

UNOFFICIAL COPY



00064063

00064063

2886/0008 46 006 Page 1 of 27

2000-01-26 16:37:39

Cook County Recorder

73.00

Property of Cook County Clerk's Office

RETURN RECORDED DOCUMENT TO BOX NUMBER 429

This instrument was submitted by:

Gail Jones Klopfer
Assistant Corporation Counsel
Village of Skokie
5127 Oakton Street
Skokie, IL 60077

COOK COUNTY
RECORDER
EUGENE "GENE" MOORE
SKOKIE OFFICE



DECLARATION OF RESTRICTION & GRANT OF EASESEMENTS

BETWEEN JETCO PROPERTIES, INC. & WXI/LWS CONCOURSE

OFFICE PLAZA REAL ESTATE LIMITED PARTNERSHIP

Exhibit B

Legal Description of the Property.

Lot 2: Lot 2 in the proposed ASPI's Subdivision, being a subdivision of part of the south half of the northwest quarter of Section 15, Township 41 North, Range 13, East of the Third Principal Meridian in Cook County, Illinois.

Commonly known as: 9449 Skokie Boulevard
Skokie, Illinois

PIN: 10-15-106-043-0000
10-15-107-039-0000
10-15-108-026-0000
10-15-109-005-0000

Lot 3: Lot 1 in Concourse Resubdivision, being a resubdivision of Lots 2 and 3 in Golf-Skokie Associates Subdivision in the north half of the northwest quarter of Section 15, Township 41 North, Range 13, East of the Third Principal Meridian, according to the Plat of said Concourse Resubdivision recorded as Document 98844157, in Cook County, Illinois.

Commonly known as: Same

PIN: 10-15-100-022-0000

::ODMA\PCDOCS\BURKE_CHI\103979\4

UNOFFICIAL COPY

PREPARED BY, RECORDING
REQUESTED BY AND
WHEN RECORDED RETURN TO:

00064063 Page 3 of 27

Michael J. Martin, Esq.
Burke, Warren,
MacKay & Serritella, P.C.
22nd Floor IBM Plaza
330 North Wabash Avenue
Chicago, Illinois 60611

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS

between

JETCO PROPERTIES, INC.

and

WXI/LWS CONCOURSE OFFICE PLAZA REAL ESTATE LIMITED PARTNERSHIP

DATE: May 28, 1999

STORE NO: 01-108

LOCATION: Northwest corner of Emerson Street and Gross Point Road
Skokie, Illinois

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS (this "Agreement") is made as of the 28th day of May, 1999, by and between JETCO PROPERTIES, INC., a Delaware corporation ("JETCO"), and WXI/LWS CONCOURSE OFFICE PLAZA REAL ESTATE LIMITED PARTNERSHIP, a Delaware limited partnership ("WXI/LWS"), JETCO and WXI/LWS are sometimes hereinafter collectively referred to as the "Parties" or individually, a "Party", or collectively as "Owners" or individually, an "Owner."

RECITALS

WHEREAS, this Agreement concerns that certain real property located at the northwest corner of Emerson Street and Gross Point Road, Village of Skokie, County of Cook, State of Illinois, as shown on the Site Plan attached hereto as Exhibit A (the "Site Plan"), which real property is hereinafter referred to as the "Property" and the legal description of which is contained on Exhibit B attached hereto; and

WHEREAS, JETCO is, or will be at the time of the recordation of this Agreement, the Owner of that portion of the Property designated as Lot 2 on the Site Plan and as more particularly described as such in Exhibit B ("Lot 2"); and

WHEREAS, WXI/LWS is, or will be at the time of the recordation of this Agreement, the Owner of that portion of the Property designated as Lot 3 on the Site Plan and as more particularly described as such in Exhibit B ("Lot 3", Lot 2 and Lot 3 are hereinafter referred to collectively as the "Parcels" or individually, a "Parcel"); and

WHEREAS, the Parties hereby establish easements, covenants, restrictions, liens and charges (collectively the "Restrictions") as are hereinafter set forth, subject to which all of the Property shall be held, sold and/or conveyed;

WHEREAS, each of the Restrictions (i) is imposed upon each Parcel in the Property as a mutual equitable servitude in favor of the other Parcel, (ii) shall create reciprocal rights and obligations between and among each of the Owners; and (iii) shall create a privity of contract and estate between and among the Owners and their heirs, successors and assigns;

WHEREAS, each of the Restrictions are intended to and shall run with the land, and each Parcel is affected and burdened by the covenants of its Owner for the benefit of the other Parcels; and

WHEREAS, the Owners intend that the successive owners of all or any portion of any Parcel are bound hereby for the benefit of the other Parcels in the Property and any portion thereof and the Owners thereof.

NOW, THEREFORE, in consideration of the foregoing, and the covenants and agreements set forth herein, the Parties agree as follows:

I. PRELIMINARY

1. Incorporation. The above Recitals are incorporated herein and made a part hereof.
2. Definitions.
 - a. Hazardous Materials. Hazardous Materials means any substance or material which is defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", "toxic substances" or "known to cause cancer or reproductive toxicity", or words of similar

import under any federal, state or local law, ordinance, regulation, order or decree now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous.

b. Interest Rate. Interest at the rate of interest equal to the then published "Prime Rate" of Citibank, N.A. (the Parties acknowledging that such rate may not be the lowest or "best" rate), or the highest rate permitted by law, whichever is lower.

c. JETCO Affiliate. Any entity which is owned or ultimately owned (i.e., through various subsidiaries) by American Stores Company, a Delaware corporation, or any successor thereto by merger, consolidation or acquisition of its assets.

d. Owner of JETCO Parcel. JETCO and its respective assigns, grantees and successors in interest having fee record title to all or any portion of Lot 2. In the event any JETCO Affiliate does not have record fee title to Lot 2 but is occupying all or a portion of such Lot 2 pursuant to a lease, then (i) all notices required to be given to, and all consents and approvals which are required to be obtained from, the Owner of Lot 2 must also be given or obtained from as the case may be, the JETCO Affiliate; (ii) such JETCO Affiliate may independently of the Owner of Lot 2 enforce the terms of this Agreement in the case of a default or violation hereunder and seek any remedy available hereunder arising from such default or violation (including, but not limited to, the right to cure such default and the remedies available to an Owner hereunder arising by virtue of such cure if such cure was made by such JETCO Affiliate); and (iii) this Agreement may not be amended or terminated, nor any provision hereunder for the benefit of the Owner of Lot 2 or an JETCO Affiliate waived, without the prior written consent of such JETCO Affiliate.

e. Owner. JETCO, WXI/LWS and any other person or entity having fee record title to any Parcel in the Property and their respective assigns, grantees, and successors in interest.

II. EASEMENTS

A. Roadway Easement. JETCO hereby grants to WXI/LWS as grantee, for the benefit of WXI/LWS, and for the use of the WXI/LWS and its tenants, employees, agents, customers and invitees of such tenants, and for the benefit of the Lot 3 and as a burden on the Lot 2, a non-exclusive easement appurtenant to Lot 3 for the purpose of ingress and egress by vehicular and pedestrian traffic upon, over, across and through the portion of the roadway, designated as "Roadway Easement" on the Site Plan (the "Roadway Easement"), located within Lot 2; provided such easement for vehicular traffic is limited to use by licensed, over-the-road vehicles.

B. Construction of Roadway Easement. JETCO shall cause the construction of the Roadway Easement to be performed substantially in accordance with those certain engineering drawings prepared by A. Epstein and Sons International and dated March 8, 1999, consisting of sheets C 1.0 through C 5.0, subject to revisions, additions or modifications thereto required by the Village of Skokie. Such construction shall be commenced and completed in connection with the construction of other improvements to be constructed on Lot 2. The construction of the Roadway Easement shall be completed in a workmanlike manner and in accordance with all requirements of each government body having jurisdiction over the work being performed. WXI/LWS shall pay all costs and expenses arising in connection with the construction of the Roadway Easement, including, without limitation, costs and expenses related to engineering and obtaining all required governmental approvals for the construction of the Roadway Easement. In the event that JETCO constructs the

Roadway Easement under contracts let in conjunction with other improvements to be constructed on Lot 2 and the costs and expenses for the construction of the Roadway Easement under such contracts are not segregated or readily ascertainable, JETCO shall determine costs and expenses arising in connection in the construction of the Roadway Easement on a unit pricing basis including, but not limited to, paving, curbing, lighting, landscaping, storm sewer / water detention, and fencing; provided, however, that in no event shall WXI/LWS be obligated to pay in excess of One Hundred Thousand and 00/100 Dollars (\$100,000.00)("Expense Cap") for costs and expenses arising in connection with the construction of the Roadway Easement, excluding costs and expenses attributable to the construction and installation of the traffic signal ("Traffic Signal") at the intersection of Kenton Avenue and Gross Point Road, and in the event that such costs and expenses (excluding costs and expenses attributable to the construction and installation of the Traffic Signal) exceed the Expense Cap, all such excess costs and expenses shall be paid by JETCO. It is anticipated that the Village of Skokie will invoice each Party directly for each Party's share, as determined by the Village of Skokie, of the costs and expenses attributable to the construction and installation of the Traffic Signal. In the event that WXI/LWS shall fail to pay all such costs and expenses not in excess of the Expense Cap, JETCO shall have the right (but not the obligation) to pay all or any portion of such costs and expenses not in excess of the Expense Cap and to bill WXI/LWS for the amount so paid and the costs incurred in so paying such amount. In the event that WXI/LWS does not reimburse JETCO within fifteen (15) days after the presentation of a bill for the amounts expended, JETCO, at its election, shall have a lien on Lot 3 to the extent of the amount paid by JETCO but not reimbursed by WXI/LWS, which amount shall bear interest at the Interest Rate from the due date therefor until date of payment. Such lien may be filed for record by JETCO as a

claim against WXI/LWS in the form required by law in the local governmental office wherein liens are filed. The lien so claimed shall attach from the date of recordation in the amount claimed by JETCO with interest thereon at the Interest Rate from the due date therefor until date of payment. The lien may be enforced and foreclosed in any manner allowed by law, including but not limited to, suits to foreclose a mortgage or mechanic's lien under the applicable laws of the state in which such property is located. Such lien, when so filed of record against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which is acquired or attached to such real property after the time of recording the claim of lien.

Anything in this Section II(B) to the contrary notwithstanding, if JETCO has not substantially completed (as reasonably determined by the Parties) the construction of the Roadway Easement on or before November 1, 1999 (as such date may be extended for any delays the cause for which are beyond the reasonable control of JETCO, including, without limitation, delays in obtaining all required governmental approvals for the construction of the Roadway Easement), then, at any time thereafter, WXI/LWS may provide written notice to JETCO stating that construction of the Roadway Easement has not been substantially completed within the time period required herein, and, in the event that JETCO fails to substantially complete (as reasonably determined by the Parties) the construction of the Roadway Easement within thirty (30) days following the receipt of such notice, WXI/LWS shall have the right to enter upon Lot 2 to complete the construction of the Roadway Easement in accordance with the requirements of this Section II(B). In such event, the Expense Cap shall not apply, and WXI/LWS shall pay all costs and expenses arising in connection with the construction of the Roadway Easement. If WXI/LWS enters upon Lot 2 to complete the construction of the Roadway Easement, WXI/LWS shall maintain insurance as required by this

Agreement, including, without limitation, Section III(C), and shall indemnify, defend and hold JETCO harmless for any loss, cost, damage, expense, liability or claim, including reasonable attorney fees, arising from or relating to the construction of the Roadway Easement, the acts of WXI/LWS's employees, agents, contractors, subcontractors, officers and vendors, or any claim from any third party arising from any of the foregoing, including any claim asserted by any tenant, occupant or other neighboring land owners; provided, however, that this provision shall not operate to indemnify, defend or hold JETCO harmless for any costs, expense, liability or claim (including reasonable attorney fees), to the extent caused by the intentional or negligent acts of JETCO or its agents or employees. In addition, WXI/LWS, its contractors and subcontractors shall not interfere with any other work being performed by or on behalf of JETCO on Lot 2, and shall not cause any conflict with any union or other contract to which JETCO or JETCO's general contractor may be a party. If WXI/LWS, its contractor or subcontractors cause such conflict, WXI/LWS shall forthwith remove them from the Property. JETCO shall have no responsibility or liability whatsoever with respect to any work or attendant materials left or installed upon Lot 2, and shall be reimbursed by WXI/LWS for any additional costs and expenses incurred by JETCO caused thereby, or resulting directly or indirectly from any delays caused to JETCO.

C. Maintenance and Repair. JETCO shall cause the Roadway Easement to be maintained at all times in good and clean condition and repair, which shall include, but not be limited to the following:

- (1) Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;

(2) Removing all papers, debris, filth and refuse, ice and snow, and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(3) Placing, keeping in repair, and replacing appropriate directional signs, markers and lines, where necessary; and

(5) Maintaining free and unobstructed access to and from Lot 2 and Lot 3 over the Roadway Easement.

The Parties agree that, on or before each January 1 that this Agreement is in effect, WXI/LWS shall reimburse JETCO for a portion of the costs and expenses incurred by JETCO in connection with the maintenance and repair of the Roadway Easement. The amount of such reimbursement due January 1, 2000 and each January 1 thereafter through and including January 1, 2004 shall be One Thousand and 00/100 Dollars (\$1,000.00). On January 1, 2005, and in five year increments thereafter, the amount of such reimbursement due hereunder shall be increased to an amount equal to the product obtained by multiplying the amount due on the immediately preceding January 1 by one hundred ten percent (110%). Amounts owing pursuant hereto, if not paid when due, shall accrue interest at the Interest Rate from the due date therefor until date of payment, and JETCO, at its election, shall have a lien on Lot 3 as provided in Section II(B) above.

III. INDEMNIFICATION AND INSURANCE

A. **Indemnification.** Each Owner ("Indemnifying Party") hereby indemnifies, holds harmless and agrees to defend the other Owner ("Indemnified Party(ies)") from and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of

life, or damage to property occurring on the Property and on the ways immediately adjoining the Property, caused by the active or passive negligence or willful misconduct of the Indemnifying Party, its agents, servants or employees; provided, however, that the Indemnifying Party does not indemnify the Indemnified Party against any injury, loss of life, or damage which is caused by the active or passive negligence or willful misconduct of the Indemnified Party, its agents, servants or employees. The Parties' obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or termination of this Agreement, as to claims arising or accruing prior to the expiration or termination of this Agreement.

B. Liability Insurance Coverage and Limits. Each Owner agrees to maintain, and/or cause to be maintained, at no cost to the other Owner, liability insurance insuring its interests against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Property and the ways immediately adjoining the Property, with a "Combined Single Limit" (covering personal injury liability, bodily injury liability and property damage liability) of not less than Five Million Dollars (\$5,000,000.00) for total claims for any one occurrence. The insurance limits in this Section shall be subject to increase from time to time by such amounts as the Owners may reasonably agree is necessary or desirable, as may be evidenced by the practice of similarly situated properties.

C. Contractor's Insurance. During the period of any construction on the Property by or at the request of any Owner, such Owner agrees to obtain or require its contractor(s) to obtain, and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverage:

- (1) Workers' compensation - statutory limits;

- (2) Employer's liability - One Hundred Thousand Dollars (\$100,000.00); and
- (3) Comprehensive General and Commercial Automobile Liability as follows:

- (i) "Combined Single Limit" (covering personal injury liability, bodily injury liability, and property damage liability) of not less than Five Million Dollars (\$5,000,000.00) for total claims for any one occurrence; (ii) Independent Contractor's Liability or Owner's Protective Liability with the same coverage as in (i) above; (iii) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work; (iv) "XCU" Hazard Endorsement, if applicable; (v) "Broad Form" Property Damage Endorsements; (vi) "Personal Injury" Endorsements; and (vii) "Blanket Contractual Liability" Endorsement.

D. Waiver of Certain Rights. With respect to any loss or damage that may occur to the Property (or any improvements thereon) or the respective property of the Owners therein, arising from any peril customarily insured under a fire and extended coverage insurance policy, regardless of the cause or origin, excluding willful acts but including negligence of the Owners, their agents, servants or employees, the Owner suffering such loss hereby releases the other Owner from all claims with respect to such loss; and the Owners each agree that their respective insurance companies shall have no right of subrogation against the other Owner on account of any such loss, and each Owner shall procure from its respective insurers under all policies of fire and extended coverage insurance a waiver of all rights of subrogation against the other Owner which the insurers might otherwise have under such policies.

E. Policy Requirements. Insurance coverage required by this Agreement may contain the following elements, so long as the required coverage is not diminished, the required limits are

not reduced, and the elements thereof are otherwise commercially reasonable: an Owner's insurance program may include blanket, layered, umbrella, conventional and/or manuscript forms of policies, as well as retention levels and loss reserves which are charged against earnings or otherwise funded, and commercially reasonable deductibles.

Upon request, each Owner shall cause certificates of insurance reasonably evidencing compliance with the requirements of this Article to be delivered to the other Owner. The insurance policies and certificates required by this Article shall require the insurance company to furnish all Owners thirty (30) days prior written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage.

F. Performance of Indemnity Agreements. All policies of liability insurance shall insure the performance by the Owner insured thereunder of the indemnity agreements contained herein. Each Owner shall promptly notify the other Owner of any asserted claim with respect to which such Owner is or may be indemnified against hereunder and shall deliver to such other Owner copies of process and pleadings.

IV. DEFAULT

A. Right to Cure. Should any Owner fail to timely perform any of its obligations hereunder and thereafter fail to perform such obligation within twenty (20) days after its receipt of any other Owner's written demand therefor, the Owner giving such notice shall, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of the defaulting Owner and the defaulting Owner shall reimburse the curing Owner for the cost of performing such obligation within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting Owner does not reimburse the

curing Owner within such ten (10) days, the curing Owner shall have (i) the right to exercise any and all rights which such curing Owner might have at law to collect the same, and (ii) a lien on the Lot owned by the defaulting Owner to the extent of the amount paid by the curing Owner but not reimbursed by the defaulting Owner as provided in Section II(B) above.

B. Injunctive Relief. In the event of any violation or threatened violation of any provision of this Agreement, any Owner (and any JETCO Affiliate) shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation.

C. Breach Shall Not Permit Termination. No breach of this Agreement shall terminate this Agreement or entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

D. No Limitation of Remedies. The various rights and remedies herein contained and reserved to the Owners, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein.

V. NOTICES

Any notice or demand given or served by one Owner to another shall not be deemed to have been duly given or served unless in writing and personally delivered or forwarded by postage prepaid certified or registered mail, return receipt requested, or by another commercially recognized means of delivery, addressed as follows:

WXI/LWS: c/o Lincoln Property Company
120 North LaSalle Street
Suite 1750
Chicago, Illinois 60602

JETCO: c/o AMERICAN STORES PROPERTIES, INC.
1955 W. North Avenue
Melrose Park, IL 60160
Attn: Property Management (Re: Store No. 01-108)
Fax No. (708) 786-3069

With a
copy to AMERICAN STORES PROPERTIES, INC.
P.O. Box 27447
Salt Lake City, Utah 84127-0447
Attn: Legal Department (Re: Store No. 01-108)
Fax No.: (801) 961-5595

street address: 299 South Main Street, Mail Drop 1800 North
Salt Lake City, Utah 84111
Attn: Legal Department (Re: Store No. 01-108)

And, with respect to notices pertaining to Section II(A), Section II(B), Section II(C) and Article VIII,
a copy to: Village of Skokie
5127 West Oakton
Skokie, Illinois 60077
Attn: Gail Jones Klopfer, Esq.

Communications may also be given by fax, provided the communication is concurrently given by one of the above methods. Notices and demands shall be deemed effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery. The person and place to which notices are to be given may be changed by the Owners by written notice to the other Owner.

VI. ATTORNEYS' FEES

In the event legal proceedings are brought or commenced to enforce any of the terms of this Agreement against any Owner or other person with an interest in the Property, the successful party

in such action shall be entitled to receive and shall receive from the defaulting Owner, a reasonable sum as attorneys' fees and costs, to be fixed by the court in the same action.

VII. DURATION

Except as otherwise provided herein, this Agreement shall remain in full force and effect for a term of sixty-five (65) years from the date hereof. Notwithstanding the foregoing, either Party shall have the right to extend the term of this Agreement for successive ten (10) year periods upon written notice to the other Owner served prior to the expiration of the then current term, and recordation in the Official Records of the County Recorder of Cook County, Illinois, of a notice extending the term of this Agreement.

VIII. MODIFICATION

All negotiations and oral agreements acceptable to the Owners have been incorporated herein. Except as otherwise provided herein, this Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing executed by the Owners and duly recorded. Notwithstanding the foregoing, the Parties acknowledge and agree that no portion of Section II(A), Section II(B), Section II(C) and Article VIII of this Agreement shall be modified, amended or otherwise canceled without the written consent of the Village of Skokie, which consent shall not be unreasonably withheld, conditioned or delayed.

IX. GENERAL PROVISIONS

A. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public purposes whatsoever, it being the intention of the Owners that this Agreement shall be strictly limited to and for the purposes herein expressed.

B. Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

C. Pronouns. When required by context, the singular shall include the plural, and the neuter gender shall include a person, corporation, firm, association, or other business arrangement.

D. Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

E. Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted to create, a joint venture, a partnership, or any other similar relationship between the Owners.

F. Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the law of the state of Illinois.

G. No Presumption. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Owner.

H. Inurement. This Agreement and the easements, covenants, benefits and obligations created hereby shall inure to the benefit and be binding upon each Owner and its successors and assigns; provided, if any Owner conveys all of its interest in any Parcel owned by it, such Owner shall thereupon be released and discharged from any and all further obligations under this Agreement as fee owner of the property conveyed by it if the buyer assumes in writing all of such obligations;

and provided further, no such sale shall release such Owner from any liabilities, actual or contingent, existing as of the time of such conveyance.

I. Estoppel Certificate. Each Owner agrees that upon request by the other Owner, it will issue to a prospective lender of such other Owner or to a prospective purchaser of such other Owner's interest, an estoppel certificate stating:

- (1) whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Agreement, and if there are known defaults, specifying the nature thereof;
- (2) whether this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and
- (3) that to the Owner's knowledge this Agreement as of that date is in full force and effect.

Such statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Owner furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Owner to disclose correct and/or relevant information.

J. Authority. Each of the individuals who have executed this Agreement represents and warrants that he or she is duly authorized to execute this Agreement on behalf of WXI/LWS or JETCO, as the case may be; that all corporate, partnership, trust or other action necessary for such

Party to execute and perform the terms of this Agreement have been duly taken by such Party; and that no other signature and/or authorization is necessary for such Party to enter into and perform the terms of this Agreement.

K. Exhibits. Exhibits A and B attached hereto are incorporated herein by this reference.

[Signature Page Follows]

Property of Cook County Clerk's Office

THE SUBMISSION OF THIS AGREEMENT FOR EXAMINATION OR ITS NEGOTIATION OR THE NEGOTIATION OF THE TRANSACTION DESCRIBED HEREIN DOES NOT CONSTITUTE AN OFFER, AND THE EXECUTION OF THIS AGREEMENT BY WXI/LWS DOES NOT CONSTITUTE A BINDING AGREEMENT UNTIL SUCH TIME AS THIS AGREEMENT HAS BEEN APPROVED BY THE GOVERNING REAL ESTATE COMMITTEE OF JETCO, EXECUTED BY AUTHORIZED OFFICERS OF JETCO AND DELIVERED TO WXI/LWS.

Executed as of the date first above written.

JETCO PROPERTIES, INC.,
a Delaware corporation

By: Cam D. Jones
Its: VICE President

ATTEST:

By: Julie A. Webb
Its: ~~ASSISTANT~~ Secretary

"JETCO"

WXI/LWS CONCOURSE OFFICE PLAZA REAL ESTATE
LIMITED PARTNERSHIP, a Delaware limited partnership

By: WXI/LWS CONCOURSE OFFICE PLAZA GEN-
PAR, L.L.C., a Delaware limited liability company,
its sole general partner

ATTEST:

By: Bill Gray
Title: Vice President

By: Bari S. Nichols
Title: BARIS. NICHOLS
VICE PRESIDENT

"WXI/LWS"

[Signatures must be acknowledged.]

UNOFFICIAL COPY

00064063 Page 22 of 27

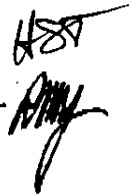
THE SUBMISSION OF THIS AGREEMENT FOR EXAMINATION OR ITS NEGOTIATION OR THE NEGOTIATION OF THE TRANSACTION DESCRIBED HEREIN DOES NOT CONSTITUTE AN OFFER, AND THE EXECUTION OF THIS AGREEMENT BY WXI/LWS DOES NOT CONSTITUTE A BINDING AGREEMENT UNTIL SUCH TIME AS THIS AGREEMENT HAS BEEN APPROVED BY THE GOVERNING REAL ESTATE COMMITTEE OF JETCO, EXECUTED BY AUTHORIZED OFFICERS OF JETCO AND DELIVERED TO WXI/LWS.

Executed as of the date first above written.

JETCO PROPERTIES, INC.,
a Delaware corporation

ATTEST:

By: _____
Its: VICE President



By: _____
Its: ASSISTANT Secretary

"JETCO"

WXI/LWS CONCOURSE OFFICE PLAZA REAL ESTATE
LIMITED PARTNERSHIP, a Delaware limited partnership

By: WXI/LWS CONCOURSE OFFICE PLAZA GEN-
PAR, L.L.C., a Delaware limited liability company,
its sole general partner

By: LINCOLN-WHITEHALL XI REALTY
(SOUTH), L.L.C., a Delaware limited liability
company, its sole member

ATTEST:

By _____
Title _____

By: _____
Title: _____

"WXI/LWS"

[Signatures must be acknowledged.]

JOINDER

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Village of Skokie joins in the execution of this Agreement for the sole and exclusive purpose of evidencing its acceptance of and agreement to the terms and provisions of Section II(A), Section II(B), Section II(C) and Article VIII of this Agreement.

The Parties acknowledge and agree that all of the statements, covenants and agreements, if any, made by the Village of Skokie contained in this Agreement are made and intended only for the purpose of establishing the existence of rights and remedies which may be exercised and enforced by the Village of Skokie, in its sole and absolute discretion, and that nothing contained in this Agreement shall impose any obligations on the Village of Skokie unless and until the Village of Skokie exercises and enforces any of its rights and remedies hereunder. Nothing contained in this Agreement shall confer any rights or benefits upon any third parties.

Village of Skokie

By: 

Title: 

[Signature must be acknowledged.]

UNOFFICIAL COPY

00064063 Page 24 of 27

State of Virginia)

County of Arlington)

On June 10, 1999 before me, Judith K. Shuland, personally appeared Zari S. Nichols, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Judith K. Shuland
Notary Public



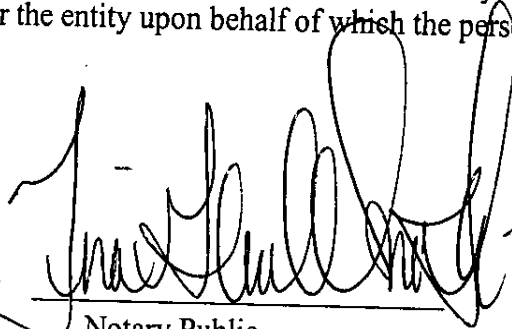
UNOFFICIAL COPY

00064063 Page 25 of 27

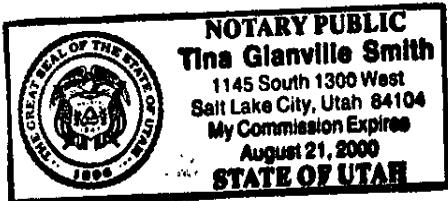
State of Utah)
County of Salt Lake)

On June 22, 1999, before me, Tina Glanville Smith, personally appeared Carv D Jones and Julie A. Welbo, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

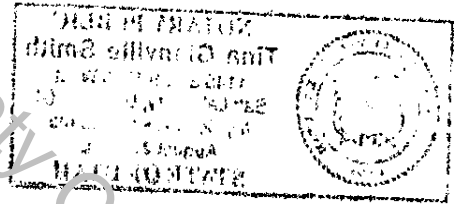


Notary Public



UNOFFICIAL COPY

Property of Cook County Clerk's Office



UNOFFICIAL COPY

00064063 Page 26 of 27

State of _____)

County of _____)

On _____, 19____, before me, BERNADETTE BOBER, personally appeared ALBERT RIGNI _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Bernadette Bober

Notary Public

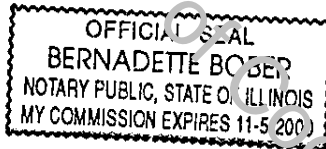


Exhibit A

Site Plan of the Property

