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Cook County Recorder 111.50



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Property Address: 1130 South Michigan Avenue  
Chicago, Illinois

Property Tax Number:

Parcel Number:

Duplicate Number:

Key Number:

Recording requested by  
and when recorded mail to:

Brownstein Hyatt & Farber, P.C.

Twenty-Second Floor

410 Seventeenth Street

Denver, Colorado 80202

Attention: Ana Lazo Tenzer, Esq.

**MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING,  
FINANCING STATEMENT  
AND ASSIGNMENT OF LEASES AND RENTS**

THIS MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING, FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "**Mortgage**") is executed as of December 26 2001, by 1130 SOUTH MICHIGAN PARTNERSHIP, an Illinois limited partnership ("**Mortgagor**"), in favor of, and for the use and benefit of, **AMERICAN GENERAL LIFE INSURANCE COMPANY**, a Texas corporation, and **AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY**, a Tennessee corporation (individually and collectively, "**Mortgagee**").

**ARTICLE 1  
PARTIES, PROPERTY AND DEFINITIONS**

The following terms and references shall have the meanings indicated:

**1.1 Chattels:** All goods, fixtures, inventory, equipment, building and other materials, supplies, and other tangible personal property of every nature, now owned or hereafter acquired by Mortgagor and used, intended for use, or reasonably required in the construction, development, or operation of the Property, together with all accessions thereto, replacements and substitutions therefor, and proceeds thereof.

**1.2 Commercial Leases.** As defined in **Section 4.7** of this Mortgage.

**1.3 Default:** Default: Any matter which, with the giving of notice, passage of time, or both, would constitute an Event of Default.

**1.4 Environmental Indemnity Agreement:** The Environmental Indemnity Agreement of even date herewith made by Mortgagor and Guarantor for the benefit of Mortgagee.

**1.5 ERISA:** The Employee Retirement Income Security Act of 1974, as amended, together with all rules and regulations issued thereunder.

**1.6 Event of Default:** As defined in Article 6.

**1.7 General Partner:** Collectively, Frederick Ford, Draper and Kramer, Incorporated, an Illinois corporation, D&K Insurance Agency, Inc., and any other or successor general partner of Mortgagor.

**1.8 Guarantor:** Draper and Kramer, Incorporated, an Illinois corporation.

**1.9 Guaranty Agreement:** The Guaranty Agreement of even date herewith made by Guarantor for the benefit of Mortgagee.

**1.10 Intangible Personalty:** Mortgagor's right to use all trademarks and trade names and symbols or logos used in connection therewith, or any modifications or variations thereof, in connection with the operation of the improvements existing or to be constructed on the Property, together with all accounts (as defined in Article 9 of the Uniform Commercial Code), including without limitation Accounts as defined in that certain Pledge and Cash Collateral Agreement (including without limitation Borrower's Operating Account, #5800237462; the Lockbox Account, #5800359043; and the Cash Collateral Account, #8602265814, each of the foregoing held at LaSalle Bank, N.A., Chicago, Illinois); and the Capital Improvements Account, #8602265822, held at LaSalle Bank, N.A., Chicago, Illinois pursuant to that certain Escrow Agreement; each between Debtor and Secured Party on or about even date herewith, and the Tax Escrow Fund as defined in Section 4.4 below, payment intangibles, chattel paper (including, without limitation, electronic chattel paper and tangible chattel paper), instruments (including without limitation promissory notes), and all monies in the possession of Secured Party (including, without limitation, proceeds from insurance, retainages and deposits for taxes and insurance), Permits, contract rights (including, without limitation, rights to receive insurance proceeds) and general intangibles (including, without limitation, payment intangibles, software owned by Mortgagor, and all letter of credit rights and supporting obligations) (whether now owned or hereafter acquired, and including proceeds thereof) relating to or arising from Debtor's ownership, use, operation, leasing, or sale of all or any part of the Property, specifically including but in no way limited to any right which Debtor may have or acquire to transfer any development rights from the Property to other real property, and any development rights which may be so transferred.

**1.11 Lease Certificate:** The certificate of even date herewith made by Mortgagor to Mortgagee concerning Leases.

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**1.12 Leases:** Any and all leases, subleases and other agreements under the terms of which any person other than Mortgagor has or acquires any right to occupy or use the Property, or any part thereof.

**1.13 Loan Documents:** The Note, all of the deeds of trust, mortgages, collateral assignments, security agreements and other instruments and documents securing the Note, including, without limitation, this Mortgage, the Environmental Indemnity Agreement, the Guaranty Agreement, the Lease Certificate, the Assignment of Leases and Rents and Other Income, the Subordination of Management Agreement and each other document now or hereafter executed or delivered in connection with the transaction pursuant to which the Note has been executed and delivered. The term "**Loan Documents**" also includes all modifications, extensions, renewals, and replacements of each document referred to above.

**1.14 Mortgagee:** The Mortgagee named in the introductory paragraph of this Mortgage (Taxpayer Identification No. 25-0598210 - American General Life Insurance Company; and No. 62-9386330 - American General Life and Accident Insurance Company), whose legal address is 1 SunAmerica Center, Century City, Los Angeles, California 90067-6022, together with any future holder of the Note.

**1.15 Mortgagor:** The Mortgagor named in the introductory paragraph of this Mortgage (Taxpayer Identification No. 36-2609660), whose legal address is c/o Draper & Kramer, Incorporated, 33 West Monroe Street, Suite 1900, Chicago, Illinois 60603, Attention: Forrest D. Bailey, together with any future owner of the Property or any part thereof or interest therein.

**1.16 Note:** Mortgagor's promissory note of even date herewith made by Mortgagor and payable to the order of Mortgagee in the principal face amount of \$40,700,000.00, the last payment under which is due on January 1, 2027, or, if extended by Mortgagee pursuant to its terms, January 1, 2032, unless such due date is accelerated, together with all renewals, extensions and modifications of such promissory note. All terms and provisions of the Note are incorporated by this reference in this Mortgage.

**1.17 Permits:** All permits, licenses, certificates and authorizations necessary for the beneficial development, ownership, use, occupancy, operation and maintenance of the Property.

**1.18 Permitted Exceptions:** The matters set forth in **Exhibit B** attached hereto.

**1.19 Property:** The tract or tracts of land described in **Exhibit A** attached, together with the following:

(a) All buildings, structures, and improvements now or hereafter located on such tract or tracts, as well as all rights-of-way, easements, and other appurtenances thereto;

(b) Any land lying between the boundaries of such tract or tracts and the center line of any adjacent street, road, avenue, or alley, whether opened or proposed;

(c) All of the rents, income, receipts, revenues, issues and profits of and from such tract or tracts and improvements;

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(d) All (i) water and water rights (whether decreed or undecreed, tributary, nontributary or not nontributary, surface or underground, or appropriated or unappropriated); (ii) ditches and ditch rights; (iii) spring and spring rights; (iv) reservoir and reservoir rights; and (v) shares of stock in water, ditch and canal companies and all other evidence of such rights, which are now owned or hereafter acquired by Mortgagor and which are appurtenant to or which have been used in connection with such tract or tracts or improvements;

(e) All minerals, crops, timber, trees, shrubs, flowers, and landscaping features now or hereafter located on, under or above such tract or tracts;

(f) All machinery, apparatus, equipment, fittings, fixtures (whether actually or constructively attached, and including all trade, domestic, and ornamental fixtures) now or hereafter located in, upon, or under such tract or tracts or improvements which are owned by Mortgagor and used or usable in connection with any present or future operation thereof, including but not limited to all heating, air-conditioning, freezing, lighting, laundry, incinerating and power equipment; engines; pipes; pumps; tanks; motors; conduits; switchboards; plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, cooking, and communications apparatus; boilers, water heaters, ranges, furnaces, and burners; appliances; vacuum cleaning systems; elevators; escalators; shades; awnings; screens; storm doors and windows; stoves; refrigerators; attached cabinets; partitions; ducts and compressors; rugs and carpets; draperies; and all additions thereto and replacements therefor;

(g) All development rights associated with such tract or tracts, whether previously or subsequently transferred to such tract or tracts from other real property or now or hereafter susceptible of transfer from such tract or tracts to other real property;

(h) All awards and payments, including interest thereon, resulting from the exercise of any right of eminent domain or any other public or private taking of, injury to, or decrease in the value of, any of such property; and

(i) All other and greater rights and interests of every nature in such tract or tracts and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Mortgagor.

**1.20 Secured Obligations:** All present and future obligations of Mortgagor to Mortgagee evidenced by or contained in the Note, the Environmental Indemnity Agreement, this Mortgage and all other Loan Documents, whether stated in the form of promises, covenants, representations, warranties, conditions, or prohibitions or in any other form. If the maturity of the Note secured by this Mortgage is accelerated, the Secured Obligations shall include an amount equal to the prepayment premium which would be payable under the terms of the Note as if the Note were prepaid in full on the date of the acceleration.

## ARTICLE 2 GRANTING CLAUSE

**2.1 Grant to Mortgagee.** As security for the Secured Obligations, Mortgagor hereby grants, bargains, sells, conveys, mortgages, and warrants unto Mortgagee the entire right, title, interest and estate of Mortgagor in and to the Property, whether now owned or hereafter

acquired; TO HAVE AND TO HOLD the same, together with all and singular the rights, hereditaments, and appurtenances in anywise appertaining or belonging thereto, unto Mortgagee and Mortgagee's successors, substitutes and assigns forever.

**2.2 Security Interest to Mortgagee.** As additional security for the Secured Obligations, Mortgagor hereby grants to Mortgagee a security interest in the Property, Chattels and Intangible Personalty. To the extent any of the Property, Chattels or the Intangible Personalty may be or have been acquired with funds advanced by Mortgagee under the Loan Documents, this security interest is a purchase money security interest. This Mortgage constitutes a security agreement under the Uniform Commercial Code of the state in which the Property is located (the "**Code**") with respect to any part of the Property, Chattels and Intangible Personalty that may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all collectively hereinafter called "**Collateral**"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property, and the following provisions of this Section shall not limit the generality or applicability of any other provisions of this Mortgage but shall be in addition thereto:

(a) The Collateral shall be used by Mortgagor solely for business purposes, and all Collateral (other than the Intangible Personalty) shall be installed upon the real estate comprising part of the Property for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Property;

(b) The Collateral (other than the Intangible Personalty) shall be kept at the real estate comprising a part of the Property, and shall not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code); and the Collateral (other than the Intangible Personalty) may be affixed to such real estate but shall not be affixed to any other real estate;

(c) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office; and Mortgagor will, at its cost and expense, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts and things as Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected first-priority security interest in the Collateral as security for the Secured Obligations, subject to no adverse liens or encumbrances; and Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents and this instrument in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable;

(d) The terms and provisions contained in this Section and in **Section 7.6** of this Mortgage shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code; and

(e) This Mortgage constitutes a financing statement under the Code with respect to the Collateral. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. The filing of this Mortgage in the real estate records of the county where the



Property is located shall constitute a fixture filing in accordance with the Code. Information concerning the security interests created hereby may be obtained at the addresses set forth in **Article 1** of this Mortgage. Mortgagor is the “**Debtor**” and Mortgagee is the “**Secured Party**” (as those terms are defined and used in the Code) insofar as this Mortgage constitutes a financing statement.

**ARTICLE 3  
MORTGAGOR'S REPRESENTATIONS AND WARRANTIES**

**3.1 Warranty of Title.** Mortgagor represents and warrants to Mortgagee that:

(a) Mortgagor has good and marketable fee simple title to the Property, and such fee simple title is free and clear of all liens, encumbrances, security interests and other claims whatsoever, subject only to the Permitted Exceptions;

(b) Mortgagor is the sole and absolute owner of the Chattels and the Intangible Personalty, free and clear of all liens, encumbrances, security interests and other claims whatsoever, subject only to the Permitted Exceptions;

(c) This Mortgage is a valid and enforceable first lien and security interest on the Property, Chattels and Intangible Personalty, subject only to the Permitted Exceptions;

(d) Mortgagor, for itself and its successors and assigns, hereby agrees to warrant and forever defend, all and singular of the property and property interests granted and conveyed pursuant to this Mortgage, against every person whomsoever lawfully claiming, or to claim, the same or any part thereof; and

The representations, warranties and covenants contained in this Section shall survive foreclosure of this Mortgage, and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property, the Chattels, or the Intangible Personalty pursuant to any such foreclosure.

**3.2 Due Authorization.** Mortgagor represents and warrants to Mortgagee that the execution of this document has been duly authorized by all necessary corporate, partnership, limited liability company or other action on the part of Mortgagor. Mortgagor represents that Mortgagor has obtained all consents and approvals required in connection with the execution, delivery and performance of this Mortgage;

**3.3 Other Representations and Warranties.** Mortgagor represents and warrants to Mortgagee as follows:

(a) Mortgagor is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Illinois. The general partners of Mortgagor are Frederick Ford, Draper and Kramer, Incorporated, and D&K Insurance Agency, Inc. Draper and Kramer, Incorporated, and D&K Insurance Agency, Inc. are duly authorized to transact business in and is in good standing under the laws of the State of Illinois;

(b) The execution, delivery and performance by Mortgagor of the Loan Documents are within Mortgagor's power and authority and have been duly authorized by all necessary action;

(c) This Mortgage is, and each other Loan Document to which Mortgagor or Guarantor is a party will, when delivered hereunder, be valid and binding obligations of Mortgagor and Guarantor enforceable against Mortgagor and Guarantor in accordance with their respective terms, except as limited by equitable principles and bankruptcy, insolvency and similar laws affecting creditors' rights;

(d) The execution, delivery and performance by Mortgagor and Guarantor of the Loan Documents will not contravene any contractual or other restriction binding on or affecting Mortgagor, any General Partner or any Guarantor, and will not result in or require the creation of any lien, security interest, other charge or encumbrance (other than pursuant hereto) upon or with respect to any of its properties;

(e) The execution, delivery and performance by Mortgagor and Guarantor of the Loan Documents does not contravene any applicable law;

(f) No authorization, approval, consent or other action by, and no notice to or filing with, any court, governmental authority or regulatory body is required for the due execution, delivery and performance by Mortgagor and Guarantor of any of the Loan Documents or the effectiveness of any assignment of any of Mortgagor's rights and interests of any kind to Mortgagee;

(g) No part of the Property, Chattels, or Intangible Personalty is in the hands of a receiver, no application for a receiver is pending with respect to any portion of the Property, Chattels, or Intangible Personalty, and no part of the Property, Chattels, or Intangible Personalty is subject to any foreclosure or similar proceeding;

(h) Neither Mortgagor, Guarantor nor any General Partner has made any assignment for the benefit of creditors, nor has Mortgagor, Guarantor or any General Partner filed, or had filed against it, any petition in bankruptcy;

(i) There is no pending or, to the best of Mortgagor's knowledge, threatened, litigation, action, proceeding or investigation, including, without limitation, any condemnation proceeding, against Mortgagor, Guarantor, any General Partner or the Property before any court, governmental or quasi-governmental, arbitrator or other authority;

(j) Mortgagor is a "non-foreign person" within the meaning of Sections 1445 and 7701 of the United States Internal Revenue Code of 1986, as amended, and the regulations issued thereunder;

(k) Access to and egress from the Property are available and provided by public streets, and Mortgagor has no knowledge of any federal, state, county, municipal or other governmental plans to change the highway or road system in the vicinity of the Property or to restrict or change access from any such highway or road to the Property;

(l) All public utility services necessary for the operation of all improvements constituting part of the Property for their intended purposes are available at the boundaries of the land constituting part of the Property, including water supply, storm and sanitary sewer facilities, and natural gas, electric, telephone and cable television facilities;

(m) The Property is located in a zoning district designated B67 (Restricted Central Business District), by the City of Chicago, Illinois. Such designation permits the development, use and operation of the Property as it is currently operated as a permitted, and not as a non-conforming use. The Property complies in all respects with all zoning ordinances, regulations, requirements, conditions and restrictions, including but not limited to deed restrictions and restrictive covenants, applicable to the Property;

(n) There are no special or other assessments for public improvements or otherwise now affecting the Property, nor does Mortgagor know of any pending or threatened special assessments affecting the Property or any contemplated improvements affecting the Property that may result in special assessments. There are no tax abatements or exceptions affecting the Property;

(o) Mortgagor, Guarantor and each General Partner have filed all tax returns which are required to be filed by them, and have paid all taxes as shown on such returns or on any assessment received pertaining to the Property;

(p) Mortgagor has not received any notice from any governmental body having jurisdiction over the Property as to any violation of any applicable law, or any notice from any insurance company or inspection or rating bureau setting forth any requirements as a condition to the continuation of any insurance coverage on or with respect to the Property or the continuation thereof at premium rates existing at present which have not been remedied or satisfied;

(q) Neither Mortgagor, Guarantor nor any General Partner is in default, in any manner which would adversely affect its properties, assets, operations or condition (financial or otherwise), in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which it is a party or by which it or any of its properties, assets or revenues are bound;

(r) Except as set forth in the Lease Certificate, there are no occupancy rights (written or oral), Leases or tenancies presently affecting any part of the Property. The Lease Certificate contains a true and correct description of all Leases presently affecting the Property. No written or oral agreements or understandings exist between Mortgagor and the tenants under the Leases described in the Lease Certificate that grant such tenants any rights greater than those described in the Lease Certificate or that are in any way inconsistent with the rights described in the Lease Certificate;

(s) There are no options, purchase contracts or other similar agreements of any type (written or oral) presently affecting any part of the Property;

(t) There exists no brokerage agreement with respect to any part of the Property other than apartment and retail leasing agreements;



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(u) Except as otherwise disclosed to Mortgagee in writing prior to the date hereof, (i) there are no contracts presently affecting the Property ("Contracts") having a term in excess of one hundred eighty (180) days or not terminable by Mortgagor (without penalty) on thirty (30) days' notice; (ii) Mortgagor has heretofore delivered to Mortgagee true and correct copies of each of the Contracts together with all amendments thereto; (iii) Mortgagor is not in default of any obligations under any of the Contracts; and (iv) the Contracts represent the complete agreement between Mortgagor and such other parties as to the services to be performed or materials to be provided thereunder and the compensation to be paid for such services or materials, as applicable, and except as otherwise disclosed herein, such other parties possess no unsatisfied claims against Mortgagor. Mortgagor is not in default under any of the Contracts and no event has occurred which, with the passing of time or the giving of notice, or both, would constitute a default under any of the Contracts;

(v) Mortgagor has obtained all Permits necessary or desirable for the operation, use, ownership, development, occupancy and maintenance of the Property as an apartment tower with residential apartments, parking garage and commercial retail stores. None of the Permits has been suspended or revoked, and all of the Permits are in full force and effect, are fully paid for, and Mortgagor has made or will make application for renewals of any of the Permits prior to the expiration thereof.

(w) All insurance policies held by Mortgagor relating to or affecting the Property are in full force and effect and shall remain in full force and effect until all Secured Obligations are satisfied. Mortgagor has not received any notice of default or notice terminating or threatening to terminate any such insurance policies. Mortgagor has made or will make application for renewals of any of such insurance policies prior to the expiration thereof;

(x) Mortgagor currently complies with ERISA. Neither the making of the loan evidenced by the Note and secured by this Mortgage nor the exercise by Mortgagee of any of its rights under the Loan Documents constitutes or will constitute a non-exempt, prohibited transaction under ERISA; and

(y) Except as otherwise disclosed to Mortgagee in the Environmental Assessment, (i) the execution and delivery of the Loan Documents is not a "transfer of real property" under and as defined in the Illinois Responsible Property Transfer Act, as amended (765 ILCS 09/3) ("IRPTA"); (ii) there are no underground storage tanks located on, under or about the Property which are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act, as amended (42 U.S.C. § 6991); and (iii) there is no facility located on or at the Property which is subject to the reporting requirements of Section 312 of the federal Emergency Planning and Community Right to Know Act of 1986, as amended, and the federal regulations promulgated thereunder (42 U.S.C. § 11022), as facility is defined in the IRPTA.

**3.4 Continuing Effect.** Mortgagor shall be liable to Mortgagee for any damage suffered by Mortgagee if any of the foregoing representations are inaccurate as of the date hereof, regardless of when such inaccuracy may be discovered by, or result in harm to, Mortgagee. Mortgagor further represents and warrants that the foregoing representations and warranties, as well as all other representations and warranties of Mortgagor to Mortgagee relative

to the Loan Documents, shall remain true and correct during the term of the Note and shall survive termination of this Mortgage.

## ARTICLE 4 MORTGAGOR'S AFFIRMATIVE COVENANTS

**4.1 Payment of Note.** Mortgagor will pay all principal, interest, and other sums payable under the Note, on the date when such payments are due, without notice or demand.

**4.2 Performance of Other Obligations.** Mortgagor will promptly and strictly perform and comply with all other covenants, conditions, and prohibitions required of Mortgagor by the terms of the Loan Documents.

**4.3 Other Encumbrances.** Mortgagor will promptly and strictly perform and comply with all covenants, conditions, and prohibitions required of Mortgagor in connection with any other encumbrance affecting the Property, the Chattels, or the Intangible Personalty, or any part thereof, or any interest therein, regardless of whether such other encumbrance is superior or subordinate to the lien hereof.

### **4.4 Payment of Taxes.**

(a) Property Taxes. Unless Mortgagor is depositing money into escrow pursuant to **Section 4.4(b)**, Mortgagor will (i) pay, before delinquency, all taxes and assessments, general or special, which may be levied or imposed at any time against Mortgagor's interest and estate in the Property, the Chattels, or the Intangible Personalty, and (ii) within ten days after each payment of any such tax or assessment, Mortgagor will deliver to Mortgagee, without notice or demand, an official receipt for such payment. At Mortgagee's option, Mortgagee may retain the services of a firm to monitor the payment of all taxes and assessments relating to the Property, the cost of which shall be borne by Mortgagor.

(b) Deposit for Taxes. On or before the date hereof, Mortgagor shall deposit with Mortgagee, or its designee, an amount equal to 1/12th of the amount which Mortgagee estimates will be required to make the next annual payment of taxes, assessments, and similar governmental charges referred to in this Section, multiplied by the number of whole or partial months that have elapsed since the date one month prior to the most recent due date for such taxes, assessments and similar governmental charges. Thereafter, with each monthly payment under the Note, Mortgagor shall deposit with Mortgagee or such designee an amount equal to 1/12th of the amount which Mortgagee estimates will be required to pay the next annual payment of taxes, assessments, and similar governmental charges referred to in this Section (said amounts in the preceding two sentences are hereinafter called the "**Tax Escrow Fund**"). The purpose of these provisions is to provide Mortgagee with sufficient funds on hand to pay all such taxes, assessments, and other governmental charges thirty (30) days before the date on which they become past due. If the Mortgagee, in its sole discretion, determines that the funds escrowed hereunder are, or will be, insufficient, Mortgagor shall upon demand pay such additional sums as Mortgagee shall determine necessary and shall pay any increased monthly charges requested by Mortgagee. Mortgagee shall hold the amounts deposited in the Tax Escrow Fund in an interest bearing account maintained with and to be serviced by Mortgagee or its designee, in Mortgagee's

name at a financial institution selected by Mortgagee, in its sole discretion. The Tax Escrow Fund will be invested by Mortgagee in Permitted Investments (defined below). Such interest income minus an annual servicing fee equal to or less than \$500.00 shall be added to and shall become part of the Tax Escrow Fund, provided that all such interest income shall be reported for federal and, if applicable, state and local income tax purposes as income of, and taxable to, Mortgagor. Mortgagor authorizes Mortgagee and Mortgagee's servicing agent to provide Mortgagor's federal taxpayer identification number to the appropriate federal, state and local agencies. Mortgagor shall execute, promptly after request from time to time by Mortgagee or Mortgagee's servicing agent, such instruments as may be necessary to facilitate the reporting of such interest income consistent with the foregoing provisions. Provided no Default or Event of Default exists hereunder, Mortgagee will apply the amounts held in the Tax Escrow Fund to the payment of such taxes, assessments, and other charges when due, but in no event will Mortgagee be liable for any interest on any amount so deposited and any amounts so deposited may be held and commingled with Mortgagee's own funds. "Permitted Investments" shall mean (i) any investment in which some or all of the certificates issued are rated "AAA" (or the equivalent rating) by the Rating Agencies, as the standards therefor are established from time to time, or such investments which are otherwise acceptable to the Mortgagee, and (ii) any shares of or units of beneficial interest issued or to be issued by ("Fund Shares") the AIG Money Market Fund of The Advisor's Inner Circle Fund, a Massachusetts business trust (the "Fund"). With respect to investments in the Fund, Mortgagee may establish an account (including any Fund Shares, cash or other assets contained therein) with the Fund with respect to Class B Fund Shares. Mortgagor authorizes and directs Mortgagee to complete and submit to the Fund all forms necessary to establish the account and purchase the Fund Shares, and agrees that the taxpayer identification number on such account will be that of Mortgagor. Mortgagor agrees to furnish a duly completed and signed Form W-9 to the Fund. Mortgagor acknowledges that Mortgagee is authorized to give any and all oral and written instructions (including purchase and redemption orders) to the Fund, its agents or any other person regarding the Fund account, and that Mortgagor will not seek to give any such instructions.

(c) Security Interest. Pursuant to **Section 2.2**, Mortgagor does hereby pledge, assign and grant to Mortgagee a security interest in the Tax Escrow Fund, including without limitation all of the following: any cash, checks or other instruments delivered by or on behalf of Mortgagor to or for the account of Mortgagee, any Fund Shares purchased therewith, the products and proceeds of the foregoing and any substitutions or replacements thereof.

(d) Intangible Taxes. If by reason of any statutory or constitutional amendment or judicial decision adopted or rendered after the date hereof, any tax, assessment, or similar charge is imposed against the Note, Mortgagee, or any interest of Mortgagee in any real or personal property encumbered hereby, Mortgagor will pay such tax, assessment, or other charge before delinquency and will indemnify Mortgagee against all loss, expense, or diminution of income in connection therewith. In the event Mortgagor is unable to do so, either for economic reasons or because the legal provisions or decisions creating such tax, assessment or charge forbid Mortgagor from doing so, then the Note will, at Mortgagee's option, become due and payable in full upon thirty (30) days' notice to Mortgagor.

(e) Right to Contest. Notwithstanding any other provision of this Section, Mortgagor will not be deemed to be in default solely by reason of Mortgagor's failure to pay any

tax, assessment or similar governmental charge so long as, in Mortgagee's judgment, each of the following conditions is satisfied:

- (i) Mortgagor is engaged in and diligently pursuing in good faith administrative or judicial proceedings appropriate to contest the validity or amount of such tax, assessment, or charge; and
- (ii) Mortgagor's payment of such tax, assessment, or charge would necessarily and materially prejudice Mortgagor's prospects for success in such proceedings; and
- (iii) Nonpayment of such tax, assessment, or charge will not result in the loss or forfeiture of any property encumbered hereby or any interest of Mortgagee therein; and
- (iv) Mortgagor deposits with Mortgagee, as security for such payment which may ultimately be required, a sum equal to the amount of the disputed tax, assessment or charge plus the interest, penalties, advertising charges, and other costs which Mortgagee estimates are likely to become payable if Mortgagor's contest is unsuccessful.

If Mortgagee determines that any one or more of such conditions is not satisfied or is no longer satisfied, Mortgagor will pay the tax, assessment, or charge in question, together with any interest and penalties thereon, within (10) days after Mortgagee gives notice of such determination.

#### 4.5 Maintenance of Insurance.

(a) Coverages Required. Mortgagor shall maintain or cause to be maintained, with financially sound and reputable insurance companies or associations satisfactory to Mortgagee, all insurance required under the terms of that certain Agreement Concerning Insurance Requirements of even date herewith executed by Mortgagor for the benefit of Mortgagee (the "**Insurance Agreement**"), and shall comply with each and every covenant and agreement contained in such Insurance Agreement.

(b) Renewal Policies. Not less than thirty (30) days prior to the expiration date of each insurance policy required pursuant to the Insurance Agreement, Mortgagor will deliver to Mortgagee an appropriate renewal policy (or a certified copy thereof), together with evidence satisfactory to Mortgagee that the applicable premium has been prepaid.

(c) Deposit for Premiums. Upon the occurrence of an Event of Default hereunder, Mortgagor shall deposit with Mortgagee an amount equal to 1/12th of the amount which Mortgagee estimates will be required to make the next annual payments of the premiums for the policies of insurance referred to in this Section, multiplied by the number of whole and partial months which have elapsed since the date one month prior to the most recent policy anniversary date for each such policy. Thereafter, with each monthly payment under the Note, Mortgagor will deposit an amount equal to 1/12th of the amount which Mortgagee estimates will be required to pay the next required annual premium for each insurance policy referred to in this Section. The purpose of these provisions is to provide Mortgagee with sufficient funds on hand to pay all such premiums thirty (30) days before the date on which they become past due. If the Mortgagee, in its sole discretion, determines that the funds escrowed hereunder are, or will be,



insufficient, Mortgagor shall upon demand pay such additional sums as Mortgagee shall determine necessary and shall pay any increased monthly charges requested by Mortgagee. Provided no Default or Event of Default exists hereunder, Mortgagee will apply the amounts so deposited to the payment of such insurance premiums when due, but in no event will Mortgagee be liable for any interest on any amounts so deposited, and the money so received may be held and commingled with Mortgagee's own funds.

(d) Application of Hazard Insurance Proceeds. Mortgagor shall promptly notify Mortgagee of any damage or casualty to all or any portion of the Property or Chattels. Mortgagee may participate in all negotiations and appear and participate in all judicial arbitration proceedings concerning any insurance proceeds which may be payable as a result of such casualty or damage, and may, in Mortgagee's sole discretion, compromise or settle, in the name of Mortgagee, Mortgagor, or both any claim for any such insurance proceeds. Any such insurance proceeds shall be paid to Mortgagee and shall be applied first to reimburse Mortgagee for all costs and expenses, including attorneys' fees, incurred by Mortgagee in connection with the collection of such insurance proceeds. The balance of any insurance proceeds received by Mortgagee with respect to an insured casualty may, in Mortgagee's sole discretion, either (i) be retained and applied by Mortgagee toward payment of the Secured Obligations, or (ii) be paid over, in whole or in part and subject to such conditions as Mortgagee may impose, to Mortgagor to pay for repairs or replacements necessitated by the casualty; provided, however, that if all of the Secured Obligations have been performed or are discharged by the application of less than all of such insurance proceeds, then any remaining proceeds will be paid over to Mortgagor. Notwithstanding the preceding sentence, if (A) no Default or Event of Default shall exist hereunder, and (B) the proceeds received by Mortgagee (together with any other funds delivered by Mortgagor to Mortgagee for such purpose) shall be sufficient, in Mortgagee's reasonable judgment, to pay for any restoration necessitated by the casualty, and (C) the cost of such restoration shall not exceed \$1,000,000.00, and (D) such restoration can be completed, in Mortgagee's judgment, at least ninety (90) days prior to the maturity date of the Note, then Mortgagee shall apply such proceeds as provided in clause (ii) of the preceding sentence. Mortgagee will have no obligation to see to the proper application of any insurance proceeds paid over to Mortgagor, nor will any such proceeds received by Mortgagee bear interest or be subject to any other charge for the benefit of Mortgagor. Mortgagee may, prior to the application of insurance proceeds, commingle them with Mortgagee's own funds and otherwise act with regard to such proceeds as Mortgagee may determine in Mortgagee's sole discretion.

(e) Successor's Rights. Any person who acquires title to the Property or the Chattels upon foreclosure hereunder will succeed to all of Mortgagor's rights under all policies of insurance maintained pursuant to this Section.

**4.6 Maintenance and Repair of Property and Chattels.** Mortgagor will at all times maintain the Property and the Chattels in good condition and repair, will diligently prosecute the completion of any building or other improvement which is at any time in the process of construction on the Property, and will promptly repair, restore, replace, or rebuild any part of the Property or the Chattels which may be affected by any casualty or any public or private taking or injury to the Property or the Chattels. All costs and expenses arising out of the foregoing shall be paid by Mortgagor whether or not the proceeds of any insurance or eminent domain shall be sufficient therefor. Mortgagor will comply with all statutes, ordinances, and other governmental



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or quasi-governmental requirements and private covenants relating to the ownership, construction, use, or operation of the Property, including but not limited to any environmental or ecological requirements; provided, that so long as Mortgagor is not otherwise in default hereunder, Mortgagor may, upon providing Mortgagee with security reasonably satisfactory to Mortgagee, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, or requirement. Mortgagee and any person authorized by Mortgagee may enter and inspect the Property at all reasonable times, and may inspect the Chattels, wherever located, at all reasonable times.

**4.7 Leases.** Mortgagor shall timely pay and perform each of its obligations under or in connection with the Leases, and shall otherwise pay such sums and take such action as shall be necessary or required in order to maintain each of the Leases in full force and effect in accordance with its terms. All Leases at the Property executed after the date hereof shall be written on the standard form of apartment lease which has been approved by Mortgagee, or with respect to a lease of commercial retail space (the "**Commercial Leases**") with prior approval of Mortgagee. No material changes may be made to the Mortgagee approved standard form apartment lease without the prior written consent of Mortgagee. Mortgagor shall immediately furnish to Mortgagee copies of any notices given to Mortgagor by the lessee under any Commercial Lease, alleging the default by Mortgagor in the timely payment or performance of its obligations under such Lease and any subsequent communication related thereto. If Mortgagor receives within any three (3) month period written communications from tenants under Leases covering, in the aggregate, ten percent (10%) or more of the rental units at the Property asserting a breach or default by Mortgagor under any Lease, or purporting to terminate or cancel any Lease prior to its stated expiration date, or requiring or demanding the expenditure of any sum by Mortgagor (or demanding the taking of any action by Mortgagor), Mortgagor will promptly forward a copy of such communications, and any subsequent communications relating to the Leases to Mortgagee. Mortgagor agrees that Mortgagee, in its sole discretion, may advance any sum or take any action which Mortgagee reasonably believes is necessary or required to maintain the Leases in full force and effect, and all such sums advanced by Mortgagee, together with all costs and expenses incurred by Mortgagee in connection with action taken by Mortgagee pursuant to this Section, shall be due and payable by Mortgagor to Mortgagee upon demand, shall bear interest until paid at the Default Rate (as defined in the Note), and shall be secured by this Mortgage.

**4.8 Eminent Domain; Private Damage.** If all or any part of the Property is taken or damaged by eminent domain or any other public or private action, Mortgagor will notify Mortgagee promptly of the time and place of all meetings, hearings, trials, and other proceedings relating to such action. Mortgagee may participate in all negotiations and appear and participate in all judicial or arbitration proceedings concerning any award or payment which may be due as a result of such taking or damage, and may, in Mortgagee's reasonable discretion, compromise or settle, in the names of both Mortgagor and Mortgagee, any claim for any such award or payment. Any such award or payment is to be paid to Mortgagee and will be applied first to reimburse Mortgagee for all costs and expenses, including attorneys' fees, incurred by Mortgagee in connection with the ascertainment and collection of such award or payment. The balance, if any, of such award or payment may, in Mortgagee's sole discretion, either (a) be retained by Mortgagee and applied toward the Secured Obligations, or (b) be paid over, in whole or in part and subject to such conditions as Mortgagee may impose, to Mortgagor for the purpose

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of restoring, repairing, or rebuilding any part of the Property affected by the taking or damage. Notwithstanding the preceding sentence, if (i) no Default or Event of Default shall have occurred and be continuing hereunder, and (ii) the proceeds received by Mortgagee (together with any other funds delivered by Mortgagor to Mortgagee for such purpose) shall be sufficient, in Mortgagee's reasonable judgment, to pay for any restoration necessitated by the taking or damage, and (iii) the cost of such restoration shall not exceed \$1,000,000.00, and (iv) such restoration can be completed, in Mortgagee's judgment, at least ninety (90) days prior to the maturity date of the Note, and (v) the remaining Property shall constitute, in Mortgagee's sole judgment, adequate security for the Secured Obligations, then Mortgagee shall apply such proceeds as provided in clause (b) of the preceding sentence. Mortgagor's duty to pay the Note in accordance with its terms and to perform the other Secured Obligations will not be suspended by the pendency or discharged by the conclusion of any proceedings for the collection of any such award or payment, and any reduction in the Secured Obligations resulting from Mortgagee's application of any such award or payment will take effect only when Mortgagee receives such award or payment. If this Mortgage has been foreclosed prior to Mortgagee's receipt of such award or payment, Mortgagee may nonetheless retain such award or payment to the extent required to reimburse Mortgagee for all costs and expenses, including attorneys' fees, incurred in connection therewith, and to discharge any deficiency remaining with respect to the Secured Obligations.

**4.9 Mechanics' Liens.** Mortgagor will keep the Property free and clear of all liens and claims of liens by contractors, subcontractors, mechanics, laborers, materialmen, and other such persons, and will cause any recorded statement of any such lien to be released of record within thirty (30) days after the recording thereof. Notwithstanding the preceding sentence, however, Mortgagor will not be deemed to be in default under this Section if and so long as Mortgagor (a) contests in good faith the validity or amount of any asserted lien and diligently prosecutes or defends an action appropriate to obtain a binding determination of the disputed matter, and (b) provides Mortgagee with such security as Mortgagee may require to protect Mortgagee against all loss, damage, and expense, including attorneys' fees, which Mortgagee might incur if the asserted lien is determined to be valid.

**4.10 Defense of Actions.** Mortgagor will defend, at Mortgagor's expense, any action, proceeding or claim which affects any property encumbered hereby or any interest of Mortgagee in such property or in the Secured Obligations, and will indemnify and hold Mortgagee harmless from all loss, damage, cost, or expense, including attorneys' fees, which Mortgagee may incur in connection therewith.

**4.11 Expenses of Enforcement.** Mortgagor will pay all costs and expenses, including reasonable attorneys' fees, which Mortgagee may incur in connection with any effort or action (whether or not litigation or foreclosure is involved) to enforce or defend Mortgagee's rights and remedies under any of the Loan Documents, including but not limited to all reasonable attorneys' fees, appraisal fees, consultants' fees, and other expenses incurred by Mortgagee in securing title to or possession of, and realizing upon, any security for the Secured Obligations. All such costs and expenses (together with interest thereon at the Default Rate from the date incurred) shall constitute part of the Secured Obligations, and may be included in the computation of the amount owed to Mortgagee for purposes of foreclosing or otherwise enforcing this Mortgage.

**4.12 Financial Reports.** During the term of the Loan, within fifteen (15) days after the end of each month and within ninety (90) days after the end of each fiscal year of Mortgagor, Mortgagor will furnish to Mortgagee (a) Mortgagor's monthly and annual operating statements for the Property as of the end of and for the preceding month and fiscal year, in each case prepared against the budget for such year; (b) contemporaneously with Mortgagor's delivery of the monthly operating statements of the Property, a certified rent roll signed and dated by Mortgagor detailing the names of all tenants under the Leases, the portion of the improvements on the Property occupied by each tenant, the rent and any other charges payable under each Lease and the term of each Lease; and (c) an annual balance sheet and profit and loss statement of Mortgagor, of each General Partner of Mortgagor, and of Guarantor. The financial statements and reports described in (a) and (c) above shall be in such detail as Mortgagee may require, shall be prepared in accordance with generally accepted accounting principles consistently applied, and shall be certified as true and correct by Mortgagor, the General Partner of Mortgagor or the applicable Guarantor (or, if required by Mortgagee, such operating statements, balance sheets, and profit and loss statements shall be certified by an independent certified public accountant acceptable to Mortgagee). Mortgagor will also furnish or cause to be furnished to Mortgagee within thirty (30) days of Mortgagee's request, any other financial reports or statements of Mortgagor, including, without limitation, balance sheets, profit and loss statements, other financial statements, and certified rent rolls, required under any of the Loan Documents, requested by any regulatory or governmental authority exercising jurisdiction over Mortgagee, or reasonably requested by Mortgagee from time to time.

**4.13 Priority of Leases.** To the extent Mortgagor has the right, under the terms of any Lease, to make such lease subordinate to the lien hereof, Mortgagor will, at Mortgagee's request and Mortgagor's expense, take such action as may be required to effect such subordination. Conversely, Mortgagor will, at Mortgagee's request and Mortgagor's expense, take such action as may be necessary to subordinate the lien hereof to any future Lease designated by Mortgagee.

**4.14 Inventories; Assembly of Chattels.** Mortgagor will, from time to time at the request of Mortgagee, supply Mortgagee with a current inventory of the Chattels and the Intangible Personalty, in such detail as Mortgagee may require. Upon the occurrence of any Event of Default hereunder, Mortgagor will at Mortgagee's request assemble the Chattels and make them available to Mortgagee at any place designated by Mortgagee which is reasonably convenient to both parties.

**4.15 Compliance with Laws, Etc.** Mortgagor shall comply in all material respects with all applicable laws, rules, regulations and orders, such compliance to include, without limitation, maintaining all Permits and paying before the same become delinquent all taxes, assessments and governmental charges imposed upon Mortgagor or the Property.

**4.16 Records and Books of Account.** Mortgagor shall keep accurate and complete records and books of account, in which complete entries will be made in accordance with generally accepted accounting principles consistently applied, reflecting all financial transactions relating to the Property.

**4.17 Inspection Rights.** At any reasonable time, and from time to time, Mortgagor shall permit Mortgagee, or any agents or representatives thereof, to examine and make copies of

and abstracts from the records and books of account of, and visit and inspect the Property and to discuss with Mortgagor the affairs, finances and accounts of Mortgagor.

**4.18 Change of Executive Offices.** Mortgagor shall promptly notify Mortgagee if changes are made in the location of Mortgagor's primary executive offices.

**4.19 Further Assurances; Estoppel Certificates.** Mortgagor will execute and deliver to Mortgagee upon demand, and pay the costs of preparation and recording thereof, any further documents which Mortgagee may request to confirm or perfect the liens and security interests created or intended to be created hereby, or to confirm or perfect any evidence of the Secured Obligations. Mortgagor will also, within ten (10) business days after any request by Mortgagee, deliver to Mortgagee a signed and acknowledged statement certifying to Mortgagee, or to any proposed transferee of the Secured Obligations, (a) the balance of principal, interest, and other sums then outstanding under the Note, and (b) whether Mortgagor claims to have any offsets or defenses with respect to the Secured Obligations and, if so, the nature of such offsets or defenses.

**4.20 Costs of Closing.** Mortgagor shall on demand pay directly or reimburse Mortgagee for any costs or expenses pertaining to the closing of the loan evidenced by the Note and secured by this Mortgage, including, but not limited to, reasonable fees of counsel for Mortgagee, costs and expenses for which invoices were not available at the closing of such loan, or costs and expenses which are incurred by Mortgagee after such closing. All such costs and expenses (together with interest thereon at the Default Rate from the date incurred by Mortgagee) shall constitute a part of the Secured Obligations, and may be included in the computation of the amount owed to Mortgagee for purposes of foreclosing or otherwise enforcing this Mortgage.

**4.21 Fund for Electronic Transfer.** All monthly payments of principal and interest on the Note, and escrow deposits under this Mortgage, shall be made by Mortgagor by electronic funds transfer from a bank account established and maintained by Mortgagor for such purpose. Mortgagor shall establish and maintain such an account until the Note is fully paid and shall direct the depository of such account in writing to so transmit such payments on or before the respective due dates to the account of Mortgagee as shall be designated by Mortgagee in writing.

**4.22 Use.** Mortgagor shall use the Property solely for the operation of an apartment tower with residential apartments, parking garage and commercial retail stores, and for no other use or purpose.

**4.23 Management.** The Property shall be managed by Draper and Kramer, Incorporated ("Property Manager") under a management agreement previously delivered to, and approved, by Mortgagee (the "Management Agreement"). Mortgagor shall not permit any amendment to or modification of the Management Agreement, or management of the Property by any person or entity other than Property Manager, without the prior written consent of Mortgagee.



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## ARTICLE 5 MORTGAGOR'S NEGATIVE COVENANTS

**5.1 Waste and Alterations.** Mortgagor will not commit or permit any waste with respect to the Property or the Chattels. Mortgagor shall not cause or permit any part of the Property, including but not limited to any building, structure, parking lot, driveway, landscape scheme, timber, or other ground improvement, to be removed, demolished, or materially altered without the prior written consent of Mortgagee.

**5.2 Zoning and Private Covenants.** Mortgagor will not initiate, join in, or consent to any change in any zoning ordinance or classification, any change in the "zone lot" or "zone lots" (or similar zoning unit or units) presently comprising the Property, any transfer of development rights, any private restrictive covenant, or any other public or private restriction limiting or defining the uses which may be made of the Property or any part thereof, without the express written consent of Mortgagee. If under applicable zoning provisions the use of all or any part of the Property is or becomes a nonconforming use, Mortgagor will not cause such use to be discontinued or abandoned without the express written consent of Mortgagee, and Mortgagor will use its best efforts to prevent the tenant under any Lease from discontinuing or abandoning such use.

### **5.3 Interference with Leases.**

(a) Mortgagor will neither do nor neglect to do, anything which may cause or permit the termination of any Lease of all or any part of the Property, or cause or permit the withholding or abatement of any rent payable under any such Lease.

(b) Without Mortgagee's prior written consent, which may be granted or withheld in Mortgagee's sole discretion, Mortgagor shall not enter into or modify any Lease of all or any part of the Property if such Lease or modification (i) is a Commercial Lease, (ii) provides for an original term of less than twelve (12) months from the original commencement date of such Lease, (iii) is not an arm's-length transaction with a bona fide tenant, (iv) contains rental and other terms not consistent with those prevailing in the applicable market, or (v) is on a lease form not theretofore approved by Mortgagee. Any Lease not on the standard lease form or a Commercial Lease, or modification thereof, for which Mortgagor is requesting Mortgagee's prior written consent pursuant to this **Section 5.3** shall be accompanied by a copy of such Lease or modification, as applicable, a Lease abstract, a then-current rent roll for the Property, year-to-date and prior year operating statements for the Property, and a cover letter requesting Mortgagee's approval which contains a signature line on which Mortgagee may evidence its approval of such Lease or modification. If Mortgagee fails to respond to a request for approval within fifteen (15) business days after receipt of a written request for approval and all related information and documents reasonably requested by Mortgagor, such Lease or modification thereof shall be deemed approved.

(c) Except with the prior written consent of Mortgagee, which may be granted or withheld in Mortgagee's sole discretion, Mortgagor will not (i) collect rent from all or any part of the Property for more than one month in advance, (ii) assign the rents from the Property or any part thereof, or (iii) consent to the cancellation or surrender of all or any part of any



Lease, except that Mortgagor may in good faith terminate any Lease for nonpayment of rent or other material breach by the tenant.

**5.4 Transfer or Further Encumbrance of Property.**

(a) Without Mortgagee's prior written consent, which consent may be granted or withheld in Mortgagee's sole and absolute discretion, Mortgagor shall not (a) sell, assign, convey, transfer or otherwise dispose of any legal, beneficial or equitable interest in all or any part of the Property, (b) permit or suffer any owner, directly or indirectly, of any beneficial interest in the Property or Mortgagor to transfer such interest, whether by transfer of partnership, membership, stock or other beneficial interest in any entity or otherwise, or (c) mortgage, hypothecate or otherwise encumber or permit to be encumbered or grant or permit to be granted a security interest in all or any part of the Property or Mortgagor or any beneficial or equitable interest in either the Property or Mortgagor. Provided no Event of Default shall have occurred or be continuing, the provisions of this **Section 5.4(a)** shall not prohibit:

(i) transfers of title or interest under any will or testament or applicable law of descent, or

(ii) transfers of limited partnership interests in Mortgagor or in any direct or indirect owner of Mortgagor, or

(iii) any transfer of the general partnership interests of Frederic Ford, D&K Insurance Agency, Inc. ("**D&K Agency**") or Draper and Kramer Incorporated ("**D&K Inc.**") in Mortgagor to an entity wholly owned and controlled by each of Frederic Ford, D&K Agency and D&K Inc., respectively, or

(iv) the conversion of the general partnership interest in Mortgagor of Frederick C. Ford to a limited partnership interest in Mortgagor, so long as (A) D&K Inc. and D&K Agency remain the only general partners in Mortgagor, (B) D&K Agency continues to own no less than a 20%, direct or indirect, interest in Mortgagor, and shall at all times be owned 51% or more by the current shareholders in D&K Agency, and (C) D&K Inc. continues to control the Mortgagor and the day to day operations of the Property, including the asset and property management and leasing of the Property, or

(v) any transfers of interests in D&K Inc. or D&K Agency among the Kramer Family (as hereinafter defined), provided such (A) transfers do not exceed 49% in the aggregate of either D&K Inc. or D&K Agency; (B) D&K Inc. remains as the general partner in Mortgagor, and continues to control the Mortgagor and the day to day operations of the Property, including the asset and property management and leasing of the Property, and (C) D&K Agency continues to own no less than a 20%, direct or indirect, interest in Mortgagor, and D&K Agency and D&K Inc. shall at all times be owned at least 51% by the current shareholders in D&K Agency and D&K Inc., respectively. For purposes hereof, the "Kramer Family" shall mean Ferdinand Kramer, his siblings, any of their spouses or any of their descendants and their spouses, any trusts or estates for the benefit of any of said parties, provided such trust is owned and controlled by said parties; control for purposes of this definition shall mean ownership of at least 50% of the ownership interest and voting interests in the subject entity.

(b) Notwithstanding the prohibitions upon transfer contained in the Loan Documents (including this Mortgage) to the contrary, Mortgagee shall permit a one-time transfer of the Property provided that all of the following conditions are satisfied: (i) no Default or Event of Default has occurred or is continuing; (ii) Mortgagor has paid to Mortgagee an assumption fee of one percent (1%) of the outstanding principal balance of the Secured Obligations; (iii) if the proposed transferee is a land trust, Mortgagee has received a first-lien collateral assignment of all beneficial interest therein; (iv) Mortgagee has received and has had a reasonable opportunity to review all documents and agreements executed or to be executed in connection with the proposed transfer; (v) the non-economic terms (e.g., those terms other than interest rate, payment schedule, principal balance, and non-recourse nature (subject to exceptions thereto customarily included by Mortgagee in loan documents)) of the Loan Documents have been modified as Mortgagee may request in good faith; (vi) the proposed transferee has assumed all of Mortgagor's obligations under the Loan Documents; (vii) Mortgagee has received at least thirty (30) days' prior written notice of the proposed transfer; (viii) the proposed transferee and, if applicable, its general partners have, in the sole judgment of Mortgagee exercised in good faith, a net worth equal to the net worth of Mortgagor as of the date hereof or otherwise satisfactory to Mortgagee, and a satisfactory history of owning, operating and leasing property similar to the Property; (ix) the proposed transferee and, if applicable, its general partners or members have, in the sole judgment of Mortgagee exercised in good faith, a satisfactory credit history and professional reputation and character; (x) the Debt Service Coverage Ratio (as hereinafter defined) is not less than 1.30, and Mortgagee receives satisfactory evidence that such ratio will be maintained for the succeeding twelve (12) months; (xi) the Loan-to-Value Ratio (as hereinafter defined), taking into account all obligations secured by liens on the Property does not exceed 75%; (xii) Mortgagor pays all costs and expenses incurred by Mortgagee in connection with such transfer, including, without limitation, all legal processing, accounting, title insurance, and appraisal fees, whether or not such transfer is actually consummated; (xiii) at Mortgagee's option, Mortgagee has received an endorsement to its mortgagee's title insurance policy at Mortgagor's expense, which endorsement states that the lien of the Mortgage remains a first and prior lien against the Property subject to no exceptions other than as approved by Mortgagee; and (xiv) principals of the proposed transferee acceptable to Mortgagee in its sole discretion execute a guaranty agreement in the form of the Guaranty Agreement and an environmental indemnity agreement in the form of the Environmental Indemnity Agreement. Upon the satisfaction of the foregoing conditions, Mortgagee shall release Mortgagor and Guarantor from liability under the Loan Documents except to the extent that, prior to such release, any full-recourse liability of Mortgagor or Guarantor has arisen under any of the Loan Documents. The foregoing one-time right to transfer the Property shall terminate upon the conveyance of the Property by the initial Mortgagor named herein.

(c) The term "Debt Service Coverage Ratio" shall mean the ratio, as determined by Mortgagee, of (i) Net Operating Income (as hereinafter defined) for the Property for the preceding twelve-month period to (ii) the aggregate debt service payments due under the Note for the following twelve-month period and on all other indebtedness secured, or to be secured, by a lien on all or any part of the Property.

(d) The term "Net Operating Income" shall mean all gross income, revenues and consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor, its agents or employees, from any and all sources resulting from or attributable to the Property minus all reasonable expenses actually incurred by Mortgagor in respect of the ownership, operation, leasing and occupancy of the Property, but excluding: (i) depreciation expenses and other income tax related bookkeeping entries which do not result in the payment of monies; and, (ii) any and all payments to be made by Mortgagor pursuant to the terms of the Loan Documents.

(e) The "Loan-to-Value Ratio" shall be the ratio, as determined by Mortgagee, of the aggregate principal balance of the Note and all other indebtedness secured by liens or encumbrances against the Property to the fair market value of the Property, as such fair market value is determined by an M.A.I. appraisal satisfactory to Mortgagee (the "Appraisal"). Upon Mortgagee's request, Mortgagor shall deliver the appraisal to Mortgagee at Mortgagor's sole cost and expense.

**5.5 Further Encumbrance of Chattels.** Mortgagor will neither create nor permit any lien, security interest or encumbrance against the Chattels or Intangible Personalty or any part thereof or interest therein, other than the liens and security interests created by the Loan Documents, without the prior written consent of Mortgagee, which may be withheld for any reason.

**5.6 Assessments Against Property** Mortgagor will not, without the prior written approval of Mortgagee, which may be withheld for any reason, consent to or allow the creation of any so-called special districts, special improvement districts, benefit assessment districts or similar districts, or any other body or entity of any type, or allow to occur any other event, that would or might result in the imposition of any additional taxes, assessments or other monetary obligations or burdens on the Property, and this provision shall serve as RECORD NOTICE to any such district or districts or any governmental entity under whose authority such district or districts exist or are being formed that, should Mortgagor or any other person or entity include all or any portion of the Property in such district or districts, whether formed or in the process of formation, without first obtaining Mortgagee's express written consent, the rights of Mortgagee in the Property pursuant to this Mortgage or following any foreclosure of this Mortgage, and the rights of any person or entity to whom Mortgagee might transfer the Property following a foreclosure of this Mortgage, shall be senior and superior to any taxes, charges, fees, assessments or other impositions of any kind or nature whatsoever, or liens (whether statutory, contractual or otherwise) levied or imposed, or to be levied or imposed, upon the Property or any portion thereof as a result of inclusion of the Property in such district or districts.

**5.7 Transfer or Removal of Chattels.** Mortgagor will not sell, transfer or remove from the Property all or any part of the Chattels, unless the items sold, transferred, or removed are simultaneously replaced with similar items of equal or greater value.

**5.8 Change of Name.** Mortgagor will not change the name under which Mortgagor does business, or adopt or begin doing business under any other name or assumed or trade name, without first notifying Mortgagee of Mortgagor's intention to do so and delivering to Mortgagee

such executed modifications or supplements to this Mortgage (and to any financing statement which may be filed in connection herewith) as Mortgagee may require.

**5.9 Improper Use of Property or Chattels.** Mortgagor will not use the Property or the Chattels for any purpose or in any manner which violates any applicable law, ordinance, or other governmental requirement, the requirements or conditions of any insurance policy, or any private covenant.

**5.10 ERISA.** Mortgagor shall not engage in any transaction which would cause the Note (or the exercise by Mortgagee of any of its rights under the Loan Documents) to be a non-exempt, prohibited transaction under ERISA (including for this purpose the parallel provisions of Section 4975 of the Internal Revenue Code of 1986, as amended), or otherwise result in Mortgagee being deemed in violation of any applicable provisions of ERISA. Mortgagor shall indemnify, protect, defend, and hold Mortgagee harmless from and against any and all losses, liabilities, damages, claims, judgments, costs, and expenses (including, without limitation attorneys' fees and costs incurred in the investigation, defense, and settlement of claims and in obtaining any individual ERISA exemption or state administrative exception that may be required, in Mortgagee's sole and absolute discretion) that Mortgagee may incur, directly or indirectly, as the result of the breach by Mortgagor of any warranty or representation set forth in **Section 3.3(x)** hereof or the breach by Mortgagor of any covenant contained in this Section. This indemnity shall survive any termination, satisfaction or foreclosure of this Mortgage and shall not be subject to the limitation on personal liability described in the Note.

**5.11 Use of Proceeds.** Mortgagor will not use any funds advanced by Mortgagee under the Loan Documents for household or agricultural purposes, to purchase margin stock, or for any purpose prohibited by law.

## ARTICLE 6 EVENTS OF DEFAULT

Each of the following events will constitute an event of default (an "Event of Default") under this Mortgage and under each of the other Loan Documents:

**6.1 Failure to Pay Note.** Mortgagor's failure to make any payment when due under the terms of the Note or any other Loan Document.

**6.2 Due on Sale or Encumbrance.** The occurrence of any violation of any covenant contained in **Section 5.4 (Transfer or Further Encumbrance of Property)**, **5.5 (Further Encumbrance of Chattels)** or **5.7 (Transfer or Removal of Chattels)** hereof.

**6.3 Other Obligations.** The failure of Mortgagor to properly perform any obligation contained herein or in any of the other Loan Documents (other than the obligation to make payments under the Note or the other Loan Documents) and the continuance of such failure for a period of thirty (30) days following written notice thereof from Mortgagee to Mortgagor; provided, however, that if such failure is not curable within such thirty (30) day period, then, so long as Mortgagor commences to cure such failure within such thirty (30) day period and is continually and diligently attempting to cure to completion, such failure shall not be an Event of



Default unless such failure remains uncured for sixty (60) days after such written notice to Mortgagor.

**6.4 Levy Against Property.** The levy against any of the Property, Chattels or Intangible Personalty, of any execution, attachment, sequestration or other writ.

**6.5 Liquidation.** The liquidation, termination or dissolution of Mortgagor, Draper and Kramer, Incorporated or D&K Insurance Agency, or their successors, any General Partner, any Guarantor, or any other party directly or indirectly liable for the payment of the Secured Obligations, whether as maker, endorser, guarantor, surety, general partner or otherwise.

**6.6 Appointment of Receiver.** The appointment of a trustee or receiver for the assets, or any part thereof, of Mortgagor, any General Partner, any Guarantor or any other person directly or indirectly liable for the Secured Obligations, whether as maker, endorser, guarantor, surety, general partner or otherwise, or the appointment of a trustee or receiver for any real or personal property, or the like, or any part thereof, representing the security for the Secured Obligations.

**6.7 Assignments.** The making by Mortgagor, any General Partner, any Guarantor or by any other person or entity directly or indirectly liable for the Secured Obligations, whether as maker, endorser, guarantor, surety, general partner or otherwise, of a transfer in fraud of creditors or an assignment for the benefit of creditors.

**6.8 Order for Relief.** The entry in bankruptcy of an order for relief for or against Mortgagor, any General Partner, any Guarantor or any other party directly or indirectly liable for the payment of the Secured Obligations, whether as maker, endorser, guarantor, surety, general partner or otherwise.

**6.9 Bankruptcy.** The filing of any petition (or answer admitting the material allegations of any petition), or other pleading, seeking entry of an order for relief for or against Mortgagor, any General Partner, any Guarantor or any other party directly or indirectly liable for the payment of the Secured Obligations, whether as maker, endorser, guarantor, surety, general partner or otherwise as a debtor or bankrupt or seeking an adjustment of any of such parties' debts, or any other relief under any state or federal bankruptcy, reorganization, debtor's relief or insolvency laws now or hereafter existing, including, without limitation, a petition or answer seeking reorganization or admitting the material allegations of a petition filed against any such party in any bankruptcy or reorganization proceeding, or the act of any of such parties in instituting or voluntarily being or becoming a party to any other judicial proceedings intended to effect a discharge of the debts of any such parties, in whole or in part, or a postponement of the maturity or the collection thereof, or a suspension of any of the rights or powers of a trustee or of any of the rights or powers granted to Mortgagee herein, or in any other document executed in connection herewith.

**6.10 Misrepresentation.** If any representation or warranty made by Mortgagor, any General Partner, any Guarantor or any other party directly or indirectly liable for the payment of the Secured Obligations, whether as maker, endorser, guarantor, surety, general partner or otherwise, herein, or in any of the other Loan Documents or any other instrument or document



modifying, renewing, extending, evidencing, securing or pertaining to the Note is false, misleading or erroneous in any material respect.

**6.11 Judgments.** The failure of Mortgagor, any General Partner, any Guarantor or any party directly or indirectly liable for the payment of the Secured Obligations, whether as maker, endorser, guarantor, surety, general partner or otherwise, to pay any money judgment in excess of \$10,000.00 against any such party before the expiration of thirty (30) days after such judgment becomes final and no longer appealable.

**6.12 Admissions Regarding Debts.** The admission of Mortgagor, any General Partner, any Guarantor or any other party directly or indirectly liable for the payment of the Secured Obligations, whether as maker, endorser, guarantor, surety, general partner or otherwise, in writing of any such party's inability to pay such party's debts as they become due.

**6.13 Assertion of Priority.** The assertion of any claim of priority over this Mortgage, by title, lien, or otherwise, unless Mortgagor within thirty (30) days after such assertion either causes the assertion to be withdrawn or provides Mortgagee with such security as Mortgagee may require to protect Mortgagee against all loss, damage, or expense, including attorneys' fees, which Mortgagee may incur in the event such assertion is upheld.

**6.14 Other Loan Documents.** The occurrence of any default by Mortgagor, after the lapse of any applicable grace or cure period, or the occurrence of any event or circumstance defined as an Event of Default, under any of the Loan Documents other than this Mortgage.

**6.15 Other Liens.** The occurrence of any default by Mortgagor, after the lapse of any applicable grace or cure period, or the occurrence of any event or circumstance defined as an Event of Default, under any other consensual lien encumbering the Property, or any part thereof or interest therein, or any document or instrument evidencing obligations secured thereby.

**6.16 Other Indebtedness.** The occurrence of any default by Mortgagor, after the lapse of any applicable grace or cure period, or the occurrence of any event or circumstance defined as an Event of Default, under any other indebtedness incurred or owing by Mortgagor, or any document or instrument evidencing any obligation to pay such indebtedness.

## ARTICLE 7 MORTGAGEE'S REMEDIES

Immediately upon or any time after the occurrence of any Event of Default hereunder, Mortgagee may exercise any remedy available at law or in equity, including but not limited to those listed below and those listed in the other Loan Documents, in such sequence or combination as Mortgagee may determine in Mortgagee's sole discretion:

**7.1 Performance of Defaulted Obligations.** Mortgagee may make any payment or perform any other obligation under the Loan Documents which Mortgagor has failed to make or perform, and Mortgagor hereby irrevocably appoints Mortgagee as the true and lawful attorney-in-fact for Mortgagor to make any such payment and perform any such obligation in the name of Mortgagor. All payments made and expenses (including attorneys' fees) incurred by Mortgagee in this connection, together with interest thereon at the Default Rate from the date paid or

incurred until repaid, will be part of the Secured Obligations and will be immediately due and payable by Mortgagor to Mortgagee. In lieu of advancing Mortgagee's own funds for such purposes, Mortgagee may use any funds of Mortgagor which may be in Mortgagee's possession, including but not limited to insurance or condemnation proceeds and amounts deposited for taxes, insurance premiums, or other purposes.

**7.2 Specific Performance and Injunctive Relief.** Notwithstanding the availability of legal remedies, Mortgagee will be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring Mortgagor to cure or refrain from repeating any Default.

**7.3 Acceleration of Secured Obligations.** Mortgagee may, without notice or demand, declare all of the Secured Obligations immediately due and payable in full.

**7.4 Suit for Monetary Relief.** Subject to the non-recourse provisions of the Note, with or without accelerating the maturity of the Secured Obligations, Mortgagee may sue from time to time for any payment due under any of the Loan Documents, or for money damages resulting from Mortgagor's default under any of the Loan Documents.

**7.5 Possession of Property.** To the extent permitted by law, Mortgagee may enter and take possession of the Property without seeking or obtaining the appointment of a receiver, may employ a managing agent for the Property, and may lease or rent all or any part of the Property, either in Mortgagee's name or in the name of Mortgagor, and may collect the rents, issues, and profits of the Property. Any revenues collected by Mortgagee under this Section will be applied first toward payment of all expenses (including attorneys' fees) incurred by Mortgagee, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance, if any, will be applied against the Secured Obligations in such order and manner as Mortgagee may elect in its sole discretion.

**7.6 Enforcement of Security Interests.** Mortgagee may exercise all rights of a secured party under the Code with respect to the Chattels and the Intangible Personalty, including but not limited to taking possession of, holding, and selling the Chattels and enforcing or otherwise realizing upon any accounts and general intangibles. Any requirement for reasonable notice of the time and place of any public sale, or of the time after which any private sale or other disposition is to be made, will be satisfied by Mortgagee's giving of such notice to Mortgagor at least five (5) days prior to the time of any public sale or the time after which any private sale or other intended disposition is to be made.

**7.7 Foreclosure Against Property.**

(a) Mortgagee may bring an action in any court of competent jurisdiction to foreclose this Mortgage pursuant to the Illinois Mortgage Foreclosure Act, (735 ILCS 5/15/-1101 et seq.), as from time to time amended (the "Act") or as otherwise permitted by law, with respect to either (and at Mortgagee's option) the entire amount of Secured Obligations, or any delinquent installment or installments of the indebtedness secured hereby without accelerating the due date of the entire indebtedness, in which case any sale of the Property under such a foreclosure proceeding shall be subject to and shall not affect the unmaturing part of the indebtedness secured

hereby and this Mortgage shall be and continue as a lien on the Property securing such unmatured indebtedness. Mortgagee may bid for and purchase all or any portion of the Property at any foreclosure sale thereof.

(b) All fees, costs and expenses of any kind incurred by Mortgagee in connection with foreclosure of this Mortgage, including, without limitation, the costs of any appraisals of the Property obtained by Mortgagee, the cost of any title reports or abstracts, all costs of any receivership for the Property advanced by Mortgagee, and all attorneys' and consultants' fees and expenses incurred by Mortgagee, shall constitute a part of the Secured Obligations and may be included as part of the amount owing from Mortgagor to Mortgagee at any foreclosure sale.

(c) The proceeds of any sale under this Section shall be applied first to the fees and expenses of the officer conducting the sale, and then to the reduction or discharge of the Secured Obligations in such order and manner as Mortgagee may elect in its sole discretion; any surplus remaining shall be paid over to Mortgagor or to such other person or persons as may be lawfully entitled to such surplus.

(d) Nothing in this Section dealing with foreclosure procedures or specifying particular actions to be taken by Mortgagee shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by Illinois law, and any such inconsistency shall be resolved in favor of Illinois law applicable at the time of foreclosure.

**7.8 Appointment of Receiver.** To the extent permitted by law, Mortgagee shall be entitled, as a matter of absolute right and without regard to the value of any security for the Secured Obligations or the solvency of any person liable therefor, to the appointment of a receiver for the Property upon ex-parte application to any court of competent jurisdiction. Mortgagor waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver and its agents shall be empowered to (a) take possession of the Property and any businesses conducted by Mortgagor or any other person thereon and any business assets used in connection therewith, (b) exclude Mortgagor and Mortgagor's agents, servants, and employees from the Property, (c) collect the rents, issues, profits, and income therefrom, complete any construction which may be in progress, (e) do such maintenance and make such repairs and alterations as the receiver deems necessary, (f) use all stores of materials, supplies, and maintenance equipment on the Property and replace such items at the expense of the receivership estate, (g) pay all taxes and assessments against the Property and the Chattels, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, and (h) generally do anything which Mortgagor could legally do if Mortgagor were in possession of the Property. All expenses incurred by the receiver or its agents shall constitute a part of the Secured Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including attorneys' fees incurred by the receiver and by Mortgagee, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance shall be applied toward the Secured Obligations in such order or manner as Mortgagee may in its sole discretion elect or in such other manner as the court may direct. Unless sooner terminated with the express consent of Mortgagee, any such receivership will continue until the Secured Obligations have been

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discharged in full, or until title to the Property has passed after foreclosure sale and all applicable periods of redemption have expired.

**7.9 Right to Make Repairs, Improvements.** Should any part of the Property come into the possession of Mortgagee, after an Event of Default, Mortgagee may use, operate, and/or make repairs, alterations, additions and improvements to the Property for the purpose of preserving it or its value. Mortgagor covenants to promptly reimburse and pay to Mortgagee, at the place where the Note is payable, or at such other place as may be designated by Mortgagee in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges) incurred by Mortgagee in connection with its custody, preservation, use or operation of the Property, together with interest thereon from the date incurred by Mortgagee at the Default Date, and all such expenses, costs, taxes, interest, and other charges shall be a part of the Secured Obligations. It is agreed, however, that the risk of accidental loss or damage to the Property is undertaken by Mortgagor and Mortgagee shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether any insurance ever in force is adequate as to amount or as to the risks insured.

**7.10 Surrender of Insurance.** Mortgagee may surrender the insurance policies maintained pursuant to the terms hereof, or any part thereof, and receive and apply the unearned premiums as a credit on the Secured Obligations and, in connection therewith, Mortgagor hereby appoints Mortgagee (or any officer of Mortgagee), as the true and lawful agent and attorney-in-fact for Mortgagor (with full powers of substitution), which power of attorney shall be deemed to be a power coupled with an interest and therefore irrevocable, to collect such premiums.

**7.11 Prima Facie Evidence.** Mortgagor agrees that, in any assignments, deeds, bills of sale, notices of sale, or postings, given by Mortgagee, any and all statements of fact or other recitals therein made as to the identity of Mortgagee, or as to the occurrence or existence of any Event of Default, or as to the acceleration of the maturity of the Secured Obligations, or as to the request to sell, posting of notice of sale, notice of sale, time, place, terms and manner of sale and receipt, distribution and application of the money realized therefrom, and without being limited by the foregoing, as to any other act or thing having been duly done by Mortgagee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state facts and are without further question to be so accepted, and Mortgagor does hereby ratify and confirm any and all acts that Mortgagee may lawfully do by virtue hereof.

**7.12 Compliance with Illinois Mortgage Foreclosure Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law 735 ILCS 5/15-1101 et seq., Illinois Revised Statutes) (hereinafter the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage; provided, however, that the provisions of the Act shall not be applied to invalidate or render unenforceable any provision of this Mortgage that can be construed in a manner consistent with the Act.

If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee 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 Mortgagee 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 enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or its judgment of foreclosure.

**7.13 Power of Sale.** To the extent permitted by applicable law, Mortgagee may terminate Mortgagor's interest in the Property by exercising a power of sale.

**ARTICLE 8  
ASSIGNMENT OF LEASES AND RENTS**

**8.1 Assignment of Leases and Rents.** Mortgagor hereby unconditionally and absolutely grants, transfers and assigns unto Mortgagee all rents, royalties, issues, profits and income ("**Rents**") now or hereafter due or payable for the occupancy or use of the Property, and all Leases, whether written or oral, with all security therefor, including all guaranties thereof, now or hereafter affecting the Property; reserving unto Mortgagor, however, a license to collect and retain such Rents prior to the occurrence of any Event of Default. Such license shall be revocable by Mortgagee without notice to Mortgagor at any time after the occurrence of an Event of Default. Mortgagor represents that the Rents and the Leases have not been heretofore sold, assigned, transferred or set over by any instrument now in force and will not at any time during the life of this assignment be sold, assigned, transferred or set over by Mortgagor or by any person or persons whomsoever; and Mortgagor has good right to sell, assign, transfer and set over the same and to grant to and confer upon Mortgagee the rights, interest, powers and authorities herein granted and conferred. Failure of Mortgagee at any time or from time to time to enforce the assignment of Rents and Leases under this section shall not in any manner prevent its subsequent enforcement, and Mortgagee is not obligated to collect anything hereunder, but is accountable only for sums actually collected.

**8.2 Further Assignments.** Mortgagor shall give Mortgagee at any time upon demand any further or additional forms of assignment or transfer of such Rents, Leases and security as may be reasonably requested by Mortgagee, and shall deliver to Mortgagee executed copies of all such Leases and security.

**8.3 Application of Rents.** Mortgagee shall be entitled to deduct and retain a just and reasonable compensation from monies received hereunder for its services or that of its agents in collecting such monies. Any monies received by Mortgagee hereunder may be applied when received from time to time in payment of any taxes, assessments or other liens affecting the Property regardless of the delinquency, such application to be in such order as Mortgagee may determine. The acceptance of this Mortgage by Mortgagee or the exercise of any rights by it hereunder shall not be, or be construed to be, an affirmation by it of any Lease nor an assumption of any liability under any Lease.

**8.4 Collection of Rents.** Upon or at any time after an Event of Default shall have occurred and be continuing, Mortgagee may declare all sums secured hereby immediately due and payable, and may, at its option, without notice, and whether or not the Secured Obligations shall have been declared due and payable, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, (a) enter upon, take



possession of, manage and operate the Property, or any part thereof (including without limitation making necessary repairs, alterations and improvements to the Property); (b) make, cancel, enforce or modify Leases; (c) obtain and evict tenants; (d) fix or modify Rents; (e) do any acts which Mortgagee deems reasonably proper to protect the security thereof; and (f) either with or without taking possession of the Property, in its own name sue for or otherwise collect and receive such Rents, including those past due and unpaid. In connection with the foregoing, Mortgagee shall be entitled and empowered to employ attorneys, and management, rental and other agents in and about the Property and to effect the matters which Mortgagee is empowered to do, and in the event Mortgagee shall itself effect such matters, Mortgagee shall be entitled to charge and receive reasonable management, rental and other fees therefor as may be customary in the area in which the Property is located; and the reasonable fees, charges, costs and expenses of Mortgagee or such persons shall be additional Secured Obligations. Mortgagee may apply all funds collected as aforesaid, less costs and expenses of operation and collection, including reasonable attorneys' and agents' fees, charges, costs and expenses, as aforesaid, upon any Secured Obligations, and in such order as Mortgagee may determine. The entering upon and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect notice of default under the Note or this Mortgage or invalidate any act done pursuant to such notice.

**8.5 Authority of Mortgagee.** Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Mortgagee hereunder without investigating the reason for any action taken by Mortgagee, or the validity or the amount of secured obligations owing to Mortgagee, or the existence of any default in the Note or this Mortgage, or under or by reason of this Assignment of Rents and Leases, or the application to be made by Mortgagee of any amounts to be paid to Mortgagee. The sole signature of Mortgagee shall be sufficient for the exercise of any rights under this assignment and the sole receipt of Mortgagee for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Property. Checks for all or any part of the rentals collected under this assignment of Rents and Leases shall be drawn to the exclusive order of Mortgagee.

**8.6 Indemnification of Mortgagee.** Nothing herein contained shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty or liability of any lessor under any Lease of the Property, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all liability, loss or damage which Mortgagee may or might incur under any Lease or by reason of the assignment, except to the extent of Mortgagee's gross negligence or willful misconduct; and any and all such liability, loss or damage incurred by Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by Mortgagee in defense of any claims or demands therefor (whether successful or not), shall be additional Secured Obligations, and Mortgagor shall reimburse Mortgagee therefor on demand.

## ARTICLE 9 MISCELLANEOUS PROVISIONS

**9.1 Time of the Essence.** Time is of the essence with respect to all provisions of the Loan Documents.

**9.2 Joint and Several Obligations.** If Mortgagor is more than one person or entity, then (a) all persons or entities comprising Mortgagor are jointly and severally liable for all of the Secured Obligations; (b) all representations, warranties, and covenants made by Mortgagor shall be deemed representations, warranties, and covenants of each of the persons or entities comprising Mortgagor; (c) any breach, Default or Event of Default by any of the persons or entities comprising Mortgagor hereunder shall be deemed to be a breach, Default, or Event of Default of Mortgagor; (d) any reference herein contained to the knowledge or awareness of Mortgagor shall mean the knowledge or awareness of any of the persons or entities comprising Mortgagor; and (e) any event creating personal liability of any of the persons or entities comprising Mortgagor shall create personal liability for all such persons or entities.

**9.3 Waiver of Homestead and Other Exemptions.** To the extent permitted by law, Mortgagor hereby waives all rights to any homestead or other exemption to which Mortgagor would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law. Mortgagor shall not apply for or avail itself of any appraisement, valuation, redemption, 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, for itself and all who may claim through or under it, hereby also waives any and all rights to have the Property and estates comprising the Property marshaled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Property sold in its entirety. MORTGAGOR HEREBY FURTHER WAIVES, FOR ITSELF AND ON BEHALF OF ANY TRUST ESTATE OF WHICH THE PROPERTY IS A PART AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN AND (TO THE EXTENT PERMITTED BY APPLICABLE LAW) EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN THE PROPERTY OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE, ANY AND ALL RIGHTS OF REDEMPTION FROM THE JUDGMENT OR DECREE OR FORECLOSURE OF THE LIEN OF THIS MORTGAGE PURSUANT TO MORTGAGEE'S EXERCISE OF ANY RIGHTS HEREIN GRANTED, AND MORTGAGOR HEREBY WAIVES ALL OTHER RIGHTS OF REDEMPTION OR REINSTATEMENT TO THE FULLEST EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS MORTGAGE FORECLOSURE LAW, 735 ILCS 5/15-1101 et seq.

**9.4 Non Recourse; Exceptions to Non-Recourse.** Except as expressly set forth in the Note, the recourse of Mortgagee with respect to the obligations evidenced by the Note and the other Loan Documents shall be solely to the Property, Chattels and Intangible Personality, and any other collateral given as security for the Note.

**9.5 Rights and Remedies Cumulative.** Mortgagee's rights and remedies under each of the Loan Documents are cumulative of the rights and remedies available to Mortgagee under each of the other Loan Documents and those otherwise available to Mortgagee at law or in equity. No act of Mortgagee shall be construed as an election to proceed under any particular provision of any Loan Document to the exclusion of any other provision in the same or any other Loan Document, or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Mortgagee.

**9.6 No Implied Waivers.** Mortgagee shall not be deemed to have waived any provision of any Loan Document unless such waiver is in writing and is signed by Mortgagee. Without limiting the generality of the preceding sentence, neither Mortgagee's acceptance of any payment with knowledge of a Default by Mortgagor, nor any failure by Mortgagee to exercise any remedy following a Default by Mortgagor shall be deemed a waiver of such Default, and no waiver by Mortgagee of any particular Default on the part of Mortgagor shall be deemed a waiver of any other Default or of any similar Default in the future.

**9.7 No Third Party Rights.** No person shall be a third party beneficiary of any provision of any of the Loan Documents. All provisions of the Loan Documents favoring Mortgagee are intended solely for the benefit of Mortgagee, and no third party shall be entitled to assume or expect that Mortgagee will not waive or consent to modification of any such provision in Mortgagee's sole discretion.

**9.8 Preservation of Liability and Priority.** Without affecting the liability of Mortgagor or of any other person (except a person expressly released in writing) for payment and performance of all of the Secured Obligations, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, and without impairing in any way the priority of this Mortgage over the interests of any person acquired or first evidenced by recording subsequent to the recording hereof, Mortgagee may, either before or after the maturity of the Note, and without notice or consent: (a) release any person liable for payment or performance of all or any part of the Secured Obligations; (b) make any agreement altering the terms of payment or performance of all or any of the Secured Obligations; (c) exercise or refrain from exercising, or waive, any right or remedy which Mortgagee may have under any of the Loan Documents; (d) accept additional security of any kind for any of the Secured Obligations; or (e) release or otherwise deal with any real or personal property securing the Secured Obligations. Any person acquiring or recording evidence of any interest of any nature in the Property, the Chattels, or the Intangible Personalty shall be deemed, by acquiring such interest or recording any evidence thereof, to have agreed and consented to any or all such actions by Mortgagee.

**9.9 Subrogation of Mortgagee.** Mortgagee shall be subrogated to the lien of any previous encumbrance discharged with funds advanced by Mortgagee under the Loan Documents, regardless of whether such previous encumbrance has been released of record.

**9.10 Notices.** Any notice required or permitted to be given by Mortgagor or Mortgagee under this Mortgage shall be in writing and will be deemed given (a) upon personal delivery, (b) on the first business day after receipted delivery to a courier service which guarantees next-business-day delivery, or (c) on the third business day after mailing, by registered or certified United States mail, postage prepaid, in any case to the appropriate party at its address set forth below:

If to Mortgagor:

1130 South Michigan Partnership  
c/o Draper and Kramer, Incorporated  
33 West Monroe Street, Suite 1900

Chicago, IL 60603  
Attn: Forrest D. Bailey

With a copy to:

Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
233 South Wacker Drive  
Chicago, IL 60606  
Attn: Marlene Nations, Esq.

If to Mortgagee:

American General Life Insurance Company  
1 SunAmerica Center  
Century City  
Los Angeles, California 90067-6022  
Attn: Director-Mortgage Lending and Real Estate

American General Life and Accident Insurance Company  
1 SunAmerica Center  
Century City  
Los Angeles, California 90067-6022  
Attn: Director-Mortgage Lending and Real Estate

With copies to:

Draper and Kramer, Incorporated  
33 West Monroe Street, Suite 1900  
Chicago, IL 60603  
Attn: Jim Bielanski

And

Brownstein Hyatt & Farber, P.C.  
410 Seventeenth Street, Suite 2200  
Denver, CO 80202  
Attn: Ana Lazo Tenzer, Esq.

Either party may change such party's address for notices or copies of notices by giving notice to the other party in accordance with this Section.

**9.11 Release; Defeasance.**

(a) Upon payment and performance in full of all of the Secured Obligations, Mortgagee will execute and deliver to Mortgagor such documents as may be required to release this Mortgage of record.



(b) Notwithstanding the foregoing, at any time prior to January 1, 2017 (the "**Defeasance Period**"), and provided no Event of Default has occurred and is continuing, Mortgagor may obtain the release of the Property from the lien of this Mortgage upon the satisfaction of the following conditions precedent:

(i) not less than fifteen (15) days' prior written notice to Mortgagee specifying the Business Day other than a Friday or on any day preceding a public holiday, or the equivalent for banks generally under the laws of the State of Illinois (the "**Release Date**") on which the Defeasance Deposit (hereinafter defined) is to be made;

(ii) the payment to Mortgagee of interest accrued and unpaid on the principal balance of the Note to and including the Release Date;

(iii) the payment to Mortgagee of all other sums, not including scheduled interest or principal payments, due under the Note, this Mortgage and the other Loan Documents as of the date the Defeasance Deposit is made;

(iv) the payment to Mortgagee of the Defeasance Deposit, which shall be initially determined by Mortgagee's selection of the U.S. Obligations to be purchased with the Defeasance Deposit and notice to Mortgagor of such determination not less than three (3) days prior to the Release Date; and

(v) the delivery to Mortgagee of:

(A) a security agreement, in form and substance reasonably satisfactory to Mortgagee, creating a first priority lien on the Defeasance Deposit and the U.S. Obligations (hereinafter defined) purchased on behalf of Mortgagor with the Defeasance Deposit in accordance with the provisions of this paragraph (the "**Security Agreement**");

(B) a release of lien with regards to the Property from the lien of this Mortgage (for execution by Mortgagee) in a form appropriate for the jurisdiction in which the Property is located or an assignment of mortgage in favor of Mortgagor's designee as provided in **Section 9.11(c)** below;

(C) a certificate of Mortgagor certifying that the requirements set forth in this **Subsection 9.11(b)** have been satisfied;

(D) an opinion of counsel for Mortgagor in form reasonably satisfactory to Mortgagee to the effect that Mortgagee has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations purchased by Mortgagee on behalf of Mortgagor; and

(E) such other customary certificates, documents or instruments as Mortgagee may reasonably request.

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Mortgagee agrees that the foregoing payments and deliveries may be made to an escrow agent pursuant to an escrow agreement reasonably satisfactory to Mortgagee to facilitate the simultaneous purchase of the U.S. Obligations and recordation of the release or assignment of the Mortgage in connection with the refinancing of Property by Mortgagor.

In connection with the conditions set forth in **Subsection 9.11(b)(v)** above, Mortgagor hereby irrevocably authorizes Mortgagee to use the Defeasance Deposit (or direct any escrow agent holding the Defeasance Deposit) to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled payment dates after the Release Date upon which interest and principal payments are required under the Note (including the amounts due on the Maturity Date) and in amounts equal to the scheduled payments due on such dates under the Note (the "**Scheduled Defeasance Payments**"). Mortgagor, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to Mortgagee and applied to satisfy the obligations of the Mortgagor under the Note. The U.S. Obligations selected shall be those having the highest yield and providing for timely Scheduled Defeasance Payment even if such U.S. Obligations bear semi-annual interest.

(c) Upon compliance with the requirements of this **Section 9.11**, Mortgagee shall execute the release referred to in **Subsection (b)(v)(B)** above and the Property shall be released from the lien of this Mortgage and the pledged U.S. Obligations shall be the sole source of collateral securing the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required above to satisfy the Mortgagor's obligations under this Section shall be remitted to the Mortgagor with the release of the Property from the lien of this Mortgage. In connection with such release, Mortgagee shall form or designate a successor entity to Mortgagor (the "**Successor Mortgagor**") and Mortgagor shall transfer and assign to the Successor Mortgagor all obligations, rights and duties under and to the Note together with all of Mortgagor's right, title and interest in and to the pledged U.S. Obligations (except for right to receive surplus as hereinabove provided). The obligation of Mortgagee to form or designate a Successor Mortgagor shall be retained by Mortgagee notwithstanding the sale or transfer of this Mortgage unless such obligation is specifically assumed by the transferee. Such Successor Mortgagor shall assume the obligations under the Note and the Security Agreement and Mortgagor shall be relieved of its obligations thereunder. Notwithstanding anything in this Mortgage to the contrary, no assumption fee shall be payable upon a transfer of the Note in accordance with **this Section 9.11**, but Mortgagor shall pay all reasonable costs and expenses incurred by Mortgagee, including Mortgagee's reasonable attorneys' fees and expenses, incurred in connection with this **Section 9.11** to the extent not included in the Defeasance Deposit. Notwithstanding the foregoing, upon Mortgagor's request, Mortgagee shall execute a mortgage satisfaction or an assignment of mortgage in favor of Mortgagor's designee in lieu of such a release.

(d) For purposes of this **Section 9.11**, the following terms shall have the following meanings:

- (i) The term "**Defeasance Deposit**" shall mean an amount equal to the remaining principal amount of the Note, the Yield Maintenance Premium,

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any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments;

- (ii) The term "**Yield Maintenance Premium**" shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments; and
- (iii) The term "**U.S. Obligations**" shall mean direct non-callable obligations of the United States of America.

**9.12 Illegality.** If any provision of this Mortgage is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Mortgage, the legality, validity, and enforceability of the remaining provisions of this Mortgage shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Mortgage a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If the rights and liens created by this Mortgage shall be invalid or unenforceable as to any part of the Secured Obligations, then the unsecured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on the Secured Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Secured Obligations.

**9.13 Usury Savings Clause.** It is expressly stipulated and agreed to be the intent of Mortgagee and Mortgagor at all times to comply with the applicable law governing the highest lawful interest rate. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved or received with respect to the loan evidenced thereby, or if acceleration of the maturity of the Note, any prepayment by Mortgagor, or any other circumstance whatsoever, results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is the express intent of Mortgagor and Mortgagee that all excess amounts theretofore collected by Mortgagee be credited on the principal balance of the Note (or, at Mortgagee's option, paid over to Mortgagor), and the provisions of the Note and other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. The right to accelerate maturity of the Note does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Mortgagee for the use, forbearance or detention of the Secured Obligations evidenced hereby or by the Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such Secured Obligations until payment in full so that the rate or amount of interest on account of such Secured Obligations does not exceed the maximum rate or amount of interest permitted under applicable law. The term "applicable law" as used herein shall mean any federal or state law applicable to the loan made by Mortgagee to Mortgagor evidenced by the Note.



**9.14 Obligations Binding Upon Mortgagor's Successors.** This Mortgage is binding upon Mortgagor and Mortgagor's successors and assigns, and shall inure to the benefit of Mortgagee, and its successors and assigns, and the provisions hereof shall likewise be covenants running with the land. The duties, covenants, conditions, obligations, and warranties of Mortgagor in this Mortgage shall be joint and several obligations of Mortgagor and Mortgagor's successors and assigns.

**9.15 Construction.** All pronouns and any variations of pronouns herein shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the parties may require. Whenever the terms herein are singular, the same shall be deemed to mean the plural, as the identity of the parties or the context requires.

**9.16 Attorneys' Fees.** Any reference in this Mortgage to attorneys' or counsel fees paid or incurred by Mortgagee shall be deemed to include paralegals' fees and legal assistants' fees. Moreover, whenever provision is made herein for payment of attorneys' or counsel's fees or expenses incurred by Mortgagee, such provision shall include but not be limited to, such fees or expenses incurred in any and all judicial, bankruptcy, reorganization, administrative, or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced, during such proceedings or after entry of a final judgment.

**9.17 Waiver and Agreement.** MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE UNDER APPLICABLE LAW TO PREPAY THE NOTE, IN WHOLE OR IN PART, WITHOUT PREPAYMENT CHARGE, UPON ACCELERATION OF THE MATURITY DATE OF THE NOTE, AND AGREES THAT, IF FOR ANY REASON A PREPAYMENT OF ALL OR ANY PART OF THE NOTE IS MADE, WHETHER VOLUNTARILY OR FOLLOWING ANY ACCELERATION OF THE MATURITY DATE OF THE NOTE BY MORTGAGEE ON ACCOUNT OF THE OCCURRENCE OF ANY EVENT OF DEFAULT ARISING FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY PROHIBITED OR RESTRICTED TRANSFER, FURTHER ENCUMBRANCE OR DISPOSITION OF THE PROPERTY OR ANY PART THEREOF SECURING THE NOTE, THEN MORTGAGOR SHALL BE OBLIGATED TO PAY, CONCURRENTLY WITH SUCH PREPAYMENT, THE PREPAYMENT PREMIUM PROVIDED FOR IN THE NOTE (OR, IN THE EVENT OF ACCELERATION WHEN THE NOTE IS CLOSED TO PREPAYMENT, AS PROVIDED IN THE DEFINITION OF "SECURED OBLIGATIONS" SET FORTH IN ARTICLE 1 HEREOF). MORTGAGOR HEREBY DECLARES THAT MORTGAGEE'S AGREEMENT TO MAKE THE LOAN EVIDENCED BY THE NOTE AT THE INTEREST RATE AND FOR THE TERM SET FORTH IN THE NOTE CONSTITUTES ADEQUATE CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY MORTGAGOR, FOR THIS WAIVER AND AGREEMENT.

**9.18 Waiver of Jury Trial.** MORTGAGEE AND MORTGAGOR KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS MORTGAGE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL

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OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO OR TO ANY LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE AND MORTGAGOR TO ENTER INTO THE LOAN TRANSACTION EVIDENCED BY THE NOTE.

**9.19 Governing Laws.** The substantive laws of the State of Illinois shall govern the validity, construction, enforcement and interpretation of this Mortgage.

**9.20 Inconsistency.** In the event of any inconsistency between the terms of the Loan Documents and the terms of that certain First Mortgage Loan Application between Mortgagor and Mortgagee dated December 14, 2001, the terms of the Loan Documents shall govern and control in all respects.

**9.21 Special State Provisions**

(a) **Maximum Amount Secured Hereby.** In no event shall the indebtedness secured hereby exceed an amount equal to three hundred percent (300%) of the face amount of the Note.

(b) **Management Agreement.** The following is hereby added to the end of Section 4.23 hereof:

"Any management agreement for or relating to all or any part of the Property including, without limitation the Management Agreement, whether now in effect or entered into hereafter by Mortgagor or any agent of Mortgagor with a property manager shall contain a "no lien" provision whereby the property manager forever and unconditionally waives and releases any and all mechanics' lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law. Such Management Agreement or a short form thereof including such waiver shall, at Mortgagee's request, be recorded with the Office of the Recorder of Deeds for the county in which the Property is located. In addition, subordination of such Management Agreement, as provided herein, shall include, without limitation, the subordination of such property manager's present and future lien rights and those of any party claiming by, through or under it, to the lien of this Mortgage."

(c) **Waiver of Statutory Rights.** Mortgagor hereby waives, to the extent now or hereafter permitted by law, all rights of redemption and reinstatement of this Mortgage pursuant to the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15 1101 et seq. ("IMFL"), on behalf of itself and all those taking by, through or under Mortgagor."

(1) This financing statement covers the following types or items of property: the property described in this instrument, and all other items of personal property now or at any time hereafter owned by Mortgagor and used in connection with the Property.

(2) Some of the above goods are or are to become fixtures on the real property described herein. Mortgagor is the record owner of the real property





described herein upon which the foregoing fixtures and other items and types of property are located.

(d) **Use of Loan Proceeds.** The following is hereby added at the end of paragraph 4.22 hereof: "Mortgagor covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured hereby constitutes: (a) a "business loan" as that term is defined in, and for all purposes of, the Illinois Interest Act, Section 815 ILCS 205/4(1)(c); and (b) "a loan secured by a mortgage on real estate" within the purview and operation of Section 815 ILCS 205/4(1)(1)."

**9.22 Mortgagee's Remedies.** Sections 7.9 and 7.13 hereinabove are hereby deleted and the following sections shall be added to Article VII as Sections 7.14, 7.15, 7.16, 7.17, 7.18, 7.19, 7.20, 7.21, 7.22, 7.23, 7.24 and 7.25:

**7.14 Acceleration of Maturity.** If an Event of Default shall have occurred, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon and any other of Secured Obligations to be immediately due and payable, and upon such declaration such principal and interest and other Secured Obligations shall be due and payable without further demand or notice.

**7.15 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.** If an Event of Default occurs, upon demand by Mortgagee, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Property or any part thereof personally, by its agent or attorneys to be placed in possession pursuant to court order as mortgagee-in-possession or receiver as provided in Section 15-1701 of the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee-in-possession or receiver as provided in Section 15-1701 of the Act may enter upon and take and maintain possession of all or any part of the Property, together with all Leases, documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted: (i) hold, operate, manage and control all or any part of the Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the Rents, issues, deposits, profits, and avails of the Property, including, without limitation, actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor; (ii) cancel or terminate any Lease or sublease of all or any part of the Property for any cause or on any ground that would entitle Mortgagor to cancel the same; (iii) to the extent permitted by law, elect to disaffirm any Lease or sublease of all or any part of the Property made subsequent to this Mortgage without Mortgagee's prior written

consent; (iv) extend or modify any then existing Leases and make new Leases of all or any part of the Property, which extensions, modifications, and new Leases may provide for terms to expire or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons who interests in the Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser; (v) make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Property as may seem reasonable to Mortgagee, to insure and reinsure the Property and all risk incidental to Mortgagee's possession, operation and management thereof, and to receive all Rents, issues, deposits, profits, and avails therefrom; and (vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Property, to the payment of taxes, premiums and other charges applicable to the Property, or in reduction of the indebtedness hereby secured in such order and manner as Mortgagee shall select. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee-in-possession in the absence of the actual taking of possession of the Property. The right to enter and take possession of the Property and use any personal property therein, to manage, operate, conserve and improve the Property and use any personal property therein, to manage, operate, conserve and improve the Property, and to collect the Rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant thereto other than to account for any Rents actually received by Mortgagee. Without taking possession of the Property in the event the Property becomes vacant or are abandoned, Mortgagee may take such steps as it deems appropriate to protect and secure the Property, including, without limitation, hiring watchmen therefor, and all costs incurred in so doing shall constitute additional indebtedness hereby secured payable upon demand with interest thereon at the Default Rate.

**7.16 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.** 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, and hereby waives the benefit of such laws. To the fullest extent permitted by law, Mortgagor hereby voluntarily and knowingly waives any and all rights of redemption as allowed under Section 15-1601(b) of the Act, and to the fullest extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption and moratorium laws under any state or federal law, all on behalf of

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Mortgagor, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons. Mortgagor acknowledges and agrees that the land covered by this Mortgage at the time of execution hereof is neither "Agricultural Real Estate" nor "Residential Real Estate" (as those terms are defined in the Act).

**7.17 Sale of Property.** 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 Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. Any real estate or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to this Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by the Act. At any such sale, Mortgagee may bid for and acquire, as purchaser, the Property or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

**7.18 Application of Proceeds.** The proceeds of any foreclosure sale of the Property or of any sale of property pursuant to this Mortgage shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in this Mortgage; Second, to all other items which under the terms hereof constitute indebtedness hereby secured in addition to that evidenced by the Note with interest thereon as herein provided; Third, to all interest on the Note; Fourth, to all principal on the Note; Fifth, any surplus to whomsoever shall be lawfully entitled to such surplus.

**7.19 Remedies Cumulative and Concurrent.** No remedy or right of Mortgagee hereunder, or under any other Loan Document or otherwise available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to, every other remedy or right now or hereafter existing at law or in equity under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any default shall impair any such remedy or right to be construed to be a waiver of any such default or any acquiescence therein, or shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as



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often as may be deemed expedient by Mortgagee. All obligations of Mortgagor, and all rights, powers and remedies of Mortgagee expressed herein shall be in addition to, and not in limitation of, those provided by law or in the Note or any other Loan Documents.

**7.20 Partial Payments.** Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to demand payment of the balance due, or any other rights of Mortgagee at that time or any subsequent time.

**7.21 Tender of Payment After Acceleration.** In the event, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire indebtedness due hereunder, Mortgagee shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including, without limitation, such expenditures as are enumerated herein, and such expenses shall be additional indebtedness secured by this Mortgage, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses, and charges shall have been paid in full.

**7.22 Delays and Omissions.** No course of dealing and no delay in the exercise of or failure to exercise any remedy or right accruing by reason of any default under this Mortgage shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, or shall it affect any subsequent default of the same or of a different nature.

**7.23 Rescission of Election.** Acceleration of maturity, once made by Mortgagee, may at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed, whereupon, in either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and power of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

**7.24 No Liability on Mortgagee.** Notwithstanding anything contained herein to the contrary, Mortgagee shall not be obligated to perform or discharge, any obligation, duty or liability of Mortgagor, whether under any of the Leases or otherwise, and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, claim, expense, loss or damage which Mortgagee may or might incur with respect to the Property, or under by reason of its exercise of rights hereunder, or of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to be performed or discharged unless due to the gross negligence or willful misconduct of Mortgagee, its agents or employees. Mortgagee shall not have responsibility for the control,

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care, management or repair of the Property, or shall Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. No liability shall be enforced or asserted against Mortgagee in its exercise of the powers herein granted to it, and Mortgagor expressly waives and releases any such liability except in the event of the gross negligence or willful misconduct of Mortgagee following Mortgagee's obtaining of title to or possession of the Property. If Mortgagee incurs any such liability, loss or damage, under any of the Leases or under or by reason hereof, or in the defense of any claims or demands, Mortgagor, to the fullest extent permitted by law, agrees to reimburse Mortgagee immediately upon demand for the amount thereof, including costs, expenses and reasonable attorney's fees, together with interest thereon from the date of such payment at the Default Rate.

**7.25 Extent of Remedies.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the 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 Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee, then Mortgagee 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 Mortgagee 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 this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

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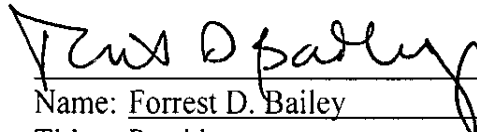
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IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage as of the date first mentioned above.

1130 SOUTH MICHIGAN PARTNERSHIP, an Illinois limited partnership

By: Draper and Kramer, Incorporated, an Illinois corporation, its General Partner

By:   
Name: Forrest D. Bailey  
Title: President

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STATE OF ILLINOIS     )  
                                  )ss.  
COUNTY OF COOK     )

The foregoing instrument was acknowledged before me this 21 day of December, 2001, by Forrest D. Bailey, as President of Draper and Kramer, Incorporated, an Illinois corporation, the General Partner of 1130 South Michigan Avenue Partnership, an Illinois limited partnership.



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Notary Public



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EXHIBIT A  
to  
MORTGAGE

11234237

(Legal Description)

Lot 4, Lot 5, Lot 8, Lot 9 and Lot 12 (except the South 50 feet thereof), (except from all of said Lots that part taken for alley), in Block 21 in Fractional Section 15, Township 39 North, Range 14 East, of the Third Principal Meridian, in Cook County, Illinois.

also known as: 1100 South Michigan Avenue, Chicago, Illinois 60605

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**EXHIBIT B  
to  
MORTGAGE**

**11234237**

(Permitted Exceptions)

1. Real estate taxes for the year 2001 and subsequent years.
2. Rights of tenants, as tenants under unrecorded leases.
3. Matters disclosed by ALTA Survey dated November 30, 2001, prepared by B.H. Suhr & Mortgage, Inc.

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10/10/2011

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