herein, with interest on such advances at the interest rate applicable after maturity under the Note. The overplus of the proceeds of sale, if any, shall then be paid to Mortgagor upon written request. This Mortgage may be foreclosed once against all, or successively against any portion or portions of the Premises, as Mortgagee may elect, until all of the Premises have been foreclosed against and sold. As part of the foreclosure, Mortgagee in its discretion may, with or without entry, personally or by attorney, , subject to the Redevelopment Agreement sell to the highest bidder all or any part of the Premises, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable law. Upon the completion of any such sale or sales, Mortgagee shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers the property so sold, in the manner and form as provided by applicable law, and Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose Mortgagee may execute and deliver, for and in the name of Mortgagor, all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that said attorney-

UNOFFICIAL COPY

Property of Cook County Clerk's Office

-in-fact shall lawfully do by virtue hereof. In the case of any sale of the Premises pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Note and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by Mortgagee for the enforcement, protection or collection of this security, including without limitation court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by Mortgagee.

33. Remedies for Contracts and Rents. If any default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, Mortgagee shall be entitled, in its discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the rents, the Contracts (as defined below) and any other collateral and income relating thereto or any part thereof personally, or by its agents or attorneys, and exclude Mortgagor therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating to the Premises, the rents, the Contracts and any other collateral relating thereto; (iii) as attorney-in-fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and its disposition or any part thereof, the rents, the Contracts and any other collateral relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the rents, the consummation of the sale of the Premises or any part thereof under any Contract, and any other collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer, actions in distress of rent and actions for specific performance of the Contracts); (iv) cancel or terminate any Contract for any cause or on any ground which would entitle Mortgagor to cancel the same; (v) elect to disaffirm any Contract made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsure the Premises for all risks incidental to Mortgagee's possession, operation and management thereof; and (viii) receive all such rents and proceeds, and perform such other acts in connection with the management and operation of the Premises, as Mortgagee in its discretion may deem proper, hereby granting Mortgagee full power and authority to exercise each and every one

UNOFFICIAL COPY

of the rights, privileges and powers contained herein at any and all times after any default without notice to Mortgagor or any other person. Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the rents, deposits, or sale proceeds under the Contracts to the payment of or on account of the following, in such order as it may determine: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, improvements of the Premises, including without limitation the cost from time to time of installing, replacing or repairing the Premises, and of placing the Premises in such condition as will, in the judgment of Mortgagee, make it readily rentable; and (c) to the payment of any of the indebtedness secured hereby and any costs or expenses incurred by Mortgagee hereunder, under the Loan Agreement or under any other Loan Instruments. The entering upon and taking possession of the Premises, or any part thereof, and the collection of any rents and the application thereof as aforesaid or the consummation of the transactions as provided in the Contracts shall not cure or waive any default theretofore or thereafter occurring or affect any notice or default hereunder or invalidate any act done pursuant to any such default or notice, and, notwithstanding continuance in possession of the Premises or any part thereof by Mortgagee or a receiver, and the collection, receipt and application of the rents, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of a default. Any of the actions referred to in this Paragraph may be taken by Mortgagee irrespective of whether any notice of default has been given hereunder and without regard to the adequacy of the security for the indebtedness hereby secured. The term "Contracts" as set forth in this Mortgage shall mean and refer to any contracts of sale of the Premises or any part thereof entered into by Borrower, including but not limited to the Unit Purchase Contracts as defined in the Loan Agreement.

34. Personal Property. Whenever there exists a default hereunder, Mortgagee may exercise from time to time any rights and remedies available to it under applicable law upon default in payment of indebtedness. Mortgagor shall, promptly upon request by Mortgagee, assemble all personal property of every kind and nature subject to the lien hereof ("personal property") and make it available to the Mortgagee at such place or places, reasonably convenient for Mortgagee, as Mortgagee shall designate. Any notification required by law of intended disposition by Mortgagor of any of the personal property shall be deemed reasonably and properly given if given at least five (5) days before such dispo-

92147895

UNOFFICIAL COPY

Property of Cook County Clerk's Office

sition. Without limiting the foregoing, whenever there exists a default hereunder, Mortgagee may, with respect to so much of the Premises as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (i) notify any person obligated on the personal property to perform directly for Mortgagee its obligations thereunder, (ii) enforce collection of any of the personal property by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligation of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of Mortgagor to allow collection of the personal property, (iv) take control of any proceeds of the personal property, (v) enter upon any premises where any of the personal property may be located and take possession of and remove such personal property, (vi) sell any or all of the personal property, free of all rights and claims of Mortgagor therein and thereto, at any public or private sale, and (vii) bid for and purchase any or all of the personal property at any such sale. Any proceeds of any disposition by Mortgagee of any of the personal property may be applied by Mortgagee to the payment of expenses in connection with the personal property, including without limitation attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by Mortgagee toward the payment of such of the indebtedness secured hereby and any and all expenses and costs incurred by Mortgagee hereunder, under the Loan Agreement, or under any other Loan Instruments and in such order of application as Mortgagee may from time to time elect. Mortgagee may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law. Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by Mortgagor of any of its rights and remedies hereunder. Mortgagor hereby constitutes Mortgagee its attorney-in-fact with full power of substitution to take possession of the personal property upon any default and, as Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by Mortgagee to accomplish the disposition of the personal property; this power of attorney is a power coupled with an interest and is irrevocable while the indebtedness secured hereby is outstanding.

35. Performance of Third Party Agreements. Mortgagee may, in its sole discretion at any time after and during the continuance thereof the occurrence of a default, notify any person obligated to Mortgagor under or with respect to any third party agreements, including any Contracts, of the existence of a default, require that performance be made directly to Mortgagee at Mortgagor's expense, and advance such sums as are necessary or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

appropriate to satisfy Mortgagor's obligations thereunder; and Mortgagor agrees to cooperate with Mortgagee in all ways reasonably requested by Mortgagee (including without limitation the giving of any notices requested by, or joining in any notices given by, Mortgagee) to accomplish the foregoing.

36. No Liability on Mortgagee. Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor, whether hereunder, under any of the third party agreements or otherwise, and Mortgagor shall and does hereby agree to indemnify against and hold Mortgagee harmless of and from: any and all liabilities, losses or damages which Mortgagee may incur or pay under or with respect to any of the collateral secured hereby or under or by reason of its exercise of rights hereunder; and any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the collateral secured hereby or in any of the contracts, documents or instruments evidencing or creating any of the collateral secured hereby. Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against Mortgagee in its exercise of the powers herein granted to it, and Mortgagor expressly waives and releases any such liability, except as to liability arising solely and exclusively out of Lender's gross negligence or wilful misconduct. Should Mortgagee incur any such liability, loss or damage under any of the leases or under or by reason hereof, or in the defense of any claims or demands, Mortgagor agrees to reimburse Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees.

37. Defeasance. Upon full payment of all indebtedness secured hereby and satisfaction of all the covenants and agreements in accordance with their respective terms and at the time and in the manner provided, and when Mortgagee has no further obligation to make any advance, or extend any credit hereunder, under the Loan Agreement, under the Note, or any other Loan Instruments, this conveyance shall be null and void, and thereafter, upon demand therefor, an appropriate instrument of reconveyance or release shall in due course be made by Mortgagee to Mortgagor upon payment by Mortgagor to Mortgagee of a release fee, if permitted by applicable law.

38. Notices. Each notice, demand or other communication in connection with this Mortgage shall be in writing and shall be deemed to be given to and served upon the addressee thereof (i) upon actual delivery to such addressee, or (ii) on the third

921A7895

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Business Day after the deposit thereof in the United States mail by registered or certified mail, first-class postage prepaid, addressed to such addressee at its address set out above. By notice complying with this paragraph, any party may from time to time designate a different address as its address for the purpose of the receipt of notices hereunder. "Business Day" shall mean any day when Mortgagee is open for business, other than Saturday, Sunday or any other day on which banks in Chicago, Illinois are not open for business.

39. Successors; Mortgagor; Gender. All provisions hereof shall inure to and bind the parties and their respective successors, vendees and assigns. The word "Mortgagor" shall include all persons liable for the payment or performance of any of the indebtedness secured hereby whether or not such persons shall have executed the Note or this Mortgage. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

40. Care by Mortgagee. Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any of the collateral secured hereby in its possession if it takes such action for that purpose as Mortgagor reasonably requests in writing, but failure of Mortgagee to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of Mortgagee to preserve or protect any rights with respect to such collateral secured hereby against prior parties, or to do any act with respect to the preservation of such collateral secured hereby not so requested by Mortgagor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such collateral secured hereby.

41. No Obligation on Mortgagee. This Mortgage is intended only as security for the indebtedness secured hereby. Anything herein to the contrary notwithstanding, (i) Mortgagor shall be and remain liable under and with respect to the collateral secured hereby to perform all of the obligations assumed by it under or with respect to each thereof, (ii) Mortgagee shall have no obligation or liability under or with respect to the collateral secured hereby by reason or arising out of this Mortgage and (iii) Mortgagee shall not be required or obligated in any manner to perform or fulfill any of the obligations of Mortgagor under, pursuant to or with respect to any of the collateral secured hereby.

42. No Waiver; Writing. No delay on the part of Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Mortgagee of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

43. Governing Law and Business Purpose. This Mortgage and the Note shall be construed in accordance with and governed by the internal laws of the State of Illinois. Mortgagor represents and agrees that the proceeds of the Note secured by this Mortgage will be used for business purposes as defined in Illinois Revised Statutes, Ch. 17, §6404(1)(c) (1985) and that the indebtedness secured by this Mortgage constitutes a "business loan" under such section. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

44. Waiver. Mortgagor, on behalf of itself and all persons now or hereafter interested in the Premises or the collateral secured hereby, to the fullest extent permitted by applicable law hereby waives all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, reinstatement and redemption statutes, laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all of the indebtedness secured by this Mortgage, and Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of the collateral secured hereby. Without limiting the generality of the preceding sentence, Mortgagor, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of reinstatement and rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any powers contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the collateral secured hereby shall be sold in the event of any sale or sales pursuant hereto and to have any of the collateral secured hereby and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

45. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

46. Mortgagee Not a Joint Venturer or Partner. Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the indebtedness secured hereby or otherwise.

47. Time of Essence. Time is declared to be of the essence in this Mortgage, the Loan Agreement, the Note and any other Loan Instruments and of every part hereof and thereof.

48. No Third Party Benefits. This Mortgage, the Loan Agreement, the Note and the other Loan Instruments, if any, are made for sole benefit of Mortgagor and Mortgagee and their successors and assigns and no other party shall have any legal interest of any kind under or by reason of any of the foregoing. Whether or not Mortgagee elects to employ any or all the rights, powers or remedies available to it under any of the foregoing, Mortgagee shall have no obligation or liability of any kind to any third party by reason of any of the foregoing or any of Mortgagee's actions or omissions pursuant thereto or otherwise in connection with this transaction.

49. Inconsistencies. If there is any inconsistency between any provision of this Mortgage and any provision of the Loan Agreement, the provision of the Loan Agreement shall govern to the extent of the inconsistency.

50. Disbursement of Loan for Construction. This is a construction mortgage, as that term is defined in Section 9-313(1)(c) of the Uniform Commercial Code. Mortgagor further covenants and agrees that the Loan secured hereby is a construction loan and that the proceeds of the Loan secured hereby are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions contained in the Loan Agreement. All advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the resulting indebtedness secured hereby may exceed the face amount of the Note, shall be secured hereby to the same extent as though the Loan Agreement were fully incorporated in this Mortgage, and the occurrence of any Event of Default under the Loan Agreement 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.

51. Limited Recourse. Nothing herein contained shall be deemed to cause the Borrower or any limited or general partner

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

of Borrower personally to be liable to pay the Note or the other indebtedness secured hereby, and Mortgagee shall not seek any personal or deficiency judgment on the Note or with respect to the other indebtedness secured hereby, and the sole remedy of Mortgagee shall be against the collateral secured hereby and any other property securing the Note and the other Loan Instruments; provided, however, that the foregoing shall not in any way affect any rights Mortgagee may have (as a secured party or otherwise) hereunder or under the Note, this Mortgage, the Environmental Indemnity Agreement, or any of the other Loan Instruments or under any other collateral agreement which may from time to time serve as security for the Note, or any rights Mortgagee may have reserved to itself under the terms of the "Limited Recourse" provision of the Note.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be duly executed and delivered in Chicago, Illinois on the day and year first above written.

QUINCY HOMES LIMITED PARTNERSHIP,
an Illinois limited partnership

By: City Lands Corp., a Delaware
corporation, its general partner

By: Susan M. McLean
Name: Susan M. McLean
Title: Senior Vice President

By: Shaw Homes, Inc., a Delaware
corporation, its general partner

By: [Signature]
Name: [Name]
Title: PRESIDENT

This document was prepared by
[when recorded return to]:

Keck, Mahin & Cate
8300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-3400
Attention: Mark W. Burns

(MPV/58002/001.1)

UNOFFICIAL COPY

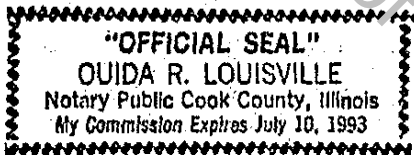
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT CITY LANDS CORP., personally known to me to be the general partner of QUINCY HOMES LIMITED PARTNERSHIP, an Illinois limited partnership, and * personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such the Sr. Vice President he/she signed and delivered the said instrument as the Sr. Vice President, pursuant to authority given by resolution of the Board of Directors as his/her free and voluntary act, and as the free and voluntary act and deed of said corporation on behalf of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26th day of February, 1993.



Ouida R. Louisville
Notary Public

My Commission expires:

7/10/93

[SEAL]

(NPN\58002\001.1)

* Susan M. McCann, personally known to me to be the Senior Vice President of City Lands Corp, a Delaware corporation
and

2147895

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

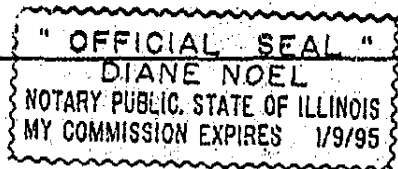
I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT SHAW HOMES, INC., personally known to me to be the general partner of QUINCY HOMES LIMITED PARTNERSHIP, an Illinois limited partnership, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such the President he/she signed and delivered the said instrument as the President, pursuant to authority given by resolution of the Board of Directors, as his/her free and voluntary act, and as the free and voluntary act and deed of said corporation on behalf of said limited partnership, for the uses and purposes therein set forth. *

GIVEN under my hand and notarial seal this 26th day of February, 1992.

Diane Noel

Notary Public

My Commission expires:



(WPV\58002\001.1)

* Frank A MARTIN, personally known to me to be the President of Shaw Homes, Inc., a Delaware corporation and

92147895

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

1. Common Address: 5001-09 WEST QUINCY, CHICAGO, ILLINOIS

Legal Description: THE EAST 100 FEET (EXCEPT THE SOUTH 8 FEET THEREOF DEDICATED AS PUBLIC ALLEY) OF LOT 39 (EXCEPT THAT PART TAKEN FOR STREET) IN SCHOOL TRUSTEE'S SUBDIVISION OF THE NORTH PART OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 16-16-210-010-0000

2. Common Address: 5023-27 WEST QUINCY, CHICAGO, ILLINOIS

Legal Description: THE WEST 50 FEET OF THE EAST 280 FEET (EXCEPT THE SOUTH 8 FEET THEREOF, HERETOFORE DEDICATED AS A PUBLIC ALLEY) OF LOT 39 (EXCEPT THAT PART TAKEN FOR STREET) ALL IN THE SCHOOL TRUSTEES SUBDIVISION OF THE NORTH PART OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 16-16-210-006-0000

3. Common Address: 5033 WEST QUINCY, CHICAGO, ILLINOIS

Legal Description: THE WEST 100 FEET OF THE EAST 430 FEET (EXCEPT THE SOUTH 8 FEET THEREOF HERETOFORE DEDICATED AS PUBLIC ALLEY) OF LOT 39 (EXCEPT THAT PART HEREOF TAKEN FOR STREET) IN SCHOOL TRUSTEES SUBDIVISION OF THE NORTH PART OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 16-16-210-004-0000

4. 5029-31 West Quincy
P.I.N.: 16-16-210-005

THE WEST 50 FEET OF THE EAST 330 FEET (EXCEPT THE SOUTH 8 FEET THEREOF HERETOFORE DEDICATED AS A PUBLIC ALLEY OF LOT 39 (EXCEPT PART TAKEN FOR STREET) ALL IN SCHOOL TRUSTEE SUBDIVISION OF THE NORTH PART OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

92147895

73-28-288
73-28-199
73-28-272
72-20-918

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

PERMITTED EXCEPTIONS

1. GENERAL REAL ESTATE TAXES NOT DELINQUENT.
2. THE REDEVELOPMENT AGREEMENT.
3. COVENANTS AND RESTRICTIONS RELATING TO THE LOCATION OF BUILDINGS TO BE ERECTED ON THE LAND AND THAT NO BUILDING SHALL BE ERECTED WITHIN 10 FEET OF THE NORTH LINE OF LOT 39 AFORESAID CONTAINED IN THE DEED FROM JOHN T. KERWIN AND MARGARET A. KERWIN TO JOHN KEMPSTON AND NELLIE KEMPSTON RECORDED FEBRUARY 2, 1928 AS DOCUMENT NUMBER 9916229 WHICH DOES NOT CONTAIN A REVERSIONARY OR FORFEITURE CLAUSE. (Affects 5001-09 W. Quincy)
4. AGREEMENT CONTAINED IN WARRANTY DEED FROM JOHN KERWIN AND HIS WIFE MARGARET A. KERWIN TO MICHAEL J. OATES AND THERESA, HIS WIFE, DATED APRIL 28, 1927 AND RECORDED JUNE 14, 1927 AS DOCUMENT 9684906, THAT NO BUILDINGS SHALL BE ERECTED WITHIN 10 FEET OF NORTH LINE OF THE LAND
NOTE: SAID INSTRUMENT CONTAINS NO PROVISION FOR A FORFEITURE OF OR REVERSION OF TITLE IN CASE OF BREACH OF CONDITION (Affects 5023-27 W. Quincy)
5. COVENANTS AS CONTAINED IN WARRANTY DEED FROM JOHN T. KERWIN AND MARGARET A. KERWIN, HIS WIFE TO MICHAEL J. OATES AND THERESE, HIS WIFE DATED APRIL 28, 1927 AND RECORDED AUGUST 3, 1927 AS DOCUMENT 9736819, RELATING TO THE LOCATION OF BUILDINGS TO BE ERECTED ON THE LAND.

NOTE: SAID INSTRUMENT CONTAINS NO PROVISION FOR A FORFEITURE OF OR REVERSION OF TITLE IN CASE OF BREACH OF CONDITION (Affects 5029-31 W. Quincy)
6. COVENANTS AND RESTRICTIONS IN WHICH NO BUILDING SHALL BE ERECTED WITHIN 10 FEET OF THE NORTH LINE OF THE LAND CONTAINED IN THE DEED RECORDED MARCH 23, 1927 AS DOCUMENT NUMBER 9589824. (Affects 5033 W. Quincy)

92247895

UNOFFICIAL COPY

Property of Cook County Clerk's Office