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2000-05-26 10:58:18  
Cook County Recorder 33.00

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Gary S. Smuckler, Esq.  
Morgan, Lewis & Bockius LLP  
1800 M Street, N.W.  
Washington, D.C. 20036



Space Above This Line for Recorder's Use

**SUBORDINATION, ATTORNMENT  
AND NONDISTURBANCE AGREEMENT**

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THIS SUBORDINATION, ATTORNMENT AND NONDISTURBANCE AGREEMENT ("Agreement") is entered into this 22nd day of May, 2000 by and between Teachers' Retirement System of the State of Illinois ("TRS") ("Tenant") and COLUMBIA NATIONAL REAL ESTATE FINANCE, INC. ("Lender").

WHEREAS, Tenant is Lessee under that certain Lease Agreement dated September 23, 1993, as amended by instrument dated January 15, 1997 (the "Lease"), between Tenant and McClurg Court Associates Limited Partnership and Fairbanks Hotel Associates Limited Partnership, d/b/a Fairbanks Hotel Associates as Lessor, such Lease covering a commercial portion, commonly known as the "Ohio Room", of certain real property known as McClurg Court Apartments (the "Leased Premises"), reference to which Lease is hereby made for a complete description of the Leased Premises and the obligations secured thereby; and

WHEREAS, Smith Property Holdings McClurg Court LLC ("Borrower"), the current owner of the Leased Premises and landlord under the Lease, has requested Lender to make to Borrower a mortgage loan to be secured by a Multifamily Deed of Trust, Assignment of Rents and Security Agreement or similar instrument from Borrower to Lender (the "Mortgage"), conveying the property of which the Leased Premises are a part; and

WHEREAS, Lender is willing to make the requested mortgage loan provided Tenant agrees to subordinate its interest in the Lease and the Leased Premises to the rights of Lender; and

WHEREAS, Tenant is willing to subordinate its interest in the Lease and the Leased Premises to Lender provided Lender agrees that so long as Tenant performs its obligations under the Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrances, and no steps or procedure taken under the encumbrances, liens or other instruments securing the indebtedness of Borrower to Lender shall affect Tenant's rights under the Lease agreement.

**BOX 333-CT1**

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NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and Lender hereby agree and covenant as follows:

- (1) The Lease and the estate conveyed thereby are and shall at all times continue to be subject and subordinate in all respects to the Mortgage and any other document or instrument evidencing or securing the indebtedness of Borrower to Lender and to all renewals, modifications and extensions thereof, subject to the terms and conditions set forth in this Agreement.
- (2) So long as Tenant is not in default (beyond any period given Tenant in the Lease to cure such default) in the payment of the rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession under the Lease and Tenant's rights and privileges thereunder, or under any extensions or renewals thereof which may be effected in accordance with any option contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy shall not be disturbed by Lender, during the term of the Lease or any extensions or renewals thereof.
- (3) If the interests of Borrower shall be acquired by Lender by reason of foreclosure of the Mortgage or other proceedings brought to enforce the rights of the holder of the Mortgage, by deed in lieu of foreclosure or by any other method, and Lender succeeds to the interest of Borrower under the Lease, the Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed except in accordance with the terms of the Lease, and Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option contained in the Lease, with the same force and effect as if Lender were the lessor under the Lease, and Tenant does hereby attorn to Lender as its lessor, said attornment to be effective and self-operative without the execution of any other instruments on the part of either party hereto immediately upon Lender's succeeding to the interest of Borrower under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any extensions or renewals, shall be and are the same as now set forth in the Lease, as it may be amended from time to time.
- (4) If Lender shall succeed to the interest of Borrower under the Lease, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease only during the period of time in which Lender is the fee owner of the property wherein the Leased Premises covered by the Lease is located, and during such period of time, Tenant shall have the same remedies against Lender for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Borrower if Lender had not succeeded to the interest of Borrower; provided further, however, that Lender shall not be liable, nor subject to offset defenses, for any act or omission of any prior landlord (including Borrower), nor bound by any rent paid in advance or amendment to the Lease not approved by Lender.

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(5) Tenant hereby certifies that Tenant and Borrower are not in default under any term or condition of the Lease, that the Lease has not been modified, except as set forth above, and that the Lease is in full force and effect.

(6) This Agreement may not be modified orally or in any other manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

(7) This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, successors and assigns, it being expressly understood that all references herein to Lender shall be deemed to include not only Lender but also its successors and assigns.

(8) This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this agreement effective as of the date first written above.

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SIGNATURE PAGE  
SUBORDINATION, ATTORNMENT  
AND NONDISTURBANCE AGREEMENT

TENANT:

Teachers' Retirement System of the State of Illinois

by Stone-Levy LLC, its agent

By 

Name: Arnold S. Levy

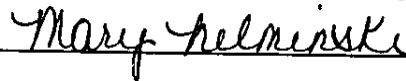
Title: President

STATE OF Illinois

CITY/ COUNTY OF Cook

BEFORE ME, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Arnold S. Levy, as President of Stone-Levy, LLC, a Limited Liability Company, and that, being duly authorized so to do, executed this instrument on behalf of said corporation, LLC.

WITNESS my hand and official seal this 22nd day of May, 2000



Notary Public

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SIGNATURE PAGE  
SUBORDINATION, ATTORNMENT  
AND NONDISTURBANCE AGREEMENT

LENDER:

COLUMBIA NATIONAL REAL ESTATE FINANCE, INC.

By R.C. Baldwin  
Name: Robert C. Baldwin  
Title: Managing Director

STATE OF District of  
CITY/COUNTY OF Columbia

BEFORE ME, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Robert C. Baldwin, as Managing Director of COLUMBIA NATIONAL REAL ESTATE FINANCE, INC., a corporation, and that, being duly authorized so to do, executed this instrument on behalf of said corporation.

WITNESS my hand and official seal this 24<sup>th</sup> day of May, 2000

*my commission Expires:  
4/14/02*

Tereso Gaydar  
Notary Public

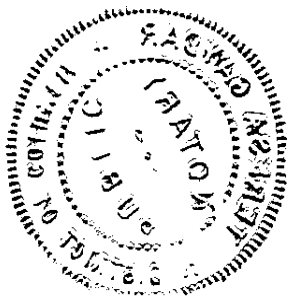


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Exhibit A

## PARCEL 1:

LOTS 10, 11, 14, 15, 18 AND 19 IN SUB-BLOCK 2 IN THE SUBDIVISION OF BLOCK 31 IN KINZIE'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE NORTH FRACTIONAL HALF OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ALSO THE SOUTH 1/2 OF THE VACATED EAST AND WEST ALLEY LYING NORTH OF AND ADJOINING LOTS 10, 11, 14, 15, 18 AND 19 IN SUB-BLOCK 2 IN THE SUBDIVISION OF BLOCK 31 OF KINZIE'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE NORTH FRACTIONAL HALF OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

## PARCEL 2:

ESTATE 2A: THE LEASEHOLD ESTATE, AS CREATED BY THE INSTRUMENT HEREBIN REFERRED TO AS THE LEASE, EXECUTED BY: WILLIAM B. BRISSET, AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 25, 1966 AND KNOWN AS TRUST NUMBER 43, AS LESSOR, AND LARALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 30, 1968 AND KNOWN AS TRUST NUMBER 38313, AS LESSEE, DATED JULY 15, 1969, A MEMORANDUM OF WHICH WAS RECORDED AUGUST 19, 1970 AS DOCUMENT 21142346, AS AMENDED BY THAT CERTAIN AMENDMENT TO LEASE DATED AS OF MARCH 17, 1970, SECOND AMENDMENT DATED FEBRUARY 28, 1974, WHICH LEASE DEVICES THE LAND DESCRIBED BELOW, FOR A TERM OF YEARS BEGINNING MAY 1, 1968 AND ENDING APRIL 10, 2067

ESTATE 2B: OWNERSHIP OF THE BUILDINGS AND IMPROVEMENTS LOCATED ON THE LAND DESCRIBED BELOW:

LOTS 9, 12, 13, 16, 17 AND 20 IN SUB-BLOCK 2 IN THE SUBDIVISION OF BLOCK 31 IN KINZIE'S ADDITION TO CHICAGO IN THE NORTH FRACTIONAL 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ALSO THE NORTH 1/2 OF THE VACATED EAST AND WEST ALLEY LYING NORTH OF AND ADJOINING LOTS 9, 12, 13, 16, 17 AND 20 IN SUB-BLOCK 2 IN THE SUBDIVISION OF BLOCK 31 OF KINZIE'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE NORTH FRACTIONAL HALF OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

## PARCEL 3:

ESTATE 3A: THE LEASEHOLD ESTATE, AS CREATED BY THE INSTRUMENT HEREBIN REFERRED TO AS THE LEASE, EXECUTED BY: ELEANOR WHEELER McCLURG, NOW KNOWN AS ELEANOR McCLURG HENNEVELL AND JAMES F. HENNEVELL, HER HUSBAND AND BARBARA GUDEN McCLURG, NOW KNOWN AS BARBARA McCLURG POTTER AND CHARLES S. POTTER, HER HUSBAND, AS LESSOR, AND LARALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 30, 1968 AND KNOWN AS TRUST NUMBER 38313, AS LESSEE, DATED JULY 15, 1969, AS AMENDED BY THAT CERTAIN AMENDMENT TO LEASE DATED AS OF MARCH 17, 1970 A MEMORANDUM OF WHICH WAS RECORDED APRIL 7, 1970 AS DOCUMENT 21139241, THIRD AMENDMENT RECORDED MARCH 12, 1974 AS DOCUMENT 21652001, WHICH LEASE DEVICES THE LAND

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DESCRIBED BELOW, FOR A TERM OF YEARS BEGINNING MAY 1, 1968 AND ENDING APRIL 30, 2067

ESTATE 38: OWNERSHIP OF THE BUILDINGS AND IMPROVEMENTS LOCATED ON THE LAND DESCRIBED BELOW:

LOTS 21, 23, 22 AND 24 (EXCEPT THE EAST 66 FEET OF LOTS 21 AND 24) IN CIRCUIT COURT PARTITION OF THE ODGEN ESTATE SUBDIVISION OF PART OF BLOCK 20, 31, 32 IN KINZIE'S ADDITION TO CHICAGO IN THE NORTH 1/2 OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AND

LOTS 22, 23, 24, 25 AND 26 IN SUBDIVISION BLOCK 2 IN THE SUBDIVISION OF BLOCK 31 IN KINZIE'S ADDITION TO CHICAGO IN THE NORTH 1/2 OF SECTION 18 AFORESAID, IN COOK COUNTY, ILLINOIS

AND

THE NORTH 1/2 OF THE VACATED EAST AND WEST ALLEY LYING SOUTH OF AND ADJOINING LOT 23 AND THE WEST 89 FEET OF LOT 31 IN CIRCUIT COURT PARTITION AFORESAID ALSO THE SOUTH 1/2 OF THE VACATED EAST AND WEST ALLEY LYING NORTH OF AND ADJOINING LOTS 22 TO 26 IN SUBDIVISION BLOCK 2 IN THE SUBDIVISION OF BLOCK 31 IN KINZIE'S ADDITION AFORESAID AND LYING NORTH OF AND ADJOINING LOT 23 AND THE WEST 89 FEET OF LOT 24 IN CIRCUIT COURT PARTITION AFORESAID. ALL IN COOK COUNTY, ILLINOIS

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