

# UNOFFICIAL COPY

This Instrument Prepared By *4 mail to:*

Charles J. Masters/  
Rosenthal and Schanfield  
55 East Monroe Street  
Chicago, Illinois 60603

89424917

COOK COUNTY RECORDER  
452800-1070A RECORDS  
2-981090/18-1  
1989 SEP 11 AM 3:45

*Box 333*

89424917

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

*\$29.00*

*7226270D3*

This Subordination, Non-Disturbance and Attornment Agreement ("Agreement") is made and entered into as of this 8th day of August, 1989 by and among NEAL, GERBER, EISENBERG & LURIE, (the "Tenant"), EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES (the "Lender"), and CHICAGO TITLE & TRUST COMPANY, solely as Trustee under Trust Number 10-69000 (the "Landlord").

### RECITAL

A. Landlord has entered into two leases (collectively the "Leases") with Tenant, each dated as of August 8, 1989. The Leases cover floors 21 through 23 inclusive and the 24th floor respectively ("Premises") in the real property commonly known as Two North LaSalle Building, Chicago, Illinois 60606 (the "Property") described in Exhibit A attached hereto.

B. Landlord executed a certain mortgage and assignments of rents and security agreements ("Mortgage") for the benefit of Lender, encumbering the Property for the purpose of securing a loan ("Loan") by Lender to Landlord, which Mortgages were recorded in the office of Recorder of Deeds, Cook County, Illinois as Document Number 24775049 and Document Numbers 24775050, 25068779 and 25206635.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant, Landlord and Lender hereby agree as follows:

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1. Subordination. The Leases and all of Tenant's right, title and interest in and to the Premises thereunder shall be, and hereby are, expressly made subject and subordinate to the Mortgage, and the lien thereof, and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewal, substitution, extension, modification or replacement thereof, including any increase therein or supplements thereto, so that at all times the Mortgage shall be and remain a lien on the Premises prior and superior to the Leases for all purposes, subject to the provisions set forth herein.

2. Attornment. In the event of a transfer of Landlord's interest in the Property as a result of a foreclosure of the Mortgage, by a deed in lieu of foreclosure or by any other exercise of Lender's rights ("Foreclosure") under the Mortgage for any reason whatsoever, Tenant shall attorn to and accept the person or entity, including Lender, who acquires Landlord's interest in the Premises ("Purchaser") as lessor under the Leases for the then remaining balance of the term thereof, subject to all of the terms and conditions of the Lease as modified by the provisions hereof. Upon the written request of a Purchaser, Tenant shall enter a new lease(s) ("New Lease") of the Premises with such Purchaser for the then remaining term of the Leases, upon the same terms and conditions as contained in the Leases, except as otherwise specifically provided in this Agreement.

3. Non-Disturbance. In the event of a Foreclosure of the Mortgage for any reason whatsoever, Lender or Purchaser

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shall accept the attornment of Tenant and shall recognize and accept Tenant as lessee of the Premises under the terms and conditions of the Leases or, if such Purchaser so elects, the New Lease. However, Tenant agrees that any conflict between provisions of the Leases and provisions of the Mortgage, (including without limitation provisions concerning disposition of insurance proceeds and condemnation or eminent domain awards) shall be resolved in favor of the Mortgage. The obligation of Lender or Purchaser to accept the attornment of Tenant and not to disturb Tenant's possession of the Premises under the Leases, as set forth above in this Paragraph 3, is expressly subject to the satisfaction of all of the following conditions at the time of Foreclosure:

(a) Tenant shall not then be in default in the performance of any of Tenant's obligations under the Leases beyond the period for cure thereof set forth in the Leases;

(b) Neither the rent nor any other charges or expenses payable by Tenant under the Leases shall have been reduced in any way (except as may be permitted by the Leases) without Lender's prior written consent;

(c) The Leases shall not have been otherwise modified or supplemented in any way (except for subletting or assignment pursuant to the terms of the Leases) without Lender's prior written consent;

(d) Tenant shall pay to Lender or Purchaser all rental and other payments payable to Landlord under the Leases from and after the earlier of the date of the Foreclosure or the

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date of Tenant's receipt of written notice from Lender or Purchaser in the amounts and at the times set forth in the Leases;

(e) Tenant shall duly confirm its attornment to such purchaser by an appropriate written instrument;

(f) Purchaser shall not be liable under the warranty of construction contained in the Leases;

(g) Tenant shall have performed all of its covenants contained herein; and

(h) All representations made herein by Tenant shall be true and correct as of the date of such attornment.

Neither Lender nor Purchaser shall (i) be liable for damages arising from any act or omission or defaults of Landlord under the Leases, or (ii) be subject to any claims, offsets or defenses which Tenant may have been entitled to assert against Landlord prior to the time Lender or any Purchaser succeeds to the position of Landlord under the Leases at Foreclosure, except for abatements of rent resulting from rent concessions or Tenant's inability to utilize the Premises pursuant to Section R-11 of the Rider to the Leases. Landlord and Lender hereby covenant and agree that any and all payments made by Tenant to Lender pursuant to Subparagraph 3(d) shall constitute legally effective payment and performance by Tenant of such obligation for all purposes under the Leases and Tenant is authorized and directed to make such rental and other payments as requested by such notice without any obligation or duty to inquire into either (i) the validity or accuracy of the notices from Lender or Purchaser or (ii) the application

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of any moneys paid to Lender or Purchaser; provided, however, Lender acknowledges that execution of the Agreement shall not constitute a waiver of any of Landlord's rights or protections under the Mortgage nor to expand any of Lender's rights thereunder.

4. Notice and Cure. Tenant shall promptly deliver to Lender, at the address set forth in Paragraph 12 below, a copy of any notice of default ("Notice") which Tenant serves upon Landlord resulting from Landlord's default in the performance of Landlord's obligations under the Leases, if such default would entitle Tenant to terminate the Leases, reduce the rent payable thereunder or credit or offset any amounts against future rents payable thereunder. Tenant agrees that, notwithstanding any provision of the Leases, no Notice shall be effective to cancel the Leases or to entitle Tenant to an abatement or offset against rents payable if Lender has received the Notice and (i) within thirty (30) days after Lender's receipt of the Notice, Lender has cured such default, or (ii) if such default cannot reasonably be cured within such thirty (30) days, Lender has commenced cure within such thirty (30) day period and such cure is thereafter diligently prosecuted. Tenant shall also give a copy of such Notice to any successor to Lender's interest under the Mortgage, provided that Lender or such successor notifies Tenant of the name and address of the party Tenant is to notify.

Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Leases. Unless Lender otherwise agrees in writing, Land-

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lord shall remain solely liable to perform Landlord's obligations under the Leases, both before and after Lender's exercise of any right or remedy under this Agreement. If any Purchaser becomes obligated to perform as lessor under the Leases, such Purchaser will be released from those obligations when such Purchaser assigns, sells or otherwise transfers its interest in the Premises or the Property.

5. Estoppel Certificate. Tenant and Landlord each respectively hereby represent to Lender as of the date hereof and agree as follows:

(a) Lease Effective. The Leases are in full force and effect and has not been modified, supplemented, amended, altered or superseded in any way, except as specifically described hereunder, and all conditions to the effectiveness or continuing effectiveness thereof required to be satisfied by the date hereof have been satisfied. No cancellation (other than a cancellation pursuant to the Leases), modification or amendment of the Leases (other than an assignment or subletting pursuant to the Leases) or waiver or consent by Landlord under the terms of the Leases shall be effective without the prior written consent of Lender.

(b) No Default. To the best of their knowledge, Landlord and Tenant have fulfilled each of their duties of an inducement nature and that as of the date hereof neither Landlord nor Tenant is in default in any respect under any of the provisions of the Leases.

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(c) No Prepaid or Reduced Rent. Tenant has not prepaid and will not prepay any rent under the Leases in excess of one (1) month's rent and has not and will not reduce rent under the Leases (except as may be permitted by the Leases), and any such prepayment and any such reduction (other than as may be permitted by the Leases) shall be ineffective without the prior written consent of Lender.

(d) No Offset. Tenant has no defenses or counter-claims to Lease obligations which have accrued under the Leases or against the enforcement of the Leases by Landlord and, except as expressly provided in the Leases, Tenant has no right of offset against rentals or other Lease obligations.

(e) Option, Refusal. The Leases contain no option or right of first refusal to purchase any property including the Premises or any interest therein.

(f) Assignment. Tenant and Landlord each have no notice of any other assignment, hypothecation or pledge of rents of the Lessor or any sublease of the Leases.

(g) Insurance. Tenant shall cause Lender to be named as an insured, as its interest may appear, by standard mortgage clause with cross-liability and severability of interest endorsements if applicable, under all policies of insurance required to be maintained by Tenant under the Leases, which policies of insurance will specifically provide for non-cancellation and no material modification without 30 days' prior written notice to Lender, and shall promptly provide Lender with a certificate evidencing same.

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(h) Authority. Landlord represents that the Leases were duly executed by Landlord and all consents, resolutions or other approvals required for Landlord to execute the Leases were obtained. Tenant represents that the Leases were duly executed by Tenant and all consents, resolutions or other approvals required for Tenant to execute the Leases were obtained.

(i) Further Subordination. Tenant and Landlord shall provide a document similar to this to any lender making a loan secured by property, including the Premises, the proceeds of which loan are used to repay the Loan in whole or part.

6. Successors and Assigns. The covenants and agreements herein contained shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.

8. Remedies Cumulative. All remedies of Lender against Landlord provided herein are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Landlord or others. If any party consists of multiple individuals or entities, each of same shall be jointly and severally liable for the obligations of such party hereunder.

9. Attorney Fees. The reasonable cost of attorneys' fees for any legal action or arbitration between or among the parties



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arising out of any dispute or litigation relating to enforcement of this Agreement shall be borne by the party(s) against whom a final decision is rendered.

10. Exhibits. All exhibits attached are incorporated herein by reference as though fully set forth in this Agreement.

11. Paragraph Headings. Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.

12. Notices. All notices to be given under this Agreement shall be in writing and shall be deemed served upon receipt by the addressee if served personally or, if mailed, upon the first to occur of receipt or the refusal of delivery as shown on a return receipt, after deposit in the United States Postal Service certified mail, postage prepaid, addressed to the address of Landlord, Tenant or Lender appearing below, or, if sent by telegram, when delivered by or refused upon attempted delivery by the telegraph office. Such addresses may be changed by notice given in the same manner. If any party consists of multiple individuals or entities, then notice to any one of same shall be deemed notice to such party. Notices shall be as follows:

Lender's Address:

Equitable Life Assurance Society of  
the United States  
401 North Michigan Avenue  
Chicago, Illinois 60611  
Loan No. B-18506

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Tenant's Address:

Neal, Gerber, Eisenberg & Lurie  
Two North LaSalle Street  
Chicago, Illinois 60602

Landlord's Address:

Equitec Properties Company  
200 West Adams  
Suite 1603  
Chicago, Illinois 60606

All notices to Lender shall include a reference to Loan Number B-18506.

13. Applicable Law and Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Illinois.

14. Exoneration. This Agreement is executed by Chicago Title and Trust Company, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as Trustee, and under the express direction of the beneficiaries of the said Trust. It is expressly understood and agreed that nothing herein shall be construed as creating any liability whatsoever against said Trustee personally, and in particular, without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, or to keep, preserve, or sequester any property of said Trust, and that all personal liability of said Trustee of every sort, if any is hereby expressly waived by said Tenant and by every person now or hereafter claiming any right or security hereunder; and that so far as the said trustee is concerned the owner of any indebtedness or liability accruing hereunder, shall

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look solely to the assets of said Trust and the proceeds thereof for the payment thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of the day and year first above written.

Lender

EQUITABLE LIFE ASSURANCE  
SOCIETY OF THE UNITED STATES

By: [Signature]

Its: Assistant Secretary

Tenant

NEAL, GERBER, EISENBERG  
& LURIE

By: [Signature]

Its: Authorized General Partner

By: [Signature]

Its: Authorized General Partner

Landlord

CHICAGO TITLE AND TRUST  
COMPANY

IN WITNESS WHEREOF Chicago Title and Trust Company, not personally but as Trustee as aforesaid, has caused these presents to be signed by its Assistant Vice-President, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

CHICAGO TITLE AND TRUST COMPANY, As Trustee as aforesaid and not personally,

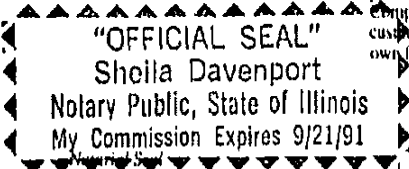
By: [Signature] ASSISTANT VICE-PRESIDENT

Attest: [Signature] ASSISTANT SECRETARY

Corporate Seal

STATE OF ILLINOIS,      SS.  
COUNTY OF COOK

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above named Assistant Vice President and Assistant Secretary of the CHICAGO TITLE AND TRUST COMPANY, Grantor, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that said Assistant Secretary, as custodian of the corporate seal of said Company, caused the corporate seal of said Company to be affixed to said instrument as said Assistant Secretary's own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth.



Given under my hand and Notarial Seal this SEP - 6 1989 day of

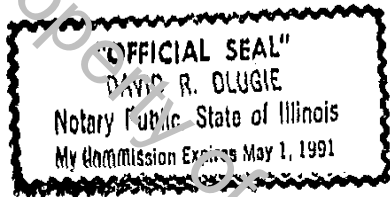
Sheila Davenport  
Notary Public

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STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 6th day of September, 1989 by Jarvis A. West, a Assistant Secretary of Equitable Life Assurance Society of the United States, a New York corporation, on behalf of the corporation.



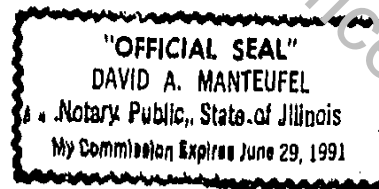
David R. Dlugie  
Notary Public

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 6th day of September, 1989 by Philip Kayner and Alvin Charles of Neal, Gerber, Eisenberg & Lurie, a general partnership, on behalf of Neal, Gerber, Eisenberg & Lurie.

David A. Manteufel

Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

**PARCEL 1:**

SUB LOTS 4 AND 5 (EXCEPT THE SOUTH 1 FOOT OF THE SUB LOT 5) OF LOT 8 IN BLOCK 55 IN THE ORIGINAL TOWN OF CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

THE SOUTH 1 FOOT OF SUB LOT 5 AND ALL OF SUB LOTS 6 AND 7 AND SO MUCH OF SUB LOT 8 AS LIES NORTH OF MADISON STREET; ALL IN BRADSTREETS SUBDIVISION OF LOT 8 IN BLOCK 55 IN THE ORIGINAL TOWN OF CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

LOT 2 IN THE ASSESSOR'S DIVISION OF LOT 7 IN BLOCK 55 IN THE ORIGINAL TOWN OF CHICAGO, EAST OF THE THIRD PRINCIPAL MERIDIAN, OTHERWISE DESCRIBED AS THE EAST 1/2 OF SAID LOT 7 (EXCEPT THE NORTH 50 FEET THEREOF), IN COOK COUNTY, ILLINOIS.

**PARCEL 4:**

SUB LOT 3 OF LOTS 5 AND 7 IN BLOCK 55 IN THE ORIGINAL TOWN OF CHICAGO, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 5:**

LOT 4 IN ASSESSOR'S DIVISION OF LOTS 5 AND 7 IN BLOCK 55 IN THE ORIGINAL TOWN OF CHICAGO, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 6:**

SUB LOTS 1, 2 AND 3 IN ALBERT G. BRADSTREETS SUBDIVISION OF LOT 8 IN BLOCK 55 IN THE ORIGINAL TOWN OF CHICAGO;

**ALSO**

THE NORTH 50 FEET OF THE EAST 1/2 OF LOT 7 IN BLOCK 55 (THE SAID NORTH 50 FEET OF THE EAST 1/2 OF LOT 7 BEING ALSO KNOWN AS SUB LOT 1 IN THE ASSESSOR'S DIVISION OF SAID LOT 7 OF BLOCK 55 IN THE ORIGINAL TOWN OF CHICAGO, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 17-09-458-015-0000

Common Address: 2 North LaSalle Street,  
Chicago, Illinois

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