

Subordination, Non-Disturbance and Attornment Agreement



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THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the 21st day of September, 2000, between National City Bank of Michigan - Illinois ("Mortgagee"), which has an office at 2021 Spring Road, Suite 600, Oak Brook, Illinois 60523 and Zurich American Insurance Company, a New York corporation ("Tenant"), which has an office at 3910 Keswick Road, Baltimore, Maryland 21211.

RECITALS:

A. Tenant has entered into that certain lease agreement dated May 6, 2000, with Windy Point of Schaumburg, LLC ("Landlord"), as Lessor, which lease agreement covers certain premises (the "Premises") in that certain real property (the "Property") commonly known as Windy Point of Schaumburg and more particularly described on Exhibit A attached hereto and made a part hereof (herein, said lease agreement, together with any and all amendments, modifications, extensions, renewals, consolidations and replacements thereof now existing or hereafter entered into, are collectively the "Lease");

B. Mortgagee has agreed to make a loan to Landlord, to be secured by the lien of a mortgage from Landlord to the Mortgagee (herein, together with all amendments, modifications, extensions, renewals, consolidations and replacements thereof now existing or hereafter entered into, collectively, the "Mortgage") on the Property; and

C. Tenant has agreed to subordinate the Lease to the lien of the Mortgage and Mortgagee has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the Premises and of the sum of One Dollar (\$1.00) by each party in hand paid to the other, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. *Subordination.* The Lease (including all of the terms, covenants and provisions thereof) is and shall be subject and subordinate in all respects to the Mortgage, to the full extent of any and all amounts from time to time secured thereby and interest thereon, all with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. *Attornment.* Tenant, for itself and its successors and assigns, agrees that it will attorn to and recognize any purchaser of the Property at a foreclosure sale under the Mortgage or any transferee who acquires the Property by deed in lieu of foreclosure or otherwise, and the successors and assigns of such purchaser or transferee, as its landlord for the unexpired balance (and any extensions or renewals, if previously, at that time or thereafter exercised by Tenant) of the term of the Lease upon the same terms and conditions set forth in the Lease.

3. *Non-Disturbance.* Mortgagee, for itself and its successors and assigns, for any purchaser at a foreclosure sale under the Mortgage, for any transferee who acquires the Property by deed in lieu of foreclosure or otherwise, and for the successors and assigns of such purchaser and transferee (herein, Mortgagee and each such other party is called a "New Landlord"), hereby covenants and agrees with Tenant that if Mortgagee or other New Landlord shall commence any proceedings to foreclose the Mortgage for any reason whatsoever or shall succeed to the interest of Landlord by foreclosure, deed in lieu thereof or otherwise, provided Tenant is not then in default (after expiration of any applicable grace period) under the Lease, and so long as Tenant is not in default (after expiration of any applicable grace period) under the Lease, that: (a) Tenant shall not be named as a party defendant in any foreclosure action unless Tenant is deemed to be a necessary party; (b) subject to the next succeeding grammatical paragraph, the Lease shall, in accordance with its terms, remain in full force and effect as a direct indenture of lease between Mortgagee, or such other New Landlord (as the case may be), and Tenant, with the same force and effect as if originally entered into with Mortgagee, or such other New Landlord (as the case may be); and (c) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease shall not be diminished, interfered with or disturbed by such Mortgagee or such other New Landlord by such foreclosure under the Mortgage or by any such attempt to foreclose or to succeed to the interests of Landlord by foreclosure, deed in lieu thereof or otherwise.

If Mortgagee or any other New Landlord shall succeed to the interest of Landlord under the Lease, Tenant agrees as follows.

(a) Mortgagee or such other New Landlord shall not be bound by any rent or additional rent which Tenant shall have paid more than one (1) month in advance to any prior landlord (including Landlord);

(b) No New Landlord (including, without limitation, Mortgagee) shall be liable for: (i) any act or omission of any prior landlord (including Landlord) of which Tenant is aware, unless Tenant has notified New Landlord of such act or omission, or (ii) return of any security deposit made by Tenant to Landlord unless such New Landlord shall have actually received such security deposit from Landlord; and

(c) Tenant shall look solely to the Property for recovery of any judgment or damages from Mortgagee or such other New Landlord, and neither Mortgagee, such other New Landlord, any partner, officer, director, shareholder or agent of them nor any successor or assign of any of the foregoing shall have any personal liability, directly or indirectly, under the Lease or any amendment thereof made at any time or times, heretofore or hereafter, and Tenant hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation on liability applicable to Mortgagee or such other New Landlord provided by law or by any other contract, agreement or instrument.

4. *Mortgagee's Consent.* Except as hereinafter provided, whenever Landlord's consent, approval or waiver is required for any action by Tenant under the Lease, Landlord's consent, approval or waiver thereto shall not be effective unless such consent, approval or waiver is accompanied by Mortgagee's written consent. Mortgagee agrees not to unreasonably withhold

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or condition its consent, approval or waiver, and Mortgagee further agrees that if it fails to respond to Tenant's request for consent, approval or waiver within 20 days after delivery, Mortgagee will be deemed to have consented, approved or waived the requested action, as applicable. To the extent Landlord's consent, approval or waiver is not required for any action by Tenant under the Lease (including, without limitation, the exercise of any right or remedy by Tenant upon a default by Landlord, the assignment or sublease to an "Affiliate" of Tenant or the exercise by Tenant of any of the rights or options in Tenant's favor set forth in Sections 27 through 33, inclusive, of the Lease), Tenant need not obtain Mortgagee's consent, approval or waiver to such action. Notwithstanding the foregoing, (a) Tenant need not obtain Mortgagee's consent or approval for any sublease of less than ten percent of the rentable area of the Premises, in the aggregate; (b) Mortgagee shall be bound by the same standards governing Landlord in considering whether to consent or approve any sublease or assignment where Landlord's consent or approval is required; (c) Tenant need not obtain Mortgagee's consent or approval for any amendment to the Lease that changes the size of the Premises unless the effect of such change is the reduction of the rentable area of the Premises by more than ten percent, in the aggregate; (d) Tenant need not obtain Mortgagee's consent or approval for any extension or renewal of the lease term of the Lease; (e) Tenant need not obtain Mortgagee's consent or approval for any aggregate increase in the rentals due under the Lease; (f) Tenant need not obtain Mortgagee's consent for the extension of any date for the performance by Landlord of any obligation of Landlord due under the Lease; (g) Tenant need not obtain Mortgagee's consent for any change order or other instrument documenting an immaterial change in the scope of the improvements to be constructed by Landlord or Tenant pursuant to the Lease; and (h) in requesting Mortgagee's consent to any alteration or improvement where Mortgagee's consent is required, Tenant need not include in the notice to Mortgagee the documents described in Section 9.A of the Lease (even if such documents must be included in the notice to Landlord). Except as provided above in this Paragraph 4, Mortgagee's consent shall be required for any agreement or amendment terminating or surrendering the Lease. Tenant will allow Mortgagee's employees and representatives to inspect the Premises from time to time upon reasonable advance notice (but not less than 48 hours' notice, excluding emergencies, when such notice shall not be required).

5. *Landlord's Default*. Tenant hereby agrees to provide Mortgagee with written notice of any casualty damage to the Premises (if such a notice is also provided to Landlord) and any default under the Lease by the Landlord (if such a notice is also provided to Landlord). Notwithstanding the foregoing, Tenant agrees that Mortgagee shall have no obligation to remedy any such default.

6. *Estoppel Certificate*. Tenant agrees at any time and from time to time to execute, deliver and acknowledge to Landlord, to Mortgagee or to any third party designated by Landlord or by Mortgagee, an estoppel certificate in the form, and within the time periods, specified in Section 20 of the Lease.

7. *Further Subordination*. Tenant, for itself and its successors and assigns, agrees that, without the prior written consent of Mortgagee, Tenant will not (a) enter into any subordination agreement with any person other than Mortgagee; or (b) agree to attorn to or recognize any, purchaser of the Property at any foreclosure sale under any lien other than that of the Mortgage or any transferee who acquires the Property by deed in lieu of foreclosure or

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otherwise under any lien other than that of the Mortgage (provided, however, that this provision shall not be deemed to constitute Mortgagee's consent to the placing of any lien other than the Mortgage on the Property).

8. *Condemnation Awards.* Tenant hereby agrees that any interest of Tenant in any condemnation or eminent domain proceeds or awards made with respect to any interest in the Premises shall be subordinate to the interests of Mortgagee in such proceeds or awards. Subject to the terms of Section 13 of the Lease, Tenant will neither seek nor accept any condemnation or eminent domain proceeds or awards made with respect to any interest in the Premises until all amounts secured by the Mortgage have been paid in full. Tenant reserves the right to make a separate claim for trade fixtures and moving expenses if separately allocated in accordance with Section 13 of the Lease.

9. *Notice.* Each notice, demand or other communication in connection with this Agreement shall be in writing and shall be deemed to be given to and served upon the addressee thereof on the earlier of (a) actual delivery to such addressee at its address set out above, or (b) the third business day after the deposit thereof in the United States mails, registered or certified mail, return receipt requested, first-class postage prepaid, addressed to such addressee at its address set out above. By notice complying with this section, any party may from time to time designate a different address in the 48 contiguous continental United States as its address for the purpose of the receipt of notice hereunder.

10. *Binding Effect.* This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

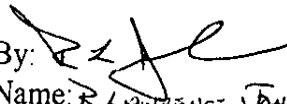
11. *Recording.* The parties hereto agree that this Agreement may be recorded in the public records of the county in which the Property is located.

12. *Counterparts.* This Agreement may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

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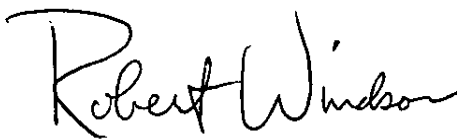
IN WITNESS WHEREOF, the parties hereto have executed and delivered this document as of the day and year first above written.

NATIONAL CITY BANK OF MICHIGAN - ILLINOIS

By: 
Name: R. LAWRENCE JOHNSON
Title: SENIOR VICE PRESIDENT

TENANT:

ZURICH AMERICAN INSURANCE COMPANY, a New York corporation

By: 

Name: Robert Windsor
Title: Vice President & Secretary

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

Jack Edelbrock
Mayer, Brown & Platt
190 South LaSalle Street
Chicago, Illinois 60603-3441



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City Council on Expiry Dec. 31, 1901

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Phase II Legal Description

PARCEL 1:

LOT 2 IN WINDY POINT OF SCHAUMBURG IN SECTION 12, TOWNSHIP 41 NORTH RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 99137488.

PARCEL 2:

LOT 4A IN WINDY POINT OF SCHAUMBURG UNIT NO. 1, BEING A RESUBDIVISION IN SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 1, 1999 AS DOCUMENT NUMBER 09026116, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENTS FOR INGRESS AND EGRESS, PARKING AND SIGNAGE FOR THE BENEFIT OF PARCEL 1 AFORESAID AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RECIPROCAL RIGHTS AND EASEMENTS FOR WINDY POINT OF SCHAUMBURG SUBDIVISION RECORDED FEBRUARY 9, 1999 AS DOCUMENT NUMBER 99137489.

07-12-400-036
Clerk's Office