

2

299001403 57552

MORTGAGE, SECURITY AND RECAPTURE AGREEMENT

THIS MORTGAGE, SECURITY AND RECAPTURE AGREEMENT ("Mortgage") is made as of this 12th day of September, 1997 from Jamie Ballard (<sup>a single person</sup> "Mortgagor") to SEARS, ROEBUCK AND CO., a New York corporation, having its principal office at Sears Tower, 233 South Wacker Drive, Chicago, Illinois ("Sears" or "Mortgagee").

RECITALS

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

WHEREAS, pursuant to the objectives of the New Homes Program, the City and Developer, executed the "Redevelopment Agreement, New Homes for Chicago Program, Homan Square, Phase III" dated as of 21 January, 1997 and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on 21 January, 1997 as document #97156834 ("Redevelopment Agreement") whereby Developer redeveloped the real property legally described on Exhibit A attached hereto ("Land"), by constructing a single family townhome housing unit ("Single Family Home") improving the Land; and

WHEREAS, in furtherance of the objectives contained in the Redevelopment Agreement, Sears and Developer have entered into a Subsidy Agreement dated August 29, 1995, pursuant to the terms of which Sears agreed to subsidize a portion of the construction cost of the Single Family Home; and

WHEREAS, the Single Family Home was constructed by Developer in part by utilizing \$20,000.00 of Sears' funds which served to improve the quality of construction of the Single Family Home; and

WHEREAS, pursuant to the objective of the New Home for Chicago Program that single family homes be made affordable, the expenditure of Sears' funds to construct the Single Family Home is not reflected in the sales price for the Single Family Home and the Land paid by the Mortgagor to Developer at closing; and

WHEREAS, pursuant to the terms of the Redevelopment Agreement, Developer proposes to convey the Land and the completed Single Family Home to Mortgagor as the initial homebuyer; and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

WHEREAS, Mortgagor has covenanted to Mortgagee herein that it meets the income eligibility requirements to participate as an initial homebuyer under the New Homes for Chicago Program, it being understood and acknowledged that Mortgagee has a material economic interest in the success of the New Homes Program with respect to Mortgagor's purchase and occupancy of the Single Family Home; and

WHEREAS, in consideration for Sears' willingness to forego reimbursement of Sears' funds at closing, Mortgagor has executed and delivered to the Mortgagee the covenant of residency ("Covenant of Residency"), a copy of which is attached as Exhibit B to this Mortgage; and

WHEREAS, Sears wishes to secure the obligations of the Mortgagor contained in the Covenant of Residency.

NOW THEREFORE, to secure the performance and observance by Mortgagor of all the terms, covenants and conditions described in the Covenant of Residency, and in order to charge the properties, interests and rights hereinafter described with such consideration, Mortgagor has executed and delivered this Mortgage and does hereby grant, convey, assign, mortgage, grant a security interest in, and confirm unto Mortgagee and its successors and assigns forever, all of the following described property (which is hereinafter sometimes referred to as "Mortgaged Property"):

(A) The Land;

(B) All structures and improvements of every nature whatsoever now or hereafter situated on the Land, including without limitation, the Single Family Home, all fixtures of every kind and nature whatsoever which are or shall be attached to said buildings, structures or improvements, and now or hereafter owned by Mortgagor, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing (collectively, the "Improvements");

(C) All rents and issues of the Land and Improvements from time to time and all of the estate, right, title, interest, property, possession, claim and demand at law, as well as in equity of Mortgagor, in and to the same;

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions, herein;

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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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

## ARTICLE I INCORPORATION OF RECITALS

The recitals set forth above constitute an integral of the Mortgage and are hereby incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

## ARTICLE II COVENANTS REPRESENTATIONS AND WARRANTIES

### 2.01 Taxes and Assessments.

(a) Mortgagor will pay when due all general taxes and assessments, special assessments, water charges and all of the charges against the Mortgaged Property and shall, upon written request, furnish to Mortgagee receipts evidencing payment thereof, provided that Mortgagor, in good faith and with reasonable diligence, may contest the validity or amount of any such taxes, assessments or charges, provided that during any such contest the enforcement of the lien of such taxes, assessments or charges is stayed.

(b) Mortgagor will not suffer (unless bonded or insured over) any mechanic's, laborer's, materialmen's, or statutory lien to remain outstanding upon any of the Mortgaged Property. Mortgagor may contest such lien, provided that Mortgagor shall first post a bond in the amount of the contested lien, or provide title insurance over such contested lien, and further provided that Mortgagor shall diligently prosecute the contested lien and cause the removal of the same.

### 2.02 Insurance.

Mortgagor shall keep the Mortgaged Property continuously insured in such amounts and against such risks as required of Mortgagor by the Senior Lender (as hereinafter defined), paying the premiums for said insurance as they become due. Policies of insurance shall name Mortgagee as an additional insured. All policies of insurance shall provide that the same shall not be canceled, except upon 30 days prior written notice to Mortgagee.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## 2.03 Maintenance of the Property.

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair, will not commit or suffer any waste thereof, and will keep the same in a clean, orderly and attractive condition. Mortgagor shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

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

(c) Mortgagee or its representative shall have the right to inspect the Mortgaged Property to assure compliance with the terms of the Mortgage and the Covenant of Residency.

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

(e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Mortgagor, shall promptly restore to the Mortgaged Property to the equivalent of its condition prior to the casualty, to the extent of any insurance proceeds made available to Mortgagor for that purpose.

## 2.04 Subordination.

The Mortgage shall be subject and subordinate in all respects to (i) the mortgage dated as of September 12, 1997, between Mortgagor and NORWEST MORTGAGE, INC. ("Senior Lender"), recorded with the Office of the Recorder of Deeds of Cook County, Illinois ("Recorder") on September 1997 as document # \_\_\_\_\_ to secure indebtedness in the original principal amount not to exceed the ceiling base price of \$99,000.00 (excluding options and extras) pursuant to the terms of the Redevelopment Agreement ("Senior Mortgage"), and shall also be subordinate to any mortgage that replaces the Senior Mortgage, and (ii) the Mortgage, Security and Recapture Agreement dated as of September 12, 1997, between Mortgagor and the City, recorded with the Recorder on September, 1997 as document # \_\_\_\_\_ ("City Mortgage") to secure indebtedness in the original principal amount of \$20,000.00.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## 2.05 Income Eligibility.

Mortgagor covenants to Mortgagee that it meets the income eligibility requirements established by the City pursuant to the New Homes Program in order to participate as an initial homebuyer under the New Homes Program, it being understood and acknowledged that Mortgagee has a material economic interest in the success of the New Homes Program with respect to Mortgagor's purchase and occupancy of the Single Family Home.

## ARTICLE III RECAPTURE OF PROFIT PROVISIONS

### 3.01 Generally.

The amount of Sears' funds disbursed by Sears with regard to the construction of the Single Family Home is ~~\$20,000.00~~. Mortgagor, as an initial homebuyer under the New Homes Program, covenants to Sears that it shall own the Mortgaged Property and utilize the Single Family Home improving the Mortgaged Property as its primary residence for a period of four years commencing with the Conveyance Date (as defined in the Covenant of Residency) of the Mortgage Property from Developer to Mortgagor, as evidenced by the execution of the Covenant of Residency for the benefit of Sears.

### 3.02 Recapture.

If Mortgagor conveys the Mortgaged Property (whether by sale, foreclosure, deed in lieu of foreclosure or otherwise), prior to the fourth anniversary of the Conveyance Date at a price (or as consideration for the forgiveness or discharge of indebtedness which is) in excess of the purchase price paid for the Mortgaged Property by Mortgagor to Developer on the Conveyance Date, Sears shall be entitled to recapture, and Mortgagor shall be obligated to pay Sears, the amount set forth in Section 4 of the Covenant of Residency.

### 3.03 Release of Mortgage.

If, during the four year period commencing with the Conveyance Date, Mortgagor: (a) retains ownership of the Mortgaged Property and use of the Single Family Home as Mortgagor's primary residence, (b) conveys the Mortgaged Property for a purchase price less than or equal to the purchase price that Mortgagor paid to Developer for the Mortgaged Property on the Conveyance Date, or (c) conveys the Mortgaged Property for a price in excess of said purchase price and pays Sears the amount Sears is entitled to receive pursuant to the provisions described in Section 3.02 above,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

then Mortgagor shall be deemed to have fully complied with the provisions contained in the Mortgage, and Mortgagor shall be under no further obligation to Mortgagee. In such event, within 30 days of receipt of a written request from Mortgagor, Mortgagee shall execute a release of the Mortgage. Said release shall be in recordable form.

## ARTICLE IV DEFAULT

### 4.01 Events of Default.

The terms "Event of Default" or "Events of Default" wherever used in the Mortgage, shall mean any one or more of the following events:

(a) Failure by Mortgagor to duly observe or perform any material term, covenant, condition, or agreement of the Covenant of Residency or the Mortgage after the expiration of all cure periods as provided herein; or

(b) A default continuing beyond all applicable cure periods under the Senior Mortgage or the City Mortgage and permitting foreclosure thereunder.

### 4.02 Acceleration of Maturity.

(a) If any Event of Default due to a failure to make any payment when the same is due and owing ("Monetary Event of Default") shall have occurred under the Senior Lender's security documents, the City Mortgage, the Covenant of Residency or the Mortgage, and shall have continued for ten days following notice thereof from Mortgagee to Mortgagor, the entire amount of Sears' funds described herein and secured hereby, at Mortgagee's sole option, shall become immediately due and payable without further notice or demand.

(b) If an Event of Default (other than a Monetary Event of Default), shall have occurred under the Senior Lender's security documents or the City Mortgage, and shall have continued for 60 days following the receipt of notice thereof from Mortgagee to Mortgagor, Sears' funds secured hereby, at Mortgagee's sole option, shall immediately become due and payable without further notice or demand; provided, however, that in the event such default cannot reasonably be cured within such 60 day period and if Mortgagor has commenced efforts to cure, then the time to cure shall be extended so long as said party diligently continues to cure such default.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(c) Except as otherwise permitted by the terms of the Mortgage and as evidenced by Mortgagee's written consent, any sale, partial sale, refinancing, syndication or other disposition of the Mortgaged Property shall entitle the Mortgagee to declare Sears' funds secured hereby immediately due and payable without further notice or demand; provided, however, the replacement or substitution of any machinery, equipment or fixtures, now owned or hereafter acquired by Mortgagor, with machinery or equipment of like kind and value, whether or not such machinery or equipment is deemed a fixture under applicable provisions of the Illinois Uniform Commercial Code, will not be an Event of Default under the Mortgage, provided Mortgagor executes such documents as may be necessary to assure Mortgagee of a continuing perfected secured interest in such replacement or substituted machinery, equipment or fixtures.

#### 4.03 Remedies.

(a) Subject to the rights of the Senior Lender and the City, when Sears' funds hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof or such indebtedness or part thereof. The Mortgage and the right of foreclosure hereunder shall not be impaired or exhausted by any foreclosure of the Senior Mortgage or the City Mortgage, and may be foreclosed successively and in parts, until all of the Mortgaged Property has been foreclosed against. In any such foreclosure, or upon the enforcement of any other remedy of Mortgagee under the Mortgage or the Covenant of Residency, there shall be allowed and included as additional indebtedness, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs involved in title insurance and title examinations. All expenditures and expenses of the nature in this Section 4.03 mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of the Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting the Mortgage, the Covenant of Residency or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the lesser of the highest rate permitted by law or 15% per annum, and shall be secured by the Mortgage. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incidental to the foreclosure proceedings, including all such items as are mentioned in this section; (ii) all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Covenant of Residency and the Mortgage; (iii) all principal and interest remaining to be paid pursuant to the recapture provisions described in the Covenant of Residency; and (iv) any remaining amounts due to Mortgagor, its successors or assigns, as their interest may appear.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(b) Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold and an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of the Mortgage on its behalf and on behalf of each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the Mortgaged Property subsequent to the date of the Mortgage.

(c) Upon any other entering upon or taking of possession of the Mortgaged Property after the occurrence of an Event of Default and the expiration of the applicable cure period and other than by means of a foreclosure, Mortgagee, subject to the rights of the Senior Lender and the City, may hold, use, manage and control the Mortgaged Property and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property required in connection therewith; (ii) insure or keep the Mortgaged Property insured; (iii) manage the Mortgaged Property and exercise all the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may reasonably determine to be to its best advantage. Mortgagee may collect and receive all the rents, issues, profits and revenues of the same, including those past due as well as those accruing thereafter, and, after deducting to the extent reasonable: (aa) expenses of taking, holding and managing the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other similar charges as Mortgagee may determine to pay; (ee) other proper charges upon the Mortgaged Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Mortgagee, shall apply the remainder of the monies and proceeds so received by Mortgagee first to payment of accrued interest; and second to the payment of principal. The balance of such funds, if any, after payment in full, of all of the aforesaid amounts (including, without limitation, all amounts owing to Sears pursuant to the Covenant of Residency) shall be paid to Mortgagor.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## 4.04 Receiver.

Subject to the rights of the Senior Lender and the City, if an Event of Default shall have occurred and be continuing after an applicable cure period has expired, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits and revenue thereof. The receiver shall otherwise have all the rights and powers to the fullest extent permitted by law.

## 4.05 Purchase by Mortgagee.

Upon any foreclosure sale Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit to the purchase price; provided, however, that the Senior Lender and the City have been paid in full.

## 4.06 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to Mortgagee by the Mortgage is intended to be exclusive of any other right, power or remedy, but each and every right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law, in equity or by status.

## 4.07 Waiver.

No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by the Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. No consent or waiver, expressed or implied, by Mortgagee to or of any breach or Event of Default by Mortgagor in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or any other breach or Event of Default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies on account of any breach or default by Mortgagor.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## ARTICLE V MISCELLANEOUS PROVISIONS

### 5.01 Successors and Assigns.

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

### 5.02 Terminology.

All personal pronouns used in the Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and sections are for convenience only and neither limit nor amplify the provisions of the Mortgage, and all references herein to articles, sections or paragraphs shall refer to the corresponding articles, sections or paragraphs of the Mortgage unless specific reference is made to such articles, sections or paragraphs of another document or instrument.

### 5.03 Severability.

If any provision of the Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of the Mortgage and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by law.

### 5.04 Security Agreement.

The Mortgage shall be construed as a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Mortgaged Property which constitutes fixtures. Mortgagee shall have all the rights with respect to such fixtures afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Mortgagee by the Mortgage or any other agreement.

### 5.05 Modification.

No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

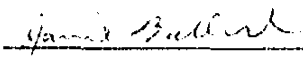
5.06 No Merger.

It being the desire and intention of the parties that the Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by Mortgagee as evidenced by an appropriate document duly recorded, the Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

5.07 Applicable Law.

The Mortgage shall be interpreted, construed and enforced under the laws of the State of Illinois.

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

  
\_\_\_\_\_  
Jamie Ballard

Prepared by:

Everett S. Ward, Esq.  
Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
Chicago, Illinois 60606

After recording return to:

Homan Square Management Company  
Sears Tower Suite 325  
Chicago, Illinois 60606



UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF Cook)

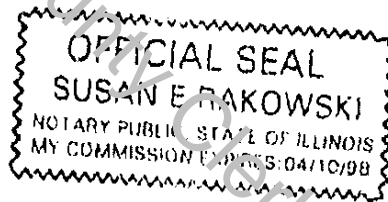
I, Susan E Rakowski, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT James Ballard, personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 12th day of September, 1997.

Susan E Rakowski  
NOTARY PUBLIC

My Commission expires:

\_\_\_\_\_



97681400

Page 12 of 13

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## Exhibit "A"

### Legal Description

#### Parcel 1:

Lot 55 in Homan Square Phase Three, being a resubdivision of lots 1 through 48, inclusive, and the vacated 16 feet East/West alley in block 9 in E.A. Cummings and Co.'s Central Park Avenue addition, a subdivision of part of the Southeast 1/4 of Section 14, Township 39 North, Range 13 East of the third principal meridian, recorded July 12, 1996 as Document Number 96534799, in Cook County, Illinois.

#### Parcel 2:

Perpetual non-exclusive easement to and for the benefit of Parcel 1 for ingress and egress in, over and across Lot 57 as created and set out in the plat of subdivision recorded July 12, 1996 as Document Number 96534799 and the declaration of covenants, conditions, restrictions and easements for Homan Square Homeowners' Association recorded June 27, 1994 as Document Number 94558398 and amended as Document Numbers 94930840, 95190932, 95552590, 96476893, 96605103 and 96971447.

#### Commonly known as:

816 S. St. Louis  
Chicago, IL 60624

#### Tax I.D. Number:

16-14-412-001  
16-14-412-002  
(affects PIQ & others)

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## COVENANT OF RESIDENCY

This Covenant of Residency ("Covenant") is made this 12th day of September, 1997 by Jamie Ballard ("Mortgagor") in favor of Sears, Roebuck and Co., a New York corporation ("Sears").

### RECITALS

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

WHEREAS, pursuant to the objectives of the New Homes Program, the City and West Side Affordable Housing, Limited Partnership, an Illinois limited partnership ("Developer"), executed the "Redevelopment Agreement, New Homes for Chicago, Homan Square, Phase III", dated as of January 21, 1997 as document #97156834, whereby Developer redeveloped the parcel legally described on Exhibit A attached hereto ("Land") by constructing a single family housing unit ("Single Family Home") and other improvements on the Land (the Land, Single Family Home and other improvements are collectively referred to as the ("Mortgage Property")); and

WHEREAS, in furtherance of the objectives contained in the Redevelopment Agreement, Sears and Developer have entered into a Subsidy Agreement dated August 29, 1995, pursuant to the terms of which Sears agreed to subsidize a portion of the construction cost of the Single Family Home; and

WHEREAS, the Single Family Home was constructed by Developer in part by using \$20,000.00 of Sears's funds which served to improve the quality of the construction of the Single Family Home; and

WHEREAS, the expenditure of Sears's funds to construct the Single Family Home is not reflected in the sales price for the Mortgaged Property paid by the Mortgagor to Developer as closing, and may be recovered by Sears only upon the terms and conditions set forth in this Covenant;

NOW THEREFORE, in consideration of the benefits accruing to Mortgagor as a result of its purchase of the Mortgaged Property and the Single Family Home which was constructed by Developer through its participation in the New Homes Program, Mortgagor covenants to Sears as

97681400

Page 14 of 16

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

follows:

1. Mortgagor covenants to Sears that it meets the income eligibility requirements established by City pursuant to the New Homes Program in order to participate as an initial homebuyer of the Mortgaged Property under the New Homes Program. Mortgagor understands and acknowledges that Sears, through the funding of a portion of the cost of the Single Family Home, has a material economic interest in the success of the New Homes Program with respect to Mortgagor's purchase and occupancy of the Single Family Home.

2. Mortgagor paid Developer the purchase price of \$104,950.00 ("Purchase Price") for the Mortgaged Property on the date of conveyance of the Mortgaged Property from Developer to Mortgagor ("Conveyance Date").

3. Mortgagor covenants and agrees that Mortgagor shall own the Mortgaged Property and utilize the Single Family Home as its primary residence for a period of four years commencing with the Conveyance Date.

4. If Mortgagor conveys the Mortgaged Property (whether by sale, foreclosure, deed in lieu of foreclosure or otherwise), prior to the fourth anniversary of the Conveyance Date as a price (or as consideration for the forgiveness or discharge of indebtedness which is) in excess of the Purchase Price, then Sears shall be entitled to recapture, and Mortgagor shall be obligated to pay to Sears on the date of such conveyance (whether by sale, foreclosure, deed in lieu of foreclosure or otherwise), an amount equal to the lesser of the following:

(a) the excess of the [gross] resale price, or of the amount of indebtedness forgiven or discharged, over the Purchase Price; and

(b) \$20,000.00, less \$5,000.00 for each full year from the Conveyance Date until the fourth anniversary of such Conveyance Date, at which time the amount in this clause (b) shall equal zero.

5. The performance of Mortgagor's obligations under this Covenant shall be secured by the "Mortgage, Security and Recapture Agreement" of even date herewith ("Mortgage") made by Mortgagor in favor of Sears, encumbering the Mortgaged Property, which, upon execution by the parties, shall be filed and recorded with the Office of the Recorder of Deed of Cook County, Illinois.

6. Provided that Mortgagor has complied fully with the terms of this Covenant and the Mortgage, Sears shall, within 30 days of receipt of a written request from Mortgagor at any time

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

following the fourth anniversary of the Conveyance Date, issue a release of this Covenant. Said release shall be in recordable form.

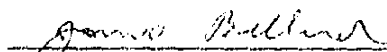
7. Any payment to be made by Mortgagor to Sears pursuant to this Covenant shall be made at the Homan Square Management Company, 3333 West Arthington, Chicago, Illinois 60624 or such other place designated by Sears from time to time in writing.

8. If any lawsuit is instituted by Sears to recover any sums owed Sears pursuant to this Covenant, Mortgagor agrees to pay all of Sears' costs incurred as a result of such collection, including reasonable attorney's fees and court costs.

9. Demand, protest and notice of demand and protest are hereby waived, and Mortgagor hereby waives, to the extent authorized by law, any and all exemption rights authorized by law which otherwise would apply to the recapture provisions evidenced by this Covenant.

10. The obligations of Mortgagor under this Covenant shall be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, this Covenant has been duly executed by Mortgagor, as of the date above written.

  
\_\_\_\_\_  
Jamie Ballard

UNOFFICIAL COPY

Property of Cook County Clerk's Office