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This instrument was prepared by and after recording should be returned to:

Sanford R. Gail
Bell, Boyd & Lloyd
70 W. Madison Street
Suite 3100
Chicago, Illinois 60602



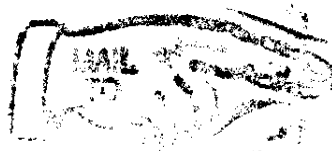
Doc#: 0421219031
Eugene "Gene" Moore Fee: \$50.00
Cook County Recorder of Deeds
Date: 07/30/2004 01:38 PM Pg: 1 of 14

STORM SEWER EASEMENT AGREEMENT

This Storm Sewer Easement Agreement (the "Agreement") is made as of the 19th day of July, 2004, by and between **CHICAGO TITLE LAND TRUST COMPANY** As Trustee Under Trust Agreement dated June 28, 1963, and Known As Trust No. 45839, an Illinois corporation, ("Grantor") and **LOCK UP OLD ORCHARD, L.L.C.**, an Illinois limited liability company ("Grantee").

Recitals

- A. Grantor is the owner of the real estate commonly known as 5300 Golf Road in the Village of Skokie, Illinois and legally described on Exhibit A attached hereto (the "Grantor's Property").
- B. Grantee is the owner of the real estate commonly known as 5250 Golf Road in the Village of Skokie, Illinois and legally described on Exhibit B attached hereto (the "Grantee's Property").
- C. Grantee, intends to construct certain improvements on the Grantee's Property in accordance with the Sheet C-10 of the plans and specifications bid set dated February 20, 2004, revised March 17, 2004 for permit, revised May 5, 2004 for detention and revised May 25, 2004 for Village review and titled "IDOT Drainage Exhibit Proposed" prepared by Gary A. Wiss, Incorporated, and submitted by Sullivan Goulette Ltd., (the "Plans"). Pursuant to the Plans, Grantee will construct certain storm sewer improvements under and across the Grantee's Property and Grantor's Property (the "Drainage System"), which Grantee will connect to the storm sewer owned by the Illinois Department of Transportation ("IDOT") and located in the right-of-way for the Edens Expressway. To connect the storm sewer improvements on Grantee's Property with the IDOT storm sewer, Grantee desires to construct certain storm sewer improvements under and across a portion of Grantor's Property in accordance with the Plans. The Plans set out the proposed location and design of the storm sewer under and across the Grantor's Property and the Grantee's Property which location is also shown on Exhibit C attached hereto. Notwithstanding anything to the contrary contained in the Plans, Grantee agrees to construct a manhole and cover in the Easement Area and to connect the manhole to the Drainage System in a manner acceptable to Grantor so that storm water from the Grantor's Property drains into the Drainage System.



BOX 136
5-9-04

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D. The parties are entering into this Agreement in order to assure: (i) the appropriate installation by the Grantee of the Drainage System described in the Plans and (ii) the rights and responsibilities of the parties with respect to the future inspection, maintenance, repair and replacement of the Drainage System.

Agreements

Now, therefore, in consideration of the mutual covenants contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Construction Per Plans.** The Grantee agrees to proceed diligently with installation of the Drainage System (the "Work") which shall be governed by the following covenants:

- a. The work shall be performed at the sole cost and expense of the Grantee and be done in a good and workmanlike manner. Grantee shall obtain all necessary permits from any governmental agency having jurisdiction, and the work performed shall comply with all requirements of such permits and of applicable laws and regulations.
- b. The Covenants Relating to Inspection, Repairs, Restoration, and Replacements of Section 3 below shall apply.
- c. The Grantee shall provide the Grantor with "as-built" drawings of the work promptly upon conclusion of construction of the Drainage System.
- d. Notwithstanding anything to the contrary contained in the Plans, Grantee agrees to construct a catch basin in the Easement Area at the location shown on the Plans and to connect the catch basin to the Drainage System in a manner acceptable to Grantor so that storm water from the Grantor's Property drains into the Drainage System as shown on the Plans.

2. **Restoration After Initial Construction.** The Grantee shall, at its sole cost and expense and as part of the Work, restore the Grantor's Property after the initial installation of the Drainage System to the condition which existed immediately prior to such installation, which restoration shall be subject to the reasonable approval of Grantor.

3. **Covenants Relating to Inspection, Repair, Restoration and Replacements.** The parties recognize that, after the installation of the Drainage System, periodic inspection, maintenance, repair and replacement of the Drainage System may be necessary in order to assure the proper function of the Drainage System and the protection of the both the Grantee's Property and the Grantor's Property. Accordingly, the parties agree as follows:

- a. Except for any maintenance or repair necessitated by the negligence or intentional action of Grantor, the Grantee shall have the sole responsibility for maintenance, repair and replacement of the Drainage System (including, without limitation, the manholes and catch basins), such that the same shall at all times be in a good and safe condition and in compliance with all applicable laws, ordinances, rules and

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regulations, which shall be performed at Grantee's sole cost and expense. In the event Grantee fails to so maintain the Drainage System, Grantor shall have the right, but not the obligation, following the delivery of not less than three (3) business days notice without Grantee curing, or commencing to cure the default and thereafter diligently pursuing the cure to completion, to perform such maintenance and repairs as Grantor reasonably deems necessary, including that portion of the Drainage System which is located on Grantee's Property and Grantee grants an easement to Grantor over that portion of Grantee's Property as is reasonably necessary for Grantor to exercise its rights hereunder. Grantee shall pay Grantor for all costs incurred by Grantor in connection with any such maintenance or repairs within ten (10) business days after Grantor's demand for the same. Any sums not paid within such ten (10) day period shall bear interest from the date the same was incurred until paid at the rate of twelve percent (12%) per annum.

- b. No alterations to the Drainage System, as shown on the Plans, shall be made by the Grantee except in the event of an amendment to this Agreement signed by both parties.
- c. Subject to paragraphs 3.d and 3.e below, the Grantee and its contractors shall have the right to enter the Grantor's Property to the extent provided in paragraph 5 hereof to perform necessary inspection, maintenance, repair and replacement of the Drainage System.
- d. Any such entry shall be on at least two (2) business days advance written notice, except in the case of a bona fide emergency where damage to person or property is imminent, in which event the Grantee shall provide telephone notice at minimum and whatever other notice is possible under the circumstances. In the case of entry for the purpose of maintenance, repair or replacement of any of the Drainage System, the notice shall specify the nature and extent of the work to be performed.
- e. Prior to the commencement of any work on the Grantor's Property (including the Work), the Grantee shall (i) retain reputable and fully insured contractors to perform any such work on the Grantor's Property, and (ii) provide Grantor evidence of insurance reasonably acceptable to Grantor, which insurance shall name Grantor, its beneficiary and any lender of Grantor as an additional insured. Any contractor performing the Work shall provide commercial general liability insurance with contractual liability with combined single limits of not less than \$2,000,000 per occurrence naming Grantor, its beneficiary and its lender as additional insureds and Workers' Compensation Insurance in the statutory amount. All such work shall be performed in a good and workmanlike manner at the Grantee's sole cost and expense. The Grantee shall pay any such contractors promptly and in full such that no mechanics' liens or other claims are made against the Grantor or the Grantor's Property. If any mechanics' lien is filed against Grantor's Property as a result of any work by Grantee, Grantee shall either promptly cause such lien to be released of record or provide Grantor with a bond or title insurance over such lien acceptable to Grantor and its lender. Upon

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conclusion of any inspection, maintenance, repair or replacement, as the case may be, Grantee shall, at its sole cost and expense, promptly restore the Grantor's Property to its pre-existing condition.

- f. In connection with any entry upon the Grantor's Property pursuant to this Agreement, Grantee, its agents, contractors or employees shall not unreasonably interfere with the use and enjoyment of, or the conduct of business upon, the Grantor's Property.

4. **Grantee's Indemnification.** Grantee shall be liable for damage to the Grantor's Property resulting from the acts or omissions of Grantee, its contractors, subcontractors, agents or employees. Grantee agrees to indemnify, defend by counsel reasonably acceptable to Grantor and Grantor's beneficiary and hold Grantor and its beneficiary and their respective successors and assigns, and the Grantor's Property, harmless of, from and against any and all losses, damages, liabilities, claims, liens, costs and expenses, including court costs and reasonable attorneys' fees and expenses, in connection with injury to or death of any person or injury or damage to or theft, robbery, pilferage, loss or loss of the use of any property occurring in or about the Grantor's Property, including without limitation the Easement Area, arising from (i) the entry of Grantee, its agents, contractors or employees onto the Grantor's Property, (ii) any activity, work, or thing done, permitted or suffered by Grantee, its agents, contractors or employees in or about the Easement Area or any other part of Grantor's Property, (iii) the breach by Grantee in the performance of any covenant or agreement on the part of Grantee to be performed pursuant to the terms of this Agreement, or (iv) the improper operation of the Drainage System due to a defective condition in the Drainage System unless such defective condition results from the negligence or misconduct of the Grantor.

5. **Grant of Easement; Covenants Running with the Land.**

(A) Subject to the terms of this Agreement, the Grantor, for itself, its heirs, successors and assigns, hereby grants, a non-exclusive easement for storm sewer drainage purposes over, under, upon and across that portion of the Grantor's Property crosshatched and designated on Exhibit C attached hereto (the "Easement Area"), for the purpose of installing, inspecting, maintaining, repairing and replacing the Drainage System, together with an easement for reasonable ingress and egress over, upon and across those portions of the Grantor's Property as are from time to time designated by Grantor. Grantee shall use its reasonable best efforts to avoid interfering with the use of Grantor's Property while exercising its rights and obligations hereunder. Such easements shall be covenants running with the land, appurtenant to and for the use and benefit of the Grantee's Property.

(B) The covenants and agreements contained herein shall be covenants running with the land and shall be binding upon the parties hereto and their respective heirs, successors and assigns as owners of the Grantee's Property and the Grantor's Property, respectively.

6. **Improvement of Grantor's Property.** Nothing contained in this Agreement shall in anyway limit, or be construed to limit, Grantor's right to use or improve Grantor's Property; provided, however, that Grantor covenants not to construct any improvements over the

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Easement Area. Grantor may install landscaping and parking and sidewalks over the Easement Area.

7. **Notices.** In the event any notice is required hereunder, it shall be provided in writing (and by telephone in the event of bona fide emergency) by personal delivery, by commercially recognized overnight courier service or by facsimile transmission to the party being notified, together with facsimile transmittal or personal delivery to the party's attorney, at the following addresses:

If to the Grantor:

Konstant Architecture Planning, Inc.
5300 Golf Road
Skokie, Illinois 60077
Attention: Paul Konstant
Fax: (847) 967-0111

If to the Grantee:

Lock Up Old Orchard, L.L.C.
800 Frontage Road
Skokie, Illinois 60077
Attention Robert A. Soudan
Fax: (847) 441-7732

If to Attorney:

Schain, Burney, Ross & Citron, Ltd.
222 N. LaSalle Street, Suite 1910
Suite 1910
Chicago, Illinois 60602
Attention: John D. Malarkey
Fax: (312) 332-4514

If to Attorney:

Bell, Boyd & Lloyd LLC
70 W. Madison Street
Suite 3100
Chicago, Illinois 60602
Attention: Sanford R. Gail
Fax: (312) 827-8080

Either party may specify a different address for notice by giving notice to the other party.

8. **Enforcement; Governing Law.** This Agreement shall be enforceable by an action at law or in equity in a court of competent jurisdiction, including without limitation the remedy of specific performance. Remedies shall be cumulative and not exclusive. This Agreement shall be governed by the laws of the State of Illinois.

9. **Entire Agreement and Modifications: Exhibits.** This Agreement embodies and constitutes the final and entire agreement between the parties hereto and they shall not be bound by any terms, covenants, conditions, representations or warranties not expressly contained herein. This Agreement may not be altered, changed or amended except by an instrument in writing, executed by both parties hereto.

10. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

11. **Recordation.** The parties agree that this Agreement shall be recorded with the Recorder of Deeds of Cook County, Illinois and that the parties shall share equally the costs of recordation.

12. **Interpretation.** Whenever the context hereof shall so require, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

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13. **Severability.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14. **Estoppel Certificates.** Each party, within twenty (20) days of its receipt of a written request from the other party, shall from time to time provide the requesting party a certificate binding upon such party stating: (a) to the best of such party's knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so identifying such default or violation; and (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

15. **Counterparts.** This Agreement may be executed by the parties in separate duplicate counterparts, all of which taken together shall constitute one agreement binding on all the parties, notwithstanding that all the parties may not be signatories to the same original document.

16. **Exculpatory.** This Agreement is executed by **CHICAGO TITLE LAND TRUST COMPANY**, not personally but as trustee under Trust No. 45839, as aforesaid, in the exercise of the power and authority conferred upon and vested in said trustee as such, and it is expressly understood and agreed that nothing in said Agreement contained shall be construed as creating any liability on said trustee personally to pay any indebtedness accruing thereunder, or to perform any covenants, either expressed or implied, in said Agreement (all such liability, if any, being expressly waived by said Purchaser and by every person now or hereafter claiming any right or security thereunder) and that so far as said trustee is concerned, the trustee of any indebtedness or right accruing under said Agreement shall look solely to the premises described therein for the payment or enforcement thereof, it being understood that said trustee merely holds legal title to the premises described therein and has no control over the management thereof or the income therefrom, and has no control over the management thereof or the income therefrom, and has no knowledge respecting rentals, leases or other factual matter with respect to said premises, except as represented to it by the beneficiary or beneficiaries of said trust. Trustee does not warrant, indemnify, defend title nor is responsible for any environmental change.

[Execution Page Follows]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

GRANTEE:

LOCK UP OLD ORCHARD, L.L.C., an Illinois limited liability Company

By: **SHS DEVELOPMENT COMPANY**
Manager

By: *[Handwritten Signature]*

Its: President

GRANTOR:

CHICAGO TITLE LAND TRUST COMPANY, As Trustee Under Agreement Dated June 28, 1963 And Known As Trust No. 45839 and not personally

By: _____

Its: _____

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

GRANTEE:

LOCK UP OLD ORCHARD, L.L.C., an Illinois limited liability Company

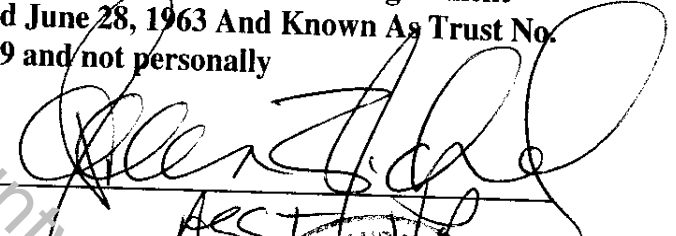
By: **SHS DEVELOPMENT COMPANY**
Manager

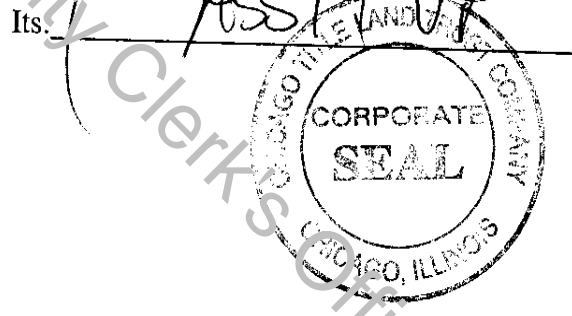
By: _____

Its: _____

GRANTOR:

CHICAGO TITLE LAND TRUST COMPANY, As Trustee Under Agreement Dated June 28, 1963 And Known As Trust No. 45839 and not personally

By: 
Asst. Trust



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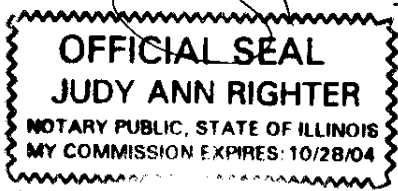
STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this 19 day of July, 2004, before me appeared Robert A. Sordan to me personally known, who being by me duly sworn, did say that he is the President of **SHS DEVELOPMENT COMPANY**, an Illinois corporation, Manager of **Lock Up Old Orchard, L.L.C.**, an Illinois limited liability company and that said instrument was signed by him on behalf of said corporation by authority of its board of directors, and said Robert A. Sordan acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

[Signature]
Notary Public

My commission expires:
10-28-04



STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this ___ day of _____, 2004, before me appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of the **CHICAGO TITLE LAND TRUST COMPANY**, an Illinois corporation, and that said instrument was signed by him on behalf of said corporation as Trustee by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation as Trustee of Trust No. 45839.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My commission expires:

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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this ____ day of _____, 2004, before me appeared _____, to me personally known, who being by me duly sworn, did say that he is the _____ of **SHS DEVELOPMENT COMPANY**, an Illinois corporation, Manager of **Lock Up Old Orchard, L.L.C.**, an Illinois limited liability company and that said instrument was signed by him on behalf of said corporation by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My commission expires:

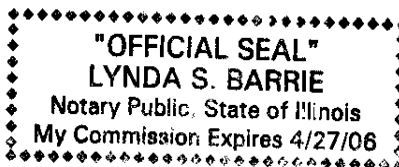
STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this 27th day of July, 2004, before me appeared KARON MICHEL, to me personally known, who being by me duly sworn, did say that he/she is the ASST VP of the **CHICAGO TITLE LAND TRUST COMPANY**, an Illinois corporation, and that said instrument was signed by him on behalf of said corporation as Trustee by authority of its board of directors, and said ASST SEC acknowledged said instrument to be the free act and deed of said corporation as Trustee of Trust No. 45839.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Lynda S. Barrie
Notary Public

My commission expires:



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EXHIBIT A

Legal Description Of The Grantor's Property

LOTS 1, 2, 3, 4, 5 AND THE SOUTH 24 FEET OF LOT 30 (EXCEPT THAT PART TAKEN FOR HIGHWAY PURPOSES) IN BLOCK 2 IN WITTBOLD'S RAPID TRANSIT TERRACE NUMBER 3 SUBDIVISION IN THE SOUTHWEST $\frac{1}{4}$ OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 13 IN COOK COUNTY, ILLINOIS.

TOGETHER WITH ONE HALF (1/2) OF THE 66 FEET OF THE VACATED RIGHT-OF-WAY OF LOCKWOOD AVENUE ADJACENT TO THE ABOVE DESCRIBED PROPERTY AND THE VACATED RIGHT-OF-WAY OF THE 16 FOOT VACATED ALLEY LYING SOUTH OF LOT 30 IN BLOCK 2 IN SAID WITTBOLD'S RAPID TRANSIT TERRACE NUMBER 3 SUBDIVISION IN COOK COUNTY, ILLINOIS.

Permanent Tax No.: 10-09-314-036
10-09-314-038

Property Address: 5300 Golf Road
Skokie, Illinois

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EXHIBIT B

Legal Description of the Grantee's Property

Parcel 1:

LOT 1 IN THE PLAT OF SUBDIVISION OF LOCK UP OLD ORCHARD SUBDIVISION
RECORDED MARCH 22, 2004 AS DOCUMENT 0408227126.

Parcel 2:

ACCESS EASEMENT IN FAVOR OF PARCEL 1 ABOVE PURSUANT TO SHARED
ACCESS EASEMENT AGREEMENT DATED AS OF MARCH 22, 2004 AND RECORDED
MARCH 22, 2004 AS DOCUMENT 0408227122 BY AND BETWEEN VILLAGE OF
SKOKIE, LOCK UP OLD ORCHARD, L.L.C. AND CHICAGO TITLE LAND TRUST
COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 28, 1963 AND
KNOWN AS TRUST NUMBER 45839.

Permanent Tax No.: 10-09-315-003 through 013
10-09-315-016
10-09-314-019
10-09-314-035
10-09-314-037

Property Address: 5250 Golf Road
Skokie, Illinois

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Exhibit C

