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2001-12-26 07:41:53
Cook County Recorder 35.00



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JUNIOR MORTGAGE

THIS JUNIOR MORTGAGE AND SECURITY AGREEMENT is made as of this 17th day of December, 2001, between STERLING MANOR CONDOMINIUMS, LLC; ~~D/B/A~~ ~~LOYOLA PARTNERS~~, an Illinois limited liability company, ("Mortgagor"), whose mailing address is 6439 North Sheridan, #266, Chicago, Illinois 60626, Illinois and TWG WINCHESTER LLC, an Illinois limited liability company, ("Lender"), with a mailing address of 2835 N. Sheffield, Suite 212, Chicago, Illinois 60657.

RECITALS

WHEREAS, Mortgagor is indebted to Lender in the principal sum of SEVENTY THOUSAND AND 00/100 DOLLARS (\$70,000.00), or so much thereof as may be now or hereafter disbursed to or for the benefit of Maker (as defined below), which indebtedness is evidenced by Maker's note dated of even date herewith and all modifications, substitutions, extensions, replacements and renewals thereof ("Note") providing for repayment of principal and interest and providing for a final payment of all sums due thereunder one (1) year from the date of execution of the Note. All obligors on the Note are collectively referred to herein as "Maker".

THE GRANT

To SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all charges provided herein and all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Junior Mortgage; and the performance of the covenants and agreements contained herein and in the Note, all future advances and all other indebtedness of Mortgagor to Lender whether now or hereafter existing (collectively, the "Secured Indebtedness" or "Indebtedness") and also in consideration of Ten and 00/100 (\$10.00), the receipt and sufficiency whereof is acknowledged. Mortgagor does hereby convey, grant, mortgage and warrant to Lender the real estate ("Real Estate") located in the County of Cook, State of Illinois and described on Exhibit "A". The Real Estate has the common street address of 7407 North Winchester, Chicago, Illinois ("Property Address") and includes eight (8) condominium units known as Units 101, 102, 201, 202, 203, 301, 302, and 303;

BOX 333-CT

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TOGETHER WITH all buildings, structures, improvements, tenements, fixtures, easements, mineral, oil and gas rights, appurtenances thereunto belonging, title or reversion in any parcels; strips, streets and alleys adjoining the Real Estate, any land or vaults lying within any street, thoroughfare, or alley adjoining the Real Estate, and any privileges, licenses, and franchises pertaining thereunto, all of the foregoing now or hereafter acquired, all leasehold estates and all rents, issues, and profits thereof, for so long and during all such times as Mortgagor, its successors and assigns may be entitled thereto, all the estate, interest, right, title or other claim Or demand which Mortgagor now has or way hereafter have or acquire with respect to: (i) proceeds of insurance in effect with respect to the Real Estate or improvements thereon and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Real Estate or improvements thereon, including without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards") (which are each pledged primarily and on a parity with the Real Estate and not secondarily), and all apparatus, equipment or articles now or hereafter located thereon used to supply heat, gas, air conditioning, water) light power; refrigeration (whether single units or centrally controlled), and ventilation, and any other apparatus, equipment or articles used or useful in the operation of the Real Estate or improvements thereon including all additions, substitutions and replacements thereof. All of the foregoing is declared to be a part of the Real Estate whether physically attached or not. All similar apparatus, equipment, articles and fixtures hereafter placed on the Real Estate by Mortgagor or its successors or assigns shall be considered as constituting part of the Real Estate. (All of the foregoing, together with the Real Estate (or the leasehold estate if this Junior Mortgage is on a leasehold) are hereinafter referred to as the "Property").

To have and to hold the Property unto the Lender, its successors and assigns forever, for the purposes and uses set forth herein, free from all rights and benefits under any Homestead Exemption laws of the state in which the Property is located, which rights and benefits Mortgagor does hereby expressly release and waive.

COVENANTS AND AGREEMENTS

Mortgagor and Lender covenant and agree as follows:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Mortgagor shall promptly pay or cause to be paid when due all Secured Indebtedness.
2. **APPLICATION OF PAYMENTS.** Unless prohibited by applicable law, all payments received by Lender under this Junior Mortgage, the Note, the Loan Agreement, if any, and all documents given to Lender to further evidence, secure or guarantee the Secured Indebtedness (collectively, and as amended; modified or extended, the "Loan Documents") shall be applied by Lender first to interest payable on the Note and then to Note principal.
3. **PRIOR ENCUMBRANCES; LIENS; PARTIAL RELEASE.** Mortgagor shall perform all of Mortgagor's obligations under any mortgage, deed of trust or other security agreement (collectively "Prior Encumbrances") creating a lien having priority over this Junior Mortgage,

including Mortgagor's covenants to make payments when due. Any act or omission of Mortgagor which, with the giving of notice of the passage of time would constitute a default or event of default under any Prior Encumbrance or under any ground lease shall be a default under this Junior Mortgage. Mortgagor shall promptly deliver to Lender all notices given or received of any defaults or events of default under any Prior Encumbrance or any ground lease.

Mortgagor shall keep the Property free from mechanics' and all other encumbrances and liens.

Lender understands and agrees that Junior Mortgage and this Note are junior and subordinate to that certain Mortgage from Borrower to Devon Bank securing that certain Mortgage Note in the amount of Seven Hundred Sixty Thousand 00/100 DOLLARS (\$760,000.00). Lender further understands and agrees that, upon sale of the Property or any of its condominium units, the proceeds of such sale shall be disbursed to Devon Bank until the First Mortgage is satisfied in full. At such time, Lender agrees to partially release its lien interest only to the extent necessary to satisfy and fully payoff the First Mortgage indebtedness.

4. **TAXES AND ASSESSMENTS; RENTS.** Mortgagor shall pay or cause to be paid when due all Impositions and water, sewer and other charges, fines and Impositions attributable to the Property and leasehold payments, if any, and all other sums due under any ground lease attributable to the Property. Mortgagor shall pay, in full, but under protest in the manner provided by Statute, any tax or assessment Mortgagor desires to contest.

5. **PROTECTION OF LENDER'S SECURITY.** If Mortgagor fails to perform any of the covenants and agreements contained in this Junior Mortgage, the Note or the other Loan Documents, or if any action or proceeding is threatened or commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Mortgagor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as it deems expedient or necessary to protect Lender's interest, including (i) making repairs; (ii) discharging Prior Encumbrances in full or part; (iii) paying, settling, or discharging tax liens, mechanics' or other liens, and paying ground rents (if any); (iv) procuring insurance; and (v) renting, operating and managing the Property and paying operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Property shall be operational and usable for its intended purposes. Lender in making payments of Impositions and assessments, may do so in accordance with any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity thereof.

Any amounts disbursed by Lender pursuant to this Paragraph 6 shall be a part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note (the "Default Rate"). Nothing contained in this Paragraph 5 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 5.

6. **MORTGAGOR NOT RELEASED; FORBEARANCE BY LENDER NOT A WAIVER; REMEDIES CUMULATIVE.** Any extension or other modification granted by Lender to any successor in interest of Mortgagor of the time for payment of all or any part of the Secured Indebtedness shall not operate to release, in any manner, Mortgagor's liability. Any forbearance or inaction by Lender in exercising any right or remedy hereunder, or otherwise afforded by

applicable law, shall not be a waiver of or preclude the later exercise of any such right or remedy. Any acts performed by Lender to protect the security of this Mortgage, as authorized by Paragraph 8 or otherwise, shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness. All remedies provided in this Junior Mortgage are distinct and cumulative to any other right or remedy under this Junior Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively. No consent or waiver by Lender to or of any breach or default by Mortgagor shall be deemed a consent or waiver to or of any other breach or default.

7. **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CO-SIGNERS.** The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective heirs, executors, legal representatives, successors and permitted assigns of Lender and Mortgagor. If this Junior Mortgage is executed by more than one Mortgagor, each Mortgagor shall be jointly and severally liable hereunder.

8. **NOTICE.** Except for any notice required under applicable law to be given in another manner, any notices required or given under this Junior Mortgage shall be given by hand delivery, by nationally recognized overnight courier service or by certified mail, return receipt requested. Notices shall be given to Mortgagor at the address provided below and to Lender at Lender's address stated above with a copy to: Charles Mangum, Fuchs & Roselli, Ltd., 440 West Randolph Street, Suite 500, Chicago, Illinois 60606. Notices shall be deemed to have been given effective on the date of delivery, if hand-delivered, the next business day after delivery to the nationally recognized overnight courier service if by such courier service, or two (2) days after the date of mailing shown on the certified receipt if mailed. Any party hereto may change the address to which notices are given by notice as provided herein. Notices to Mortgagor shall be sent to: Connie D. Abels, 6439 North Sheridan, Suite 266, Chicago, Illinois 60626.

9. **EVENT OF DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Junior Mortgage:

(a) Mortgagor's failure to pay any amount due herein or secured hereby whether at maturity or by acceleration or otherwise under the Note, this Junior Mortgage, or any other Loan Document, which failure continues for more than thirty (30) days after written notice from Lender; provided, however that such thirty (30) day cure period shall not apply to the other sub-paragraphs of this Paragraph 9;

(b) Mortgagor's failure to perform or observe any other covenant, agreement, representation, warranty or other provision contained in the Note, this Junior Mortgage (other than an Event of Default described elsewhere in this Paragraph 9 or any other Loan Document and such failure continues for a period of thirty (30) days after the earlier of Mortgagor's becoming aware of such failure or the effective date of notice thereof given by Lender to Mortgagor; provided, however, that this grace period shall not apply to the other sub-paragraphs of this Paragraph 9;

(c) The occurrence of any breach of any representation or warranty contained in this Junior Mortgage or any other Loan Document;

(d) A court having jurisdiction shall enter a decree or order for relief in respect of Mortgagor, or Beneficiary, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law; or if Mortgagor, or Beneficiary, shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization Or

other relief under the Federal Bankruptcy Act or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator or trustee (or similar official) of the Mortgagor or for any part of the Property or any substantial part of the Mortgagor's other property or any substantial part of the property of Beneficiary; (iii) make any assignment for the benefit of Mortgagor's or Beneficiary's creditors; (iv) fail generally to pay Mortgagor's debts as they become due;

(e) This Junior Mortgage shall not constitute a valid lien on and security interest in the Property or if such lien and security interest shall not be perfected;

10. **ACCELERATION; REMEDIES.** AT ANY TIME AFTER AN EVENT OF DEFAULT, LENDER, AT LENDER'S OPTION, MAY DECLARE ALL SUMS SECURED BY THIS JUNIOR MORTGAGE AND THE OTHER LOAN DOCUMENTS TO BE IMMEDIATELY DUE AND PAYABLE WITHOUT FURTHER DEMAND AND MAY FORECLOSE THIS MORTGAGE BY JUDICIAL PROCEEDING. LENDER SHALL BE ENTITLED TO COLLECT IN SUCH PROCEEDING ALL EXPENSES OF FORECLOSURE, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS INCLUDING ABSTRACTS AND TITLE REPORTS, ALL OF WHICH SHALL BECOME A PART OF THE SECURED INDEBTEDNESS AND IMMEDIATELY DUE AND PAYABLE, WITH INTEREST AT THE DEFAULT RATE. THE PROCEEDS OF ANY FORECLOSURE SALE OF THE PROPERTY SHALL BE APPLIED AS FOLLOWS: FIRST, TO ALL COSTS, EXPENSES AND FEES INCIDENT TO THE FORECLOSURE PROCEEDINGS; SECOND, AS SET FORTH IN PARAGRAPH TWO (2) OF THIS JUNIOR MORTGAGE; AND THIRD, ANY BALANCE TO MORTGAGOR OR AS A COURT MAY DIRECT.

11. **COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW.** If any provision in this Junior Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et. seq.* (1992 State Bar Edition) of the Illinois Compiled Statutes) (the "Act") the provisions of the Act shall take precedence over the Junior Mortgage provisions, but shall not invalidate or render unenforceable any other Junior Mortgage provision that can be construed in a manner consistent with the Act.

If any Junior Mortgage provision shall grant to Lender any rights or remedies upon Mortgagor's default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of such provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 10 of this Junior Mortgage, shall be added to the Indebtedness secured by this Junior Mortgage or by the judgment of foreclosure.

12. **WAIVER OF RIGHT OF REDEMPTION.** To the full extent permitted by law, Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of; any stay, exemption or extension law or any so-called "Moratorium Law" nor or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute

now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all right or redemption from sale under any order or decree of foreclosure of this Junior Mortgage, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereby that any and all such right of redemption of Mortgagor, and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by involving or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

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STREET ADDRESS: 7407 N WINCHESTER UNITS 101 THRU 303

CITY: CHICAGO

COUNTY: COOK

TAX NUMBER: 11-30-407-019-1001

, 1002, 1003, 1004, 1005, 1006, 1007
and 1008

LEGAL DESCRIPTION:

UNITS 101, 102, 201, 202, 203, 301, 302, AND 303 IN THE WINCHESTER CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

LOT 2 IN BLOCK 5 IN MURPHY'S ADDITION TO ROGERS PARK IN THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN

WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 98971821, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

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file #J

- 11-30-407-019-1001
- 11-30-407-019-1002
- 11-30-407-019-1003
- 11-30-407-019-1004
- 11-30-407-019-1005
- 11-30-407-019-1006
- 11-30-407-019-1007
- 11-30-407-019-1008

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