

UNOFFICIAL COPY



Doc#: 0517434060
Eugene "Gene" Moore Fee: \$54.50
Cook County Recorder of Deeds
Date: 06/23/2005 02:59 PM Pg: 1 of 16

43,5340

**CONSTRUCTION LOAN MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FINANCING STATEMENT**

THIS CONSTRUCTION LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Mortgage") is given on the 22nd day of June, 2005. The mortgagor is **SUTHERLAND LIMITED PARTNERSHIP**, an Illinois limited partnership (the "Mortgagor"), with its principal address at 208 South LaSalle, Chicago, Illinois 60604. This Mortgage is given to **LOCAL INITIATIVES SUPPORT CORPORATION**, a New York not-for-profit corporation, with its principal address at 501 Seventh Avenue, 7th Floor, New York, New York 10017 ("Lender"). Mortgagor owes Lender the principal sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00) or so much thereof as may be disbursed by Lender. This debt is evidenced by Mortgagor's Construction Loan Promissory Note (P.A. No. 41457-0014), dated as of June 22, 2005 (the "Note") in the amount of \$300,000.00. This Mortgage secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 6 to protect the security of this Mortgage; and (c) the performance of Mortgagor's covenants and agreements under this Mortgage and the Note, with subparagraphs (a) and (b) together defined as the "Indebtedness". For this purpose, Mortgagor does hereby mortgage, grant and convey to Lender the property described in Exhibit A attached hereto and made a part hereof, located in Cook County, Illinois;

This Mortgage prepared by and
after recording return to:

Laura E. Tilly, Esq.
Miner, Barnhill & Galland, P.C.
14 W. Erie Street
Chicago, Illinois 60610

UNOFFICIAL COPY

Together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, leases, rents, royalties, mineral, oil gas rights and profits, water, water rights and water stock, and all fixtures now or hereafter attached to the property, all articles of personal property now or hereafter owned by Borrower and forming a part of or used in connection with the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or leasehold estate if this Mortgage is on a leasehold) are herein referred to as the "Property."

It is understood and agreed that Lender may, from time to time, make loans to the Mortgagor, and that such loans and advances and the interest thereon shall be secured by this Mortgage, provided that aggregate principal amount of the loans shall at no time exceed the amount hereinbefore stated.

COVENANTS

Mortgagor and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Mortgagor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, together with any fees and charges as provided in the Note or this Mortgage.
2. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraph 1 hereof shall be applied by Lender first in payment of any advance made by Lender pursuant to this Mortgage, then to interest, fees and charges due under the Note, then to the principal amount outstanding under the Note.
3. **Charges; Liens.** Mortgagor shall pay, or cause to be paid, all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any, including all payments due under any mortgage disclosed by the title insurance policy insuring Lender's interest in the Property. Mortgagor shall, upon request of Lender, promptly furnish to Lender receipts evidencing such payments.

Mortgagor shall promptly discharge any lien or encumbrance which has priority over this Mortgage, except for the liens or encumbrances listed on Exhibit B attached hereto and made a part hereof (the "Permitted Encumbrances").

UNOFFICIAL COPY

4. **Hazard Insurance.** Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and such other hazards as Lender may require, and in such amounts and for such periods as Lender may require, provided that Lender shall not require that the amount of such coverage exceeds that amount of coverage required to pay the sums disbursed by Lender with respect to the Property and secured by this Mortgage and any other mortgage on the Property.

The insurance carrier providing the insurance shall be chosen by Mortgagor, subject to approval by Lender, provided that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid in a timely manner.

All insurance policies and renewals thereof shall be in form acceptable to Lender, as set forth in Exhibit A of the Note, and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Upon request of Lender, Mortgagor shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible, and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible, or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Mortgagor. If the Property is abandoned by Mortgagor, or if Mortgagor fails to respond to Lender within 30 days from the date of notice from Lender to Mortgagor that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option, either to restoration or repair of the Property, or to the sums secured by this Mortgage.

Unless Lender and Mortgagor otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of any payments due under the Note, or if the Property is acquired by Lender, all right, title and interest of Mortgagor in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the

UNOFFICIAL COPY

extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

5. **Preservation and Maintenance of Property; Leaseholds.** Mortgagor shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property, and shall comply with the provisions of any lease if this Mortgage is on a leasehold.
6. **Protection of Lender's Security; Future Advances.** If Mortgagor fails to perform the covenants and agreements contained in this Mortgage within thirty (30) days of the date of notice from Lender to Mortgagor, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, any proceeding brought by or on behalf of a prior mortgagee, eminent domain, insolvency, building code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender, at Lender's option upon notice to Mortgagor, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorneys' fees and entry upon the Property to make repairs.

At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Indebtedness the payment of all loan commissions, service charges, liquidated damages, attorney's fees, expenses and advances due to or incurred by Lender in connection with the Indebtedness, all in accordance with the Note and this Mortgage, provided, however, that in no event shall the total amount of the Indebtedness, including loan proceeds disbursed plus any additional charges, exceed two hundred percent (200%) of the face amount of the Note. Mortgagor acknowledges that Lender has bound itself to make advances pursuant to the Note and that all such future advances shall be a lien from the time this Mortgage is recorded, as provided in the Act. Unless Mortgagor and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Mortgagor requesting payment thereof, and shall bear interest from the date of disbursement at the Note rate. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take any action hereunder.

7. **Inspection.** Lender may make, or cause to be made, reasonable entries upon and inspections of the Property, provided that Lender shall give Mortgagor notice prior to any such inspection, specifying reasonable cause therefor related to Lender's interest in the Property.

UNOFFICIAL COPY

8. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. In the event of a total or partial taking of the Property, the proceeds shall be applied to sums secured by this Mortgage, with the excess, if any, paid to Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of any payment due under the Note or change the amount of such payment.

9. **Mortgagor Not Released.** Extension of the time for payment or modification of any other term of the Note or this Mortgage granted by Lender to any successor in interest of Mortgagor shall not operate to release in any manner the liability of the original Mortgagor and Mortgagor's successors in interest. Lender shall not be required to commence proceedings against such successor, or refuse to extend time for payment or otherwise modify any term of the Note or this Mortgage by reason of any demand made by the original Mortgagor and Mortgagor's successors in interest.
10. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy under the Note or hereunder, or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of, any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.
11. **Remedies Cumulative.** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.
12. **Successors and Assigns Bound; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of Lender and Mortgagor, subject to the provisions of paragraph 16 hereof. The captions and headings of the paragraphs of this Mortgage are for convenience only, and are not to be used to interpret or define the provisions hereof.
13. **Sending of Notices.** All notices, requests, demands, consents, waivers and other communications given under any of the provisions of this Mortgage shall be in writing

UNOFFICIAL COPY

and shall be delivered (i) in person by courier delivery, or (ii) mailed, and if mailed, then first-class postage prepaid, registered or certified mail, return receipt requested, addressed as stated below or to such other address as the addressee may have specified in a written notice duly given to the other addressees. Any such notice shall be deemed delivered three (3) business days after the same shall have been provided in the manner set forth herein. Facsimile numbers (where available) are for convenience only, and sending of communications through facsimile transmission shall not be deemed to be a formal delivery of such communication unless it is accompanied by the simultaneously sending of a notice by first-class mail, postage prepaid.

To LISC:

Local Initiatives Support Corporation
501 Seventh Avenue - 7th Floor
New York, New York 10018
ATTN: Gregory Maher, Deputy General Counsel
(212) 455 - 9860 TELEFAX: (212) 682 - 5929
Re: P.A. #41457-0014

With a copy to:

Local Initiatives Support Corporation
1 N. LaSalle Street, 12th Floor
Chicago, Illinois 60661
ATTN: Andrew Mooney, Senior Program Director
(312) 360 - 0800 TELEFAX: (312) 360 - 0183

To Mortgagor:

Sutherland Limited Partnership
208 South LaSalle Street
Chicago, Illinois 60604
ATTN: Andy Geer
(312) 660-1381 TELEFAX: (312) 660-1500

With copies to:

William Skalitzky, Esq.
Applegate & Thorne-Thomsen PC
322 S. Green St, Suite 400
Chicago, Illinois 60607
(312) 491-3329 TELEFAX: (312) 421-6162

UNOFFICIAL COPY

JP Morgan Chase
 131 S. Dearborn, 5th Floor
 Chicago, Illinois 60603
 (312) 325-5045 TELEFAX: (312) 325-5050
 Attn: Jack Bernhard

Illinois Housing Development Authority
 401 N. Michigan Avenue, Suite 900
 Chicago, Illinois 60611
 (312) 836-5317 TELEFAX: (312) 832-2182
 Attn: Legal Department

Chicago Equity Fund 1988 Partnership
 One East Superior St., Suite 604
 Chicago, Illinois 60611
 (312) 943-2266 TELEFAX: (312) 943-7994
 Attn: William Higginson

14. **Governing Law; Severability.** This Mortgage shall be governed by the laws of the State of Illinois. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and the Note are declared to be severable.
15. **Hazardous Substances.** The property and the use and operation thereof, are currently in compliance with all Environmental Laws except as otherwise disclosed to Lender in writing. To Mortgagor's knowledge, after reasonable investigation, no generation, manufacture, storage, treatment, transportation or disposal of Hazardous Substances has occurred or is occurring on or from the Property.

No environmental or public health or safety hazards currently exist with respect to the Property or the business or operations conducted thereon except as otherwise disclosed to Lender in writing. No underground storage tanks (including petroleum storage tanks) are present on or under the Property, and no portion of the Property is used as a landfill or waste dump. There are no pending or, to the best of Mortgagor's knowledge, threatened: (i) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Property or the disposal or presence of Hazardous Substances, or regarding any Environmental

UNOFFICIAL COPY

Laws; or (ii) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind that could impair the value of the Property.

Mortgagor shall not cause or permit the presence, use, disposal, storage or release of any Hazardous Substances on or in the Property. Mortgagor shall not do, and shall undertake reasonable action(s) to prevent tenants and other persons on the Property from doing, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to the rehabilitation and maintenance of the Property.

Mortgagor shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Mortgagor has actual knowledge. If Mortgagor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 15, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 15, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to public health, safety or environmental protection.

16. **Transfer of the Property; Assumption.** If all or any part of the Property or an interest therein is sold, transferred or conveyed by Mortgagor without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage; or (b) the creation of a purchase money security interest for household appliances, Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable.
17. **Acceleration; Remedies.** Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage or the Note within thirty (30) days of notice of such breach, including the covenants to pay when due any sums secured by this Mortgage, Lender, at

UNOFFICIAL COPY

Lender's option, may declare all of the sums secured by this Mortgage 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 of documentary evidence, abstracts and title reports.

18. **Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Mortgagor hereby assigns to Lender the rents of the Property, provided that Mortgagor shall, prior to acceleration under paragraph 17 hereof or its abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, and at any time prior to the expiration of any period of redemption following judicial sale, Lender, in person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property, and to collect the rents of the Property, including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of the rents, including, but not limited to receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received.

19. **Security Agreement.** Mortgagor and Lender agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) all sums at any time on deposit for the benefit of Lender or held by the Lender (whether deposited by or on behalf of the Borrower or anyone else) pursuant to any of the provisions of the Mortgage or the Note and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-502 of the Code), (which property is hereinafter referred to as "Personal Property") and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to Lender, and the Collateral and all of Borrower's right, title and interest therein and hereby assigned to the Lender, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph shall not limit

UNOFFICIAL COPY

the applicability of any other provisions of this Mortgage but shall be in addition thereto:

- a. Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Lender and no other party, and the liens or encumbrances listed on Exhibit B attached hereto and made a part hereof.
- b. The Collateral is to be used by Mortgagor solely for business purposes.
- c. The Collateral will be kept at the Property, and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Lender (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Property but will not be affixed to any other real estate.
- d. The only persons having any interest in the Premises are Mortgagor, Lender and holders of interests, if any, expressly permitted by the Note.
- e. No Financing Statement (other than those relating to the Permitted Encumbrances or Financing Statements showing Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted by the Note) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender and will do all such acts as Lender may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Lender and no other party and the liens or encumbrances listed on Exhibit B attached hereto and made a part hereof; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Lender to be desirable.
- f. Upon Default hereunder, Lender shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral

UNOFFICIAL COPY

is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Lender shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Lender may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Lender may require Mortgagor to assemble the Collateral and make it available to Lender for its possession at a place to be designated by Lender which is reasonably convenient to both parties. Lender will give Borrower at least twenty (20) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least twenty (20) days before the time of the sale or disposition. Lender may buy at any public sale. Lender may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Lender so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by Lender, shall be applied against the Indebtedness in such order or manner as Lender shall select. Lender will account to Mortgagor for any surplus realized on such disposition.

- g. The terms and provisions contained in this Paragraph 19 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.
- h. This Mortgage is intended to be a financing statement within the purview of Section 9-502(c) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Lender (Secured Party) are hereinabove set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located. Mortgagor is the record owner of the Premises.
- i. To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessors, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms

UNOFFICIAL COPY

thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

20. **Construction Loan Promissory Note.** Mortgagor has executed and delivered to Lender the Note, which relates to the construction of certain improvements upon the Premises and the disbursement of all or part of the Indebtedness for the purpose of financing a portion of the costs thereof. This Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the Code. The Note is hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length. This Mortgage secures all funds advanced pursuant to the Note (which advances shall constitute part of the Indebtedness, whether more or less than the principal amount stated in the Note) and the punctual performance, observance and payment by Mortgagor of all of the requirements of the Note to be performed, observed or paid by Mortgagor. In the event of express and direct contradiction between any of the provisions of the Note and any of the provisions contained herein, then the provisions contained in the Note shall control. Any warranties, representations and agreements made in the Note by Mortgagor shall survive the execution and recording of this Mortgage and shall not merge herein.
21. **Release.** Upon payment of all sums disbursed by Lender with respect to the Property and secured by this Mortgage, Lender shall release this Mortgage without charge to Mortgagor. Mortgagor shall pay all costs of recordation, if any.
22. **Waiver of Statutory Rights.** Notwithstanding anything to the contrary contained herein, 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 this Mortgage, but hereby waives the benefit of such laws. Mortgagor does hereby expressly waive any and all rights of redemption under any order or decree of foreclosure of this Mortgage on behalf of the Mortgagor, and each and every person, except decree of judgment creditors of the Mortgagor, acquiring any interest in or title to the Property subsequent to the date of this Mortgage.

If any provision in this Mortgage is inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101, *et seq.*, Illinois Revised Statutes (the "Foreclosure Act")), the provision of the Foreclosure Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Act.

If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Lender under the Foreclosure Act in the absence of that provision, Lender shall be vested with the rights granted in the Foreclosure Act to the full extent

UNOFFICIAL COPY

permitted by law.

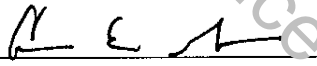
23. **Junior Mortgage.** This is a junior mortgage on the Property and is subject and subordinate in each and every respect to any and all rights of any kind created by those certain mortgages in favor of First National Bank of Chicago, n/k/a JP Morgan Chase, and Illinois Housing Development Authority (the "Senior Lenders") as listed in Exhibit B (the "Senior Mortgages").

So long as the Senior Mortgages are in effect, in the event of any conflict between the provisions of this Mortgage and the Senior Mortgages, the provisions of the Senior Mortgages shall prevail. Notwithstanding any other provision herein to the contrary, the failure by Mortgagor to provide to Mortgagee any dollar amounts or any documents as may be required herein because such amounts or documents are required to be deposited with the Senior Lenders pursuant to the provisions of the Senior Mortgages shall not be deemed an "Event of Default" hereunder; provided, however, that Mortgagor shall promptly provide to Mortgagee written notice of the deposit of such amounts or documents with the Senior Lenders (together with copies of such documents). Notwithstanding any other provision herein to the contrary, the failure by Mortgagor to comply with any provision hereof (other than the payment of amounts or the provision of documents to Mortgagee) due to conflict between the provisions of the Senior Mortgages and the provisions hereof shall not be deemed an "Event of Default" hereunder; provided, however, that Mortgagor shall promptly provide to Mortgagee written notice of such conflict and of the actions taken by Mortgagor pursuant to the Senior Mortgages.

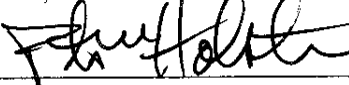
IN WITNESS WHEREOF, Mortgagor has executed this Mortgage.

**SUTHERLAND LIMITED
PARTNERSHIP**, an Illinois limited
partnership

By: Sutherland Neighborhood Development
Corporation, its Co-General Partner

By: 
Name: Andrew E. Geer
Title: Assistant Secretary

By: Holsten Real Estate Development
Corporation, its Co-General Partner

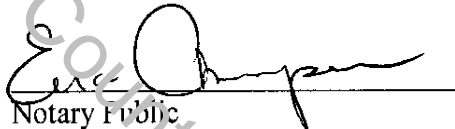
By: 
Name: Peter M. Holsten
Title: President

UNOFFICIAL COPY

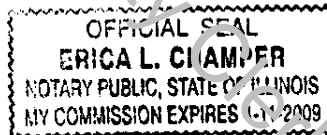
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said county and state, do hereby certify that Andrew Geer, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as Assistant Secretary of Sutherland Neighborhood Development Corporation, an Illinois not-for-profit corporation, a co-general partner of Sutherland Limited Partnership, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as the free and voluntary act 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 22nd day of June, 2005.


Notary Public

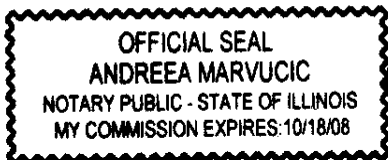
My Commission Expires:

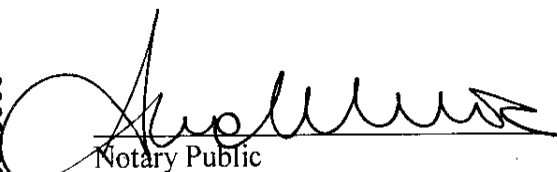


STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said county and state, do hereby certify that Peter M. Holsten, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as President of Holsten Real Estate Development Corporation, an Illinois business corporation, a co-general partner of Sutherland Limited Partnership, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as the free and voluntary act 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 22nd day of June, 2005.




Notary Public

UNOFFICIAL COPY

EXHIBIT A

Legal Description of Mortgaged Property

Lots 1, 2, 3 and 4 in Owners Division of Lot 5 and the South 19 feet of Lot 6, together with the West 1 foot of the 16 foot strip formerly an alley East of and adjoining Lots 5 and the South 19 feet of Lot 6 (except from all of the above described property the South 7 feet condemned for widening East 47th Street) in Clark and Layton's Subdivision of Lots 7 to 10, both inclusive in Block 8 in Walker and Stinson's subdivision of the West 1/2 of the Southwest 1/4 of Section 2, Township 38 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-02-516-009

Common Address: 4659 S. Drexel Boulevard, Chicago, Illinois

UNOFFICIAL COPY

EXHIBIT B

Permitted Encumbrances

1. Accrued taxes not yet due and owing.
2. Mortgage in favor of First National Bank of Chicago, n/k/a JP Morgan Chase, dated June 8, 1989 and recorded June 9, 1989 as Document 89262018, to secure a note in the amount of \$1,800,000.00.
3. Mortgage, Assignment of Rents, and Security Agreement in favor of Illinois Housing Development Authority, dated June 8, 1989 and recorded June 9, 1989 as Document 89262019, to secure a note in the amount of \$500,000.00, as modified by Mortgage Modification Agreement, recorded January 25, 1996 as Document 96068412.
4. Restrictive Covenant dated December 24, 2004 and recorded February 18, 2005 as Document 0504918113.