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**This Mortgage prepared by  
and upon recording return to:**

Arthur E. Pape, Esq.  
The Pape Law Firm  
Building A-3, Suite 102  
100 West Roosevelt Road  
Wheaton, IL 60187  
(630) 933-9300



Doc#: 0521003127  
Eugene "Gene" Moore Fee: \$48.50  
Cook County Recorder of Deeds  
Date: 07/29/2005 04:10 PM Pg: 1 of 13

**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,  
AND FIXTURE FILING**

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**THIS MORTGAGE** ("Mortgage") is given as of July 28th, 2005 by Trafalgar Square Condominium, LLC, an Illinois limited liability company (the "Borrower") whose address is 145 S. Northwest Highway, Park Ridge, IL 60069 to The New Trafalgar Square Limited Partnership, an Illinois limited partnership ("Lender") whose address is 201 East Ogden Avenue, Suite 26, Hinsdale, Illinois 60521.

**RECITALS**

Borrower has executed and delivered to Lender a Note (the "Note") of even date in the principal amount of \$1,875,000 and bearing interest as set forth therein. Borrower and Lender have entered into a loan agreement (the "Loan Agreement") of even date. Borrower owns real property situated in Cook County, Illinois, as more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"). Lender acknowledges and agrees that this Mortgage is and will be subject and subordinate to the Mortgage which secures payment of the "Project Loan" (the "PL Mortgage") as such term is defined in the Loan Agreement.

**NOW THEREFORE**, in consideration of the premises and of the covenants contained in this Mortgage, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Borrower covenants and agrees as follows.

**TERMS AND CONDITIONS**

1. **OBLIGATIONS AND INDEBTEDNESS SECURED.** Borrower grants this Mortgage to secure:

(a) Borrower's obligations to repay, and perform all of Borrower's obligations under the Note; and

(b) The payment of the obligations and all indebtedness from time to time owing and the performance and observance of all of the terms, covenants, obligations, agreements and conditions to be performed or observed by Borrower under this Mortgage or under any other document evidencing, securing, governing (including but not limited to, the Loan Agreement) or otherwise executed in connection with the loan, payment of which is secured hereby (all the foregoing being collectively called the "Loan Documents").

All of the indebtedness, obligations and liabilities described in Paragraphs 1.(a) and 1.(b) above are hereinafter together referred to as the "Mortgage Debt." Notwithstanding the foregoing, the Mortgage Debt secured hereby shall not exceed an aggregate principal amount of \$5,625,000.

2. **SECURITY.** As security for payment of the Note and performance of Borrower's obligations in the other Loan Documents, Borrower hereby grants, bargains, sells, assigns, releases, aliens, transfers, warrants, demises, conveys, and mortgages to Lender, its successors and assigns, the Property which, together with the

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property and rights described in the next succeeding Paragraphs of this Paragraph 2, is referred to as the "Mortgaged Premises":

**TOGETHER** with all improvements, tenements, hereditaments, easements, privileges, fixtures and appurtenances thereunto belonging, contract rights, rights to reimbursement (from any source whatsoever), general intangibles, located thereon, used or useable in connection therewith or arising therefrom, all leases, rents, issues, profits, income, proceeds and security deposits, all or any part of the oil and gas located in, on or under oil and gas properties, and all or any of the rents and profits from oil and gas properties, and the income from the sale of oil and gas produced or to be produced from oil and gas properties, insurance proceeds, condemnation proceeds, royalties, mineral, oil and gas rights, air rights, water, water rights and water stock thereof and all replacements and additions thereto, for so long and during such times as Borrower may own, have an interest in or be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and including, but without limiting the generality of the foregoing, all power equipment, pipes, ducts, pumps, tanks, compressors, engines, motors, conduits, plumbing and cleaning equipment, electrical equipment, appliances, elevators, escalators, attached cabinets, shelving, window treatments, partitions, carpeting, communications equipment, rubbish removal equipment, fire extinguishing equipment, snow removal equipment, cleaning and other supplies and materials, leasehold improvements, all licenses, permits, certificates and franchises issued by state, federal or local municipal authorities relating to the construction, use and operation of the Mortgaged Premises, partitions and attached floor covering now or hereafter acquired or located therein or thereon, and all fixtures, apparatus, equipment or articles now or hereafter acquired or located therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing): all fixtures, apparatus, equipment and articles, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All additions to and replacements of the foregoing property and all categories of collateral listed above and all like or similar property of Borrower now existing or hereafter acquired and used or useable in connection with the aforesaid property and all categories of collateral listed above shall also be deemed to be subject to this Mortgage. All of the land, estate and property herein described, real, personal and mixed, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

**TOGETHER** with all right, title and interest of Borrower, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Property to the center line thereof.

**TOGETHER** with good Title to Borrower's interests in and to all contracts to Purchase condominium units and common elements within, or other portions of, the Mortgaged Premises and all amounts paid to Borrower whether as earnest money or otherwise under said contracts.

**TOGETHER** with any and all awards, payments or proceeds including interest thereon, and the right to receive the same, which may be made with respect to the Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, (c) any insured casualty, (d) real or personal property tax refunds or (e) any other injury to or decrease in the value of the Property, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award, payment or proceeds, and of the reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such award, payment or proceeds. Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm such assignment to Lender of any such award, payment or proceeds.

**TO HAVE AND TO HOLD** the Mortgaged Premises to Lender, its successors and assigns, forever, for the purposes and uses herein set forth.

Borrower represents, warrants and covenants that Borrower has good and indefeasible title to the entire Mortgaged Premises in fee simple and with good right and full power to sell, mortgage, grant and convey the same; that the Mortgaged Premises are free and clear of all mortgages, easements, restrictions, liens and encumbrances, other than (i) real estate taxes and assessments, both general and special, not yet due and payable and (ii) those matters listed on Exhibit B attached hereto and made a part hereof.

3. **PAYMENT OF INDEBTEDNESS.** Borrower shall promptly pay the Mortgage Debt when due.

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4. **APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, all payments received by Lender under this Mortgage shall be applied by Lender first in payment of amounts payable to preserve the Mortgaged Premises, including taxes and insurance premiums; second (in the order Lender chooses in its sole discretion) any interest, finance charges, late charges, collection costs and other charges owing under this Mortgage; third, to the principal balance due under the Note.

5. **CHARGES; LIENS.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Mortgaged Premises by making payment promptly, before any interest, collection fees or penalties shall accrue, directly to the payee thereof. Upon written request from Lender, Borrower shall promptly furnish to Lender receipts evidencing payments for the foregoing items. Borrower shall also promptly discharge any lien which has priority over or is subordinate to this Mortgage except those being contested in good faith with appropriate reserves on the Borrower's books and records.

Borrower shall not, without the prior written consent of Lender, create, place, suffer or permit to be created or placed, or acquiesce in the placing of or allow to remain, whether through any act or any failure to act, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance, charge or conditional sale or other title retention agreement, regardless of whether same are prior to or are expressly subordinate to the lien of this Mortgage, against the Mortgaged Premises other than liens for taxes, not yet due and payable and utility easements that do not adversely affect the Mortgaged Premises.

6. **INSURANCE.** Borrower shall maintain all insurance required by Loan Agreement which shall include property insurance on a Special Causes of Loss Form, written by an insurance company reasonably acceptable to Lender, insuring all improvements now existing or hereafter erected on the Property for the full replacement cost thereof. The policy shall provide insurance on a replacement cost basis, and shall name Lender as Mortgagee under a New York Mortgagee Clause in favor of and in form reasonably acceptable to Lender, and shall provide that the same may not be cancelled or altered without giving Lender 30 days prior written notice. Upon damage to the Property or any improvements thereon, the proceeds of insurance shall, at the option of Lender, be applied either to the Mortgage Debt or to the cost of repair or restoration.

In addition, Borrower shall maintain or shall cause the Tenant under the Lease to maintain Commercial General Liability insurance with a combined single limit of not less than \$5,000,000 which insurance shall name Lender as an additional insured. Said policy shall be endorsed to provide that the same may not be cancelled or altered without giving Lender 30 days prior written notice.

The insurance carrier(s) providing insurance hereunder shall be chosen by Borrower subject to approval by Lender, provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in form reasonably acceptable to Lender. Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums on such insurance policies. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made previously by Borrower. If under the terms of this Mortgage the Mortgaged Premises are acquired by Lender, all rights, claims and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Mortgaged Premises prior to the sale or acquisition by Lender shall pass to Lender to the extent of the Mortgage Debt, immediately prior to such sale or acquisition.

7. **WASTE.** The failure of Borrower to pay any taxes or assessments assessed against the Mortgaged Premises or any installment thereof, or any premiums payable with respect to any insurance policy covering the Mortgaged Premises, shall constitute waste. To the extent permitted under applicable law, Borrower further hereby consents to the appointment of a receiver under said statute or otherwise, should Lender elect to seek such relief thereunder.

8. **STAMP TAX.** If, by the laws of the United States of America, or of any state having jurisdiction over Borrower, any tax is due or becomes due in respect to the Mortgage Debt hereby secured, Borrower covenants and agrees to pay such tax in the manner required by any such law. Borrower further covenants to reimburse Lender for any sums which Lender may expend by reason of the imposition of any tax on the Mortgage Debt secured hereby.

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9. **EFFECT OF CHANGES IN LAWS REGARDING TAXATION.** In the event of the enactment after this date of any law of the State of Illinois deducting from the value of the land for the purposes of taxation of any lien thereon, or imposing upon the Lender payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Lender's interest in the Mortgaged Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holders thereof, then, and in any event, Borrower, upon demand by Lender, shall pay such taxes or assessments, or reimburse Lender therefor; the foregoing excludes any income or similar taxes payable by Lender on account of income or profit earned by Lender on account of the Mortgage Debt.

10. **PRESERVATION AND MAINTENANCE OF MORTGAGED PREMISES.** Borrower shall keep the Mortgaged Premises in good repair, reasonable wear and tear excepted, and shall not commit waste or permit material impairment or deterioration of the Mortgaged Premises. Borrower has advised Lender that Borrower intends to use the Mortgage Debt to pay a portion of the cost of constructing on the Mortgaged Premises a project consisting of 150 condominium units to be built on a 3.99 acre site (, the "Project"). Borrower agrees to promptly undertake construction of the Project and to construct the Project in a good and workmanlike manner in accordance with all applicable laws, ordinances and other legal requirements and in accordance with the approved plans and specifications therefor.

11. **PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially and adversely affects Lender's interest in the Mortgaged Premises, including but not limited to eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorneys' fees and entry upon the Mortgaged Premises to make repairs.

Any amounts disbursed by Lender pursuant to this Paragraph 11, and all interest related thereto, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts disbursed shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of such notice at the rate payable from time to time on outstanding principal under the Loan Documents, unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this Paragraph 11 shall require Lender to incur any expense or take action hereunder. Any action taken by Lender under this Paragraph 11 shall not cure any breach Borrower may have committed of any covenant or agreement under this Mortgage.

12. **INSPECTION.** Lender may, subject to the right of peaceable possession by the Tenant under the Lease, make or cause to be made reasonable entries upon and inspections of the Mortgaged Premises during normal business hours, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Mortgaged Premises.

13. **CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Mortgaged Premises, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Mortgaged Premises, the proceeds shall be applied to the indebtedness under the Loan Documents and this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking in excess of ten percent (10%) of the value of the Mortgaged Premises, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Mortgaged Premises or to the Mortgage Debt; otherwise the proceeds shall be applied at Borrower's election to either restoration or repair of the Mortgaged Premises or to payment of the Mortgage Indebtedness.

14. **BORROWER NOT RELEASED.** Neither (a) extension of the time for payment or modification of amortization of the indebtedness secured by this Mortgage, (b) release of any security for the obligations secured hereby, or (c) any other amendment to the Loan Documents or this Mortgage granted by Lender to Borrower or to any successor in interest of Borrower, or to any other entity obligated thereunder, shall operate to release, in any manner, the liability of Borrower or Borrower's successors, as the case may be. Lender shall not be required by

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reason of any demand made by Borrower's successor in interest to commence proceedings against any successor in interest of Borrower, to refuse to extend time for payment or otherwise to modify amortization of the sums secured by this Mortgage.

15. **FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.

16. **REMEDIES CUMULATIVE.** Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, expressed or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Lender, and the exercise and the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Lender in the exercise of such right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

17. **SUCCESSORS AND ASSIGNS BOUND; CAPTIONS.** The covenants and agreements contained in this Mortgage shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 20 hereof. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

18. **NOTICE.** All notices, requests and demands (the foregoing, in the case of Borrower, to include, but not be limited to, all statutory notices required to be given in the event of foreclosure by Lender) to be made hereunder to the parties hereto shall be in writing and deemed to have been given or made when received by the party for which such notice is intended at the address set forth below or such other address which such party may designate by notice to the other. Such notices, requests and demands may be by (i) registered or certified mail, return receipt requested or (ii) recognized overnight courier, (iii) electronic transmission, or (iv) personal delivery:

(a) In the case of the Borrower to:

TRAFALGAR SQUARE CONDOMINIUM, LLC  
C/O NERI DEVELOPMENT, INC.  
145 S. Northwest Highway  
Park Ridge, Illinois 60068  
Attention: Guido C. Neri  
Phone: (847) 825-9000  
Fax: (847) 825-9451  
Email:

with a copy to:

Robert J. DiSilvestro, Esq.  
DiSilvestro & Associates  
5231 North Harlem Avenue  
Chicago, Illinois 60656-1875  
Phone: (773) 774-2000  
Fax: (773) 774-4545  
Email: [rjd@DiSilvestrolaw.com](mailto:rjd@DiSilvestrolaw.com)

(b) In the case of Lender to:

THE NERI TRAFALGAR SQUARE LIMITED  
PARTNERSHIP  
C/O PC HOME INVESTORS, INC.  
201 East Ogden Avenue, Suite 26  
Hinsdale, Illinois 60521-3697  
Attention: H. Bruce McClaren  
Phone: (630) 325-5800  
Fax: (630) 325-7238  
Email: [bruce@pcrminc.com](mailto:bruce@pcrminc.com)

with a copy to:

Arthur E. Pape, Esq.  
The Pape Law Firm  
Building A-3, Suite 102  
100 West Roosevelt Road  
Wheaton, IL 60187  
Phone: (630) 933-9300  
Facsimile: (630) 933-9301  
Email: [apape@papelaw.com](mailto:apape@papelaw.com)

19. **GOVERNING LAW; SEVERABILITY.** This Mortgage will be construed under the laws of the State of Illinois and under applicable Federal law. In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflict shall not affect the provisions of this Mortgage which can be given effect without the conflicting provision. To this end, the provisions of this Mortgage are declared to be severable.

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20. **TRANSFER OF MORTGAGED PREMISES.** If Borrower transfers any or all of the Mortgaged Premises or any interest therein, all of the Mortgage Debt, at the sole option of Lender, shall be immediately due and payable.

21. **DEFAULT/ACCELERATION; REMEDIES.** Upon the occurrence of any default (not cured within any applicable cure period) under the Note, this Mortgage, or under any other document securing payment of, governing, or otherwise executed in connection with the Loan (the foregoing being collectively called the "Loan Documents"), then, in each and every such case, Lender, at its option, in addition to and not in lieu of or in substitution for all other rights and remedies provided by law, shall have the right to do any of the following: provided, however, that (i) should any default occur of the type described in the Loan Agreement Sections 8.01.3 or 8.01.4 (a "Performance Default") Borrower shall have 15 days after notice from Lender to cure the Performance Default and (ii) if more than 15 days are reasonably required to cure the Performance Default and Borrower commences such cure within said 15-day period and thereafter diligently prosecutes such cure then Lender shall not exercise Lender's remedies by reason of such Performance Default until the period (not to exceed 90 days) reasonably required to cure Performance Default has expired. No delay on the part of Lender in the exercise of any right or remedy available to it shall operate as a waiver thereof. Lender's remedies are cumulative and no single or partial exercise of any right or remedy available to Lender shall preclude other or further exercise thereof or the exercise of any other right or remedy.

(a) Declare the entire unpaid amount of the Mortgage Debt immediately due and payable, and if the same is not paid on demand at Lender's option, to (i) bring suit therefor; or (ii) demand payment of and if the same is not paid on demand, to bring suit for any delinquent payments; or (iii) take any and all steps and institute any and all other proceedings that Lender deems necessary to enforce the indebtedness and obligations secured hereunder and to protect the lien of this Mortgage.

(b) Immediately commence foreclosure proceedings against the Mortgaged Premises by judicial proceeding according to applicable law and to sell the Mortgaged Premises or to cause the same to be sold in accordance with such statutes in a single parcel or in several parcels at the option of Lender.

(c) Cause to be brought down an updated abstract or abstracts and tax histories of the Mortgaged Premises, procure title insurance, title reports, or, if necessary, procure new abstracts and tax histories.

(d) Demand and thereupon receive peaceful possession of the Mortgaged Premises and/or receive the rent, incoming profits therefrom, apply the same for the payment of taxes and assessments, upkeep of the Mortgaged Premises and the fulfillment of the covenants of Borrower; have a receiver appointed to manage and preserve the Mortgaged Premises with power and authority, pending foreclosure of this mortgage, to collect and receive such rent, income and profit, and apply the same in the manner hereinabove set forth.

22. **FORECLOSURE; EXPENSES OF LITIGATION.** In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurances with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Mortgaged Premises. All expenditures and expenses of the nature in this Paragraph 22 mentioned and such expenses and fees as may be incurred in the protection of the Mortgaged Premises and the maintenance of the lien of this Mortgage including the reasonable fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the other Loan Documents or the Mortgaged Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Borrower upon written notice to Borrower of such amounts, with interest thereon at the rate applicable under the Loan Documents, and shall be secured by said Mortgage.

(a) **Right to Perform Borrower's Covenants.** If Borrower has failed to keep or perform any covenant whatsoever contained in this Mortgage or the Other Loan Documents, Lender may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant and any payment made or expense incurred in

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the performance or attempted performance of any such covenant, together with any sum expended by Lender that is chargeable to Borrower or subject to reimbursement by Borrower under the Loan Documents, shall be and become a part of the Mortgage Debt, and Borrower promises, upon demand, to pay to Lender, at the place where the Note are payable, all sums so incurred, paid or expended by Lender, with interest from the date when paid, incurred or expended by Lender at the Default Rate (as defined in the Note).

(b) Right of Entry. Upon default, Lender may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Property, or any part thereof, and take exclusive possession of the Property and of all books, records, and accounts relating thereto and to exercise without interference from Borrower any and all rights which Borrower has with respect to the management, possession, operation, protection, or preservation of the Property, including without limitation the right to rent the same for the account of Borrower and to deduct from such Rents all costs, expenses, and liabilities of every character incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Property and to apply the remainder of such Rents on the Mortgage Debt in such manner as Lender may elect. All such costs, expenses, and liabilities incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Borrower and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Mortgage Debt. If necessary to obtain the possession provided for above, Lender may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Lender pursuant to this Paragraph 22. (b), Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing the Property unless such loss is caused by the gross negligence or willful misconduct of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. Borrower shall and does hereby agree to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss, or damage, which may or might be incurred by Lender under any such Lease or under or by reason hereof or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any such Lease. Should Lender incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate shall be secured hereby, and Borrower shall reimburse Lender therefor immediately upon demand. Nothing in this Paragraph 22. (b) shall impose any duty, obligation, or responsibility upon Lender for the control, care, management, leasing, or repair of the Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or by any other parties, or for any hazardous substances or environmental conditions on or under the Property, or for any dangerous or defective condition of the Property or for any negligence in the management, leasing, upkeep, repair, or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Borrower hereby assents to, ratifies, and confirms any and all actions of Lender with respect to the Property taken under this Section.

23. APPLICATION OF PROCEEDS OF FORECLOSURE SALE. The proceeds of any foreclosure sale of the Mortgaged Premises shall be applied first (in the order Lender chooses in its sole discretion) to any interest, finance charges, late charges, collection costs and other charges owing under the Loan Documents, or this Mortgage (including, but not limited to, taxes and insurance); second, to the principal balance due under the Loan Documents; and third, the excess, if any, to Borrower.

24. APPOINTMENT OF RECEIVER. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon application of Lender, appoint a receiver of the Mortgaged Premises to the extent permitted under applicable law and Borrower hereby consents and agrees to the appointment of a receiver of the Mortgaged Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the then value of the Mortgaged Premises or whether the same shall then be occupied as a homestead or not and Lender hereunder or any assignee of the Loan Documents or this Mortgage may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Premises during the pendency of such foreclosure suit and during the full statutory period of redemption, whether there be a redemption or not, as well as during any further times when Borrower, except for the intervention

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of such receiver, might be entitled to collect such rents, issues and profits, and all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Premises during the whole of said period. The court from time to time shall authorize the receiver to apply from net income in his hands in payment in whole or in part of: (a) the Mortgage Debt secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessments or other liens which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale or in accordance with applicable law; and (b) the deficiency in each case of a sale and deficiency.

25. **ASSIGNMENT OF LEASES AND RENTS.** Borrower hereby sells, assigns, transfers and sets over to Lender all of its right, title and interest in and to (i) all leases, tenancy, occupancy, rental, use, sale or license agreements, (collectively, "Leases"), existing as of the date hereof, if any, or hereafter executed covering all or any part of the Mortgaged Premises, together with any and all extensions and renewals of any of the Leases, and also together with any and all guarantees of the lessee's obligations under the Leases, and any and all extensions and renewals thereof, (ii) the rents, accounts, issues, income, profits, proceeds and security deposits, the oil and gas located in, on or under oil and gas properties, and all or any of the rents and profits from oil or gas properties, and the income from the sale of oil and gas produced or to be produced from oil and gas properties now owing or which shall hereafter become owing by virtue of all of the Leases and (iii) all extensions, amendments and renewals thereof and all moneys payable thereunder, to have and to hold to the Lender as security for the Mortgage Debt.

26. **NOTICE OF ABSOLUTE ASSIGNMENT OF RENTS:**

(a) Borrower acknowledges and agrees that the assignment of rents hereunder to Lender is and is intended to be an absolute present assignment of rents and that as such, upon the occurrence of and only during the continuance of a default and without any action by Lender, Borrower shall have no further right to collect or otherwise receive such rents and that such rents will be the absolute and sole property of Lender,

(b) any rents collected or received by Borrower subsequent to and only during the continuance of a default to be applied to reduce the Mortgage Debt and shall be held in trust by Borrower for the benefit of Lender and Borrower shall have no right thereto or interest therein and

(c) such rents, as the sole and absolute property of Lender, will not under any circumstances be available to Borrower or any trustee(s) of Borrower in any bankruptcy proceeding.

This assignment shall continue and remain in full force and effect during any foreclosure proceedings relating to this Mortgage and the period of redemption, if any, and until all sums secured by this Mortgage, together with interest thereon, shall have been paid in full. If the entire balance secured hereunder shall be bid by Lender at the foreclosure sale (by cash or otherwise) or a third party at such sale, said assignment shall nonetheless continue for the benefit of the successful bidder, with any rent collected by Lender, purchaser at the foreclosure sale or their successors (net of operating expenses actually paid) to be applied in reduction of the redemption price. In the event of any default and during the continuance thereof, Lender shall have the full right and power to collect the assigned rents, income, security deposits, issues, profits and proceeds by demand, suit or otherwise. All monies received by Lender pursuant to said assignment shall be applicable at the option of Lender in the manner hereinafter provided for the use of such funds if paid to a receiver appointed to manage the Mortgaged Premises or in the manner hereinafter provided for the application of proceeds from sale of the Mortgaged Premises in the event of a foreclosure. Borrower will not, without Lender's prior written consent, make any lease of the Mortgaged Premises except for actual occupancy by the lessee thereunder.

Borrower at Borrower's sole cost and expense shall (a) at all times promptly and faithfully abide by, discharge and perform all of the material covenants, conditions and agreements contained in all Leases of the Mortgaged Premises, on the part of the landlord thereunder to be kept and performed; (b) enforce or secure the performance of all of the material covenants, conditions and agreements of the Leases on the part of the lessees to be kept and performed; (c) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or of the lessees thereunder; (d) in furtherance of the rights granted to Lender herein, transfer and assign to Lender upon written request of Lender, any Lease or Leases of the Mortgaged Premises heretofore or hereafter entered into, and make, execute and deliver to Lender upon demand, any and all instruments required to effectuate said assignment; (e) furnish Lender, within ten (10) business days after a request by Lender to do so, a written statement containing the names of all lessees, terms of all Leases of the Mortgaged Premises, including the spaces occupied and the rentals payable



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thereunder; (f) exercise within ten (10) business days of any demand therefor by Lender any right to request from the lessees under any Lease of the Mortgaged Premises a certificate with respect to the status thereof; and

Nothing in this Mortgage or in any other documents relating to the indebtedness secured hereby shall be construed to obligate Lender, expressly or by implication, to perform any of the covenants of Borrower as landlord under any of the Leases assigned to Lender or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Borrower agrees to perform and pay.

In the event of the enforcement by Lender of the remedies provided for by law or by this Mortgage, the lessee under each Lease of the Mortgaged Premises shall attorn to any person succeeding in interest as landlord under such Lease without change in the terms or other provisions thereof and such landlord and the Lender shall not disturb the lessee's quiet enjoyment of the premises provided lessee is not in material default under the Lease; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one (1) month in advance. Each lessee and the Lender and Landlord, upon request shall execute and deliver an instrument or instruments confirming such attornment and non-disturbance.

27. **WAIVER OF STATUTORY RIGHTS.** Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, redemption, extension, or exemption (including, to the extent permitted by law, all homestead exemptions) laws or any so-called "Moratorium Law", 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. Borrower, for itself and all who may claim through or under it, waives any and all right to have the Mortgaged Premises and estates comprising the Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety.

28. **WAIVER OF CERTAIN DEFENSES.** No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the indebtedness hereby secured.

29. **USURY LIMITATION.** In no event shall any interest secured or payable hereunder accrue or be payable at a rate which shall exceed the highest interest rate enforceable under applicable law for the time such indebtedness secured or payable hereunder shall be outstanding and unpaid, it being the intention of the parties hereto not to contract for a greater rate of interest than shall be enforceable under applicable law. If, for any reason, interest or any payment determined to be in the nature of interest is collected which exceeds the highest enforceable rate allowed by applicable law, such act shall be construed as a mutual mistake of the parties and such excess sum shall automatically be credited against the principal balance of the indebtedness then outstanding under the Loan Documents.

30. **STATEMENT OF OBLIGATION.** Lender may collect the maximum fee permitted by law for furnishing any statement of obligation provided by applicable law.

31. **NO MERGER.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Mortgaged Premises at any time held by or for the benefit of Lender in any capacity, without the prior written consent of Lender.

32. **FINANCING STATEMENTS.** This Mortgage shall constitute a fixture filing under the Illinois Uniform Commercial Code.

33. **FILING AND RECORDING FEES.** Borrower will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes, duties, imposts, assessments and charges.

34. **ENVIRONMENTAL.**

(a) Borrower hereby represents, warrants and covenants that, the Mortgaged Premises have not been used by Borrower, and to the best of Borrower's knowledge, based on the environmental reports, copies of which have been delivered to Lender, by Borrower's predecessors in title, and, during the term of this Mortgage, will not be used for the temporary or permanent generation, storage, treatment, manufacture, handling, processing,

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disposal, release or discharge of any toxic, hazardous, industrial or chemical materials (unless such industrial or chemical materials are used in the ordinary course of business and stored and used in an area designated to avoid accidental spillage), substance, waste or pollutant.

(b) The provisions of this Paragraph 34 shall be in addition to any and all other obligations and liabilities Borrower may have to Lender hereunder, or that Borrower may have under the Loan Documents, in law and in equity and shall survive the repayment of all sums due under this Mortgage and the Loan Documents and the satisfaction of all of the other obligations of the Borrower hereunder and under the Loan Documents and regardless of what is bid or received at a mortgage foreclosure sale.

35. **BUSINESS LOANS.** Borrower certifies and agrees that the proceeds of the loans secured by this Mortgage will be held for the purposes specified in 815 ILCS 205/4(1)(c), and that the principal obligation secured hereby constitutes a "business loan" within the definition and purview of that Section.

36. **SATISFACTION OF MORTGAGE.** Upon full payment of all the Mortgage Debt, at the time and in the manner provided in the Note, or upon satisfaction of the conditions set forth in the Loan Documents for release of the Mortgaged Premises from this Mortgage, this conveyance or lien shall be null and void and, upon demand therefor following such payment or satisfaction of the conditions set forth in the Note for release of the Mortgaged Premises, as the case may be, a satisfaction of mortgage or reconveyance of the Mortgaged Premises shall promptly be provided by Mortgagee to Borrower.

37. **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.) (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 Lender any rights or remedies upon default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the debt or to the indebtedness secured by the judgment of foreclosure.

38. **BORROWER AND LENDER ACKNOWLEDGE THAT THE RIGHT TO A TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT THE RIGHT MAY BE WAIVED. BORROWER AND LENDER KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND WITHOUT COERCION, WAIVE ALL RIGHTS TO TRIAL BY JURY OF ALL DISPUTES BETWEEN BORROWER AND LENDER. NEITHER LENDER NOR BORROWER SHALL BE DEEMED TO HAVE GIVEN UP THIS WAIVER OF JURY TRIAL UNLESS THE PARTY CLAIMING THAT THIS WAIVER HAS BEEN RELINQUISHED HAS A WRITTEN INSTRUMENT SIGNED BY THE OTHER PARTY STATING THAT THIS WAIVER HAS BEEN GIVEN UP.**

Borrower has executed this instrument on the date set forth above.

BORROWER:  
TRAFALGAR SQUARE CONDOMINIUM, LLC  
an Illinois limited liability company

BY: TSCM, Inc.  
ITS: Manager

By:   
Guido C. Neri, President

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STATE OF ILLINOIS )  
COUNTY OF Cook )

BEFORE ME, a notary public, in and for said county and state, Guido C. Neri  
appeared who acknowledged that he, the President of the Manager of, an Illinois limited liability  
company, and being duly authorized, did execute the foregoing instrument for the purposes therein contained and that  
the same is his free act and duty both individually and in the capacity stated, and the free act and deed of said  
corporation and such limited liability company.

IN TESTIMONY WHEREOF, I have set my hand and official seal on July 28, 2005.

[Signature]  
NOTARY PUBLIC



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**UNOFFICIAL COPY****EXHIBIT A****LEGAL DESCRIPTION****PARCEL 1:**

**LOT 25 IN TRAFALGAR SQUARE, BEING A RESUBDIVISION OF PARTS OF SECTION 20, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 25, 2005 AS DOCUMENT NUMBER 0520644060, IN COOK COUNTY, ILLINOIS.**

**PARCEL 2:**

**NON-EXCLUSIVE PERPETUAL EASEMENT IN FAVOR OF PARCEL NOTED ABOVE AS CREATED BY DECLARATION OF EASEMENTS FOR TRAFALGAR SQUARE OF MORTON GROVE DATED JUNE 1, 2005 AND RECORDED JUNE 30, 2005 AS DOCUMENT NUMBER 0518102246 MADE BY AND BETWEEN NORTHERN TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 28, 1992 AND KNOWN AS TRUST NUMBER 9051, SEVEN M'S LIMITED PARTNERSHIP-II, AN ILLINOIS LIMITED PARTNERSHIP, LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 12, 1987 AND KNOWN AS TRUST NUMBER 6306 AND SEVEN M'S LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP, FOR ACCESS, INGRESS AND EGRESS, OVER AND ACROSS THE "AUSTIN AVENUE EASEMENT AREA", AS LEGALLY DESCRIBED ON EXHIBIT D HERETO.**

Commonly known as: 6245 N. Lincoln Ave., Morton Grove, IL 60053  
 Permanent Index No.: 10-20-121-021; 10-20-121-022; 10-20-121-023; 10-20-121-024;  
 10-20-121-026; 10-20-121-027; 10-20-121-029.

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## EXHIBIT B

### PERMITTED EXCEPTIONS

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