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Cook County Recorder

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FIRST AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT

THIS FIRST AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT (this "Agreement") is made and entered into as of the 27<sup>th</sup> day of October, 1999 between URBAN GROWTH PROPERTY LIMITED PARTNERSHIP, a Delaware limited partnership, whose principal place of business is 111 West Jackson Boulevard, Suite 2230, Chicago, Illinois 60604 ("Borrower") and LIFE INVESTORS INSURANCE COMPANY OF AMERICA, an Iowa life insurance company, having an office c/o AEGON USA Realty Advisors, Inc., 4333 Edgewood Road, N.E., Cedar Rapids, Linn County, Iowa 52499-5443 ("Lender").

RECITALS

A. Borrower executed and delivered to Lender a certain Promissory Note dated September 3, 1999 in the original principal amount of \$64,000,000 payable to the order of Lender (the "Note"). The loan from Lender to the Borrower is sometimes referred to herein as the "Loan".

B. The Borrower executed and delivered to Lender a certain Mortgage and Security Agreement dated as of September 3, 1999 (the "Mortgage") encumbering certain real and personal property described therein (the "Property") to secure the Note and the other obligations of the Borrower described in the Mortgage. The Mortgage is recorded as Document No. 99855684 in the Cook County, Chicago Clerk's Office.

C. The Borrower executed and delivered to Lender a certain Assignment of Leases and Rents dated as of September 3, 1999 ("Assignment of Rents"), recorded as Document number 99855685 in the Cook County, Chicago Clerk's Office.

D. The Borrower executed and delivered to Lender certain financing statements and other instruments and documents related to the Loan (which instruments and documents, together with the Note, the Mortgage and the Assignment of Rents, are collectively referred to herein as the "Loan Documents").

E. Borrower and Lender have agreed to modify the legal description of certain real property secured by the Mortgage described herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each party to this Agreement, the Borrower and Lender hereby agree as follows:

1. Modification of Legal Description. The legal description for 100 East Walton Street, set forth in Exhibit A of the Mortgage referred to herein, is hereby deleted and replaced with the following:

1st AMERICAN TITLE order # CC183528 388  
JK

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Lots 1, 1\*, 1A, 1B, 1C, 1D, 1D\*, 1E, 1E\*, 1F, 1F\*, 1G, 1H, 1J, 1K, 1K\*, 1L, 1M, 1N, 2\*, 2A, 2B, 2C, 2D, 2E, and 2F in the 100 East Walton Subdivision, being a Subdivision in part of Section 3, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois, according to the Plat thereof Recorded on the 13<sup>th</sup> day of October, 1999 as Document No. 99961488.

2. **Ratification and Reaffirmation of Loan Documents.** Except as expressly modified pursuant to the terms of the First Amendment to Assignment of Leases and Rents between Borrower and Lender dated as of the effective date of this Agreement, or this Agreement, the terms of the Note, the Mortgage, the Assignment of Rents and the other Loan Documents are hereby ratified and reaffirmed in every respect and shall remain in full force and effect. All of Borrower's obligations under the Assignment of Rents as modified by the First Amendment to Assignment of Leases and Rents and this Agreement shall be and are secured by the Mortgage as modified hereby. Borrower hereby acknowledges and agrees that the Mortgage as modified hereby constitutes a valid and enforceable lien on the fee simple interest of Borrower in the Property. Nothing herein contained shall be construed to impair the lien of the Mortgage, or the priority thereof, and nothing herein contained shall affect or impair any right, power or remedy granted to Lender under the Loan Documents or be considered a waiver of any such right, power or remedy, except as expressly provided herein.

3. **Release and Waiver.** Borrower hereby releases Lender and Lender's agents, employees, attorneys, officers, directors and affiliated entities, and their respective successors and assigns, from any and all liabilities and claims, arising from events, circumstances, conditions or facts occurring or existing on or prior to the date of this Agreement, whether known or unknown, liquidated or unliquidated, fixed or contingent, and from any damage or causes of action of any kind or nature arising out of or connected in any way with the Loan and the transaction to which it relates. Borrower has neither transferred nor assigned to any other person or entity any claim, judgment or right of action released herein. Borrower acknowledges that it has been represented or has had the opportunity to be represented by competent counsel of its choosing with respect to the execution of this Agreement and the amendments or restatements of the other Loan Documents and that it has consulted with its counsel with respect to this Paragraph. Borrower realizes that facts may later turn out to be other than as Borrower assumes them to be at this time, and Borrower understands that such later stated facts shall not alter the binding effect of this Section. Borrower further acknowledges that its execution of this Agreement is predicated upon its consultations with its counsel and not upon any representations of Lender or Lender's agents, employees, attorneys, officers, directors or affiliated entities.

4. **Payment of Lender's Costs and Expenses.** Upon the execution of this Agreement, Borrower shall pay all of Lender's attorneys' fees incurred for the preparation, negotiation and conclusion of the transactions contemplated by this Agreement, and Borrower shall pay all other costs and expenses incurred by Lender in connection with the transactions contemplated by this Agreement including all title examination and title insurance premium and endorsement fees, recording fees, and such other assurances of title and perfection of security interests as Lender may require.

5. **Binding Effect.** This Agreement is binding upon, and shall inure to the benefit of the parties hereto, and any permitted successors or assigns of such parties, and is not for the benefit of any third party.

6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

7. **Construction of Agreement.** This Agreement has been executed after the parties have had the opportunity to have the same reviewed and revised by legal counsel of their choice. None of the provisions of this Agreement shall be interpreted or construed against a party hereto by virtue of the fact that any such provision should have been drafted by legal counsel representing such party.

8. **Severability.** Should any provision of this Agreement conflict with applicable law, then such conflict shall not affect other provisions of this Agreement, which may be given effect without the conflicting provision, and in any such event, the provisions of this Agreement shall be declared to be severable and this Agreement shall be construed in its entirety, excluding such provisions conflicting with applicable law.


9. **Default under Provisions of this Agreement.** Borrower agrees that any default by Borrower under the terms of this Agreement shall be deemed a default under the Loan Documents, and upon any default Lender shall be entitled to all of the rights and remedies applicable upon a default as set forth in the Loan Documents or otherwise available at law.

10. **Defined Terms.** All terms not otherwise defined herein shall have the meaning set forth in the Loan Documents.

IN WITNESS WHEREOF, this Agreement has been executed by the Borrower and Lender effective as of the date first above written.

URBAN GROWTH PROPERTY  
LIMITED PARTNERSHIP, a Delaware limited  
partnership

By: URBAN GROWTH PROPERTY TRUST,  
a Maryland real estate investment trust  
as General Partner

By: 

Name: Michael J Kassarjian

Title: Vice President

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LIFE INVESTORS INSURANCE COMPANY OF AMERICA

By: Marsha Hicks

Name: Marsha Hicks

Title: Vice President

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STATE OF IL )  
 ) SS  
COUNTY OF COOK )

Before me, a Notary Public in and for the State and County aforesaid personally appeared Michael Kassajian known to me or proven by satisfactory evidence to be the person who executed the foregoing instrument as VP of Urban Growth Property Trust, general partner of Urban Growth Property Limited Partnership, as the act and deed of said partnership. Witness my hand and seal this 3rd day of ~~October~~, 1999.

November, 1999

My Commission Expires: 12/4/02



Ellen Mary Folan  
Notary Public

[Notary Seal]

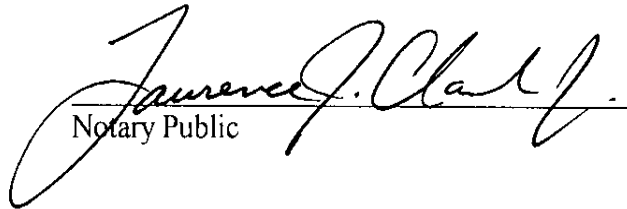
PREPARED BY JMM TO:  
MAYER, BROWN & PLATT  
190 SO. CASALLE ST.  
CHGO IL 60603  
ATTN: M. Koglan

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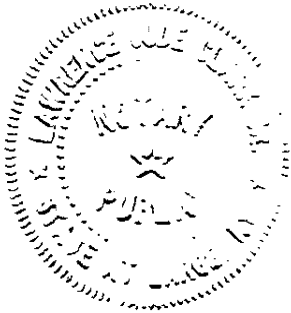
STATE OF KENTUCKY )  
 ) SS  
COUNTY OF JEFFERSON )

Before me, a Notary Public in and for the State and County aforesaid personally appeared Marsha Hicks, known to me or proven by satisfactory evidence to be the person who executed the foregoing instrument as Vice-President of Life Investors Insurance Company of America, as the act and deed of said corporation. Witness my hand and seal this 27<sup>th</sup> day of October, 1999.

My Commission Expires: 1/22/2003

  
Notary Public

[Notary Seal]



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Property of Cook County Clerk's Office