

# UNOFFICIAL COPY SUBORDINATION AGREEMENT

89015505

THIS SUBORDINATION AGREEMENT is made as of the 10th day of January, 1989  
by and between Junior Lender (described below) and Senior Lender (described below).

## Identification of Parties and Instruments:

Junior Lender—Name and Address:

The Exchange National Bank of Chicago  
La Salle and Monroe Streets  
Chicago, Illinois 60603

Senior Lender—Name and Address:

Phoenix Mutual Life Insurance Company  
One American Row  
Hartford, Connecticut 06115

Borrower—Name and Address:

Independent Trust Corporation, not personally but as  
Trustee under Trust Agreement dated October 22, 1987  
and known as Trust No. 20019  
1301 W. 22nd Street, Suite 702  
Oak Brook, Illinois 60521

Junior Note:

Amount: \$1,000,000

Dated: January 10, 1989

Junior Mortgage—Date and Recording  
Information:

Dated: January 10, 1989

Recorded: January 11, 1989  
as Document No. 89015503

Senior Note:

Amount: \$14,500,000

Date: January 10, 1985

Senior Mortgage—Date and Recording  
Information:

Dated: January 10, 1989

Recorded: January 11, 1989  
as Document No. 89015501

THIS INSTRUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:

Michael G. Rogers, Esq.  
Greenberger, Krauss & Jacobs, Chtd.  
180 North La Salle Street, Suite 2700  
Chicago, Illinois 60601

COMMON ADDRESS OF PROPERTY:

205 W. Randolph Street  
Chicago, Illinois

Real Estate Tax Index Number:

17-09-443-006 Volume 510  
17-09-443-007

51186207/S1159973 (RJM) C/E

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## RECITALS

A. Borrower has executed and delivered the Junior Note made payable to the order of the Junior Lender. The Junior Note is secured by: (1) the Junior Mortgage, made by Borrower in favor of Junior Lender and encumbering the real estate legally described in Exhibit A attached hereto and by this reference made a part hereof (the "Property"); and (2) certain other documents and instruments, if any, listed in Exhibit B attached hereto and by this reference made a part hereof (the "Other Junior Documents"); (the Junior Note, Junior Mortgage and the Other Junior Documents are collectively referred to as the "Junior Loan Documents").

B. Borrower has executed and delivered the Senior Note made payable to the order of Senior Lender. The Senior Note is secured by: (1) the Senior Mortgage encumbering the Property; and (2) certain other documents and instruments, if any, listed in Exhibit C attached hereto and by this reference made a part hereof (the "Other Senior Documents"); (the Senior Note, Senior Mortgage and the Other Senior Documents are collectively referred to as the "Senior Loan Documents").

C. Without the execution and delivery of this Agreement, the execution, delivering and recording of the Junior Loan Documents constitutes a default under the Senior Loan Documents, and Senior Lender will consent to the execution, delivering and recording of the Junior Loan Documents only upon execution and delivery of this Agreement by Junior Lender.

NOW, THEREFORE, to induce Senior Lender to consent to the execution, delivering and recording of the Junior Loan Documents and for the payment of TEN DOLLARS and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Junior Lender and Senior Lender hereby agree that until the obligations evidenced and secured by the Senior Loan Documents have been paid and satisfied in full:

1. **Subordination of Lien of Junior Loan Documents.** The Junior Mortgage and Junior Loan Documents and the lien thereof are and shall continue to be expressly subject and subordinate to any and all advances, in whatever amount and whenever made, with interest thereon, and to any and all expenses, charges and fees incurred by the Senior Lender pursuant to the terms of the Senior Loan Documents, including but without limitation any and all such advances, interest, expenses, charges and fees which may increase the indebtedness secured by the Senior Loan Documents above the original principal amount thereof, provided the same is advanced or incurred under any of the express provisions of the Senior Loan Documents or any extension, consolidation, modification or supplement thereto. The modifications, consolidations, and supplements herein referred to shall not be deemed to include any modification, consolidation or supplement which expands the rights of the holder of the Senior Loan Documents to advance additional indebtedness beyond those rights provided in the Senior Loan Documents. See Page 2-A attached hereto and made a part hereof.

2. **Insurance Proceeds and Claims.** Junior Lender shall have no right to participate in the adjustment or settlement of insurance losses or condemnation claims, provided, however, Senior Lender shall endeavor (but shall not be obligated) to give notice to Junior Lender of the occurrence of any casualty and/or condemnation and the settlement thereof. The Junior Lender hereby agrees, upon the request and at the direction of Senior Lender, to endorse in favor of Senior Lender any and all checks payable to the Junior Lender which represent insurance and condemnation proceeds paid for claims relating to the Property in any way. The Junior Lender hereby appoints Senior Lender as its attorney-in-fact, in its place and stead, to settle all insurance and/or condemnation claims relating to the Property and to receive all payments and endorse all checks with regard thereto to the full extent of all amounts secured by the Senior Loan Documents. Furthermore, Senior Lender shall remit to Junior Lender any portion of the insurance proceeds and/or condemnation awards remaining after payment in full of the indebtedness secured by the Senior Loan Documents, as provided in the Senior Mortgage.

3. **Amendment and Modification.** Junior Lender shall not materially amend or materially modify or consent to the material amendment or material modification of any of the Junior Loan Documents without the prior written approval of Senior Lender. For the purposes of this Section 3 and other provisions of this Agreement, "material" shall mean any change in the rate of interest, amount of payments, term of or principal amount of the Junior Note, but Junior Lender may renew or extend the Junior Note on such terms as are acceptable to Junior Lender.

shall notify Junior Lender of

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(Paragraph 1 continued)

However in no event will the amount to which the Junior Loan or the Junior Loan Documents are subordinate exceed \$14,500,000 exclusive of the amount of any advances made by Senior Lender which Senior Lender deems necessary to protect Senior Lender's security; such protective advances shall include without limitation, advances for payment of mechanics' liens, real estate taxes and insurance premiums, advances to meet defaulted obligations of Borrower and advances for the capitalization of unpaid interest.

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**4. Waiver of Notices, Defenses, Etc.** The Junior Lender hereby waives: (i) notice of the non-payment of all or any of the amounts due under the Senior Loan Documents (the "Senior Payments"); and (ii) all diligence by Senior Lender in collection or protection of or realization upon the Senior Loan Documents, and (iii) any protest, defense, claim or objection to or in any way relating to any amendment, modification, renewal or extension of the terms and provisions of any of the Senior Loan Documents, including, without limitation, any increase in or extension of time for the Senior Payments evidenced or secured thereby.

**5. Commencement of Bankruptcy Proceedings.** The Junior Lender agrees not to commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to Borrower (or Borrower's beneficiary or any party comprising Borrower or its beneficiary), without first obtaining Senior Lender's prior written consent, provided, however, the foregoing shall not prohibit Junior Lender from participating in any proceeding commenced by Borrower, Senior Lender or other unrelated third party.

**6. Commencement of Collateral Proceedings.** The Junior Lender agrees not to commence, or join with any other creditor in commencing, any actions affecting any Management Agreement, Personal Property Lease, Conditional Sales Agreement, Executory Contract or Lease of the Property (collectively the "Leases"), or take any action to subordinate any such Lease to the Junior Loan Documents, or any of them, until such time as the Senior Payments have been paid and satisfied in full, provided however, Junior Lender may take action not otherwise precluded hereby to enforce its rights under any junior collateral assignment of leases or other Junior Loan Document, so long as such action does not have the effect of terminating any such Lease. See Page 3-A attached hereto and made a part hereof.

**7. Action Taken by Senior Lender.** Senior Lender may, from time to time, whether before or after any discontinuance of this Agreement, at its sole discretion and without notice to the Junior Lender, take any or all of the following actions: (i) retain or obtain a security interest in the Property or any other property to secure any of the obligations or liabilities created by or associated with the Senior Loan Documents; (ii) retain or obtain the primary or secondary obligation of any other obligor or obligors with respect to any of the obligations or liabilities created by or associated with the Senior Loan Documents; and (iii) extend or renew (for one or more periods) or release, compromise, alter or exchange any obligations of a "material" nature of any obligor with respect to any such property.

**8. Remedies Upon Default.** Junior Lender hereby covenants and agrees that upon the occurrence of a default under the Senior Loan Documents, Senior Lender may, at its sole discretion, without notice to Junior Lender: (i) with or without releasing and extinguishing the Senior Mortgage or the liens or security interests created by the Senior Loan Documents, cause title in and to all or any portion of the Property (or any interest of any kind therein, including, without limitation, a beneficial interest in a land trust) to be transferred, assigned or conveyed to a nominee for Senior Lender, subject to the lien of the Junior Loan Documents; and/or (ii) take possession of the Property and take all actions necessary to operate and maintain the Property, including, without limitation, the right to complete construction of the improvements located on the Property and the right to lease or sell all or any portion of the Property or any interest in the Property, without Senior Lender's having any obligation to commence a foreclosure proceeding or have a receiver appointed. The Junior Lender hereby waives the right to assert any and all claims and defenses against Senior Lender relating to or arising from any action taken by Lender pursuant to the preceding sentence, including, without limitation, the right to assert that the Senior Mortgage was merged into any deed or instrument of conveyance to a nominee for Senior Lender.

**9. Assignment by Senior Lender.** Senior Lender may, from time to time, whether before or after any discontinuance of this Agreement, at its discretion and without notice to the Junior Lender, assign or transfer any or all of the Senior Payments or any interest therein and/or any or all of the Senior Loan Documents, or any interest therein, and notwithstanding any such assignment or transfer or subsequent assignment or transfer thereof, the Senior Payments and Senior Loan Documents shall be and remain Senior Payments and Senior Loan Documents for the purposes of this Agreement.

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(Paragraph 6 continued)  
and Junior Lender may foreclose the Junior Mortgage provided no  
tenants are named as parties in such foreclosure action.

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10. **Notice to Senior Lender and Right to Cure.** The Junior Lender shall not, without giving Senior Lender fifteen (15) days' prior written notice in the event of a monetary default and thirty (30) days' prior written notice in the event of a non-monetary default and an opportunity to cure (within the aforementioned periods) the default of Borrower specified in such notice, take any action of any kind (including, without limitation, the initiation of any proceeding seeking or contemplating foreclosure or the appointment of a receiver or a trustee in bankruptcy) to enforce any right or remedy against Borrower. Provided, however, nothing contained in this Paragraph 10 shall be construed as obligating Senior Lender to cure a default of any nature. This provision shall not limit the obligation of Borrower for any default interest or charges or for late charges.

11. **Notice to Junior Lender and Right to Cure.** Senior Lender grants to Junior Lender the right to cure (within any applicable period of grace under the Senior Loan Documents) any default of Borrower under the Senior Loan Documents arising from a non-payment of any sum due under the Senior Loan Documents. Senior Lender shall endeavor (but not be obligated) to give Junior Lender notice of any default under the Senior Loan Documents or of any action of Senior Lender to enforce any right or remedy granted to it under the Senior Loan Documents.

12. **Notices.** Any notices which may be given hereunder shall be in writing and deemed given when personally delivered and received for, three days after being deposited in the United States certified or registered mail, postage prepaid, return receipt requested, or upon the next business day after timely and proper deposit, charges paid, with any overnight carrier with respect to next day service, properly addressed to the respective address set forth on the first page of this Agreement, with copies to the following parties:

If to Senior Lender:

Phoenix Mutual Life Insurance Company  
One American Row  
Hartford, Connecticut 06115  
Attn: Real Estate Division

and

Mid North Financial Services, Inc.  
205 West Wacker Drive  
Suite 202  
Chicago, Illinois 60606-1296

Attn: Joan von Lueder

If to Borrower:

Independent Trust Corporation  
1301 W. 22nd Street, Suite 702  
Oak Brook, Illinois 60521  
Attn: Land Trust Department

If to Junior Lender:

The Exchange National Bank of Chicago  
La Salle and Monroe Streets  
Chicago, Illinois 60603  
Attn: Michelle Uhler  
Assistant Vice President

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13. Waiver of Right of Subrogation. If the Junior Lender desires to advance funds respecting the Property for any purpose expressly permitted under the Junior Loan Documents, Junior Lender shall notify Senior Lender pursuant to Paragraph 12 hereof of the amount of any proposed advance and the purpose of which the advance is being made. If, within fifteen (15) days after receipt by the Senior Lender of the aforesaid notice, the Senior Lender notifies the Junior Lender that such proposed advance should not be made, then if the Junior Lender makes said advance, Junior Lender shall have no right or claim of subrogation respecting the funds so advanced thereby. If the Senior Lender (a) consents to the advance, or (b) fails to respond within said fifteen (15) day period, the Junior Lender shall be subrogated to the rights of Senior Lender with respect to the funds so advanced thereby.

14. Governing Law, Etc. This Agreement shall be construed in accordance with and governed by the laws of the state in which the Property is located. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. The captions herein are for purposes of convenience only.

15. Binding Effect. This Agreement shall be binding upon Junior Lender and Senior Lender and their respective heirs, legatees, legal representatives, successors and assigns, including any owner or holder of any of the Junior Loan Documents or Senior Loan Documents, and shall inure to the benefit of Senior Lender, its successors and assigns, including any subsequent owner or holder of any of the Senior Loan Documents.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by Junior Lender and Senior Lender as of the day and year first above written.

JUNIOR LENDER:

THE EXCHANGE NATIONAL BANK OF CHICAGO

ATTEST:

By:

*Handwritten signature of Dave Kaufmann*

Name: DAVE KAUFMANN

Title: COMMERCIAL BANKING OFFICER

By:

*Handwritten signature of Michelle J. Ulder*

Name: Michelle J. Ulder

Title: Asst Vice President

SENIOR LENDER:

PHENIX MUTUAL LIFE INSURANCE COMPANY, a

specialty chartered Connecticut corporation

ATTEST:

By:

*Handwritten signature of Lewis A. Singer*

Name: Lewis A. Singer

Title: Secretary

By:

*Handwritten signature of Norman W. Douglas*

Name: Norman W. Douglas

Title: Vice President

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## BORROWER'S ACKNOWLEDGMENT

The undersigned acknowledges receipt of a copy of the foregoing Subordination Agreement, and agrees to be bound by the terms and provisions thereof, to mark its books and records so as to clearly indicate that the Junior Loan Documents are subordinated to the Senior Loan Documents in accordance with the terms of such Subordination Agreement, to make no payments or distributions contrary to the terms and provisions thereof, and to do every other act and thing necessary or appropriate to carry out such terms and provisions. In the event of any violation of any of the terms and provisions of the foregoing Subordination Agreement by reason of any act or omission within the direct or indirect control of Borrower, then, at the election of Senior Lender, any and all obligations of the undersigned to Senior Lender shall forthwith become due and payable and any and all agreements of Senior Lender to make loans to the undersigned shall forthwith terminate.

Dated: January 19 89

BORROWER: INDEPENDENT TRUST CORPORATION,  
not personally but solely as Trustee as aforesaid  
UIT # 20019

Exoneration provision restricting any liability of Independent Trust Corporation, attached hereto, is hereby expressly made a part hereof.

ATTEST:

By: [Signature]  
Name: ROBERT J. MCCORMICK  
Title: Trust Officer

By: [Signature]  
Name: SHERYL JAWORSKY, Trust Officer  
Title: \_\_\_\_\_

All representations and undertakings of INDEPENDENT TRUST CORPORATION as trustee as aforesaid and not individually are those of its beneficiaries only and no liability is assumed by or shall be asserted against the INDEPENDENT TRUST CORPORATION personally as a result of the signing of this instrument.

This Agreement is signed by INDEPENDENT TRUST CORPORATION not individually but solely as Trustee under a certain Trust Agreement known as Trust No. 20019. Said Trust Agreement is hereby made a part hereof and any claims against said trustee or any person interested beneficially or otherwise in said property which may result herefrom, shall be payable only out of any trust property which may be held thereunder. Any and all personal liability of INDEPENDENT TRUST CORPORATION, or any person interested beneficially or otherwise in said property is hereby expressly waived by the parties hereto and their respective successors and assigns.

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STATE OF ILLINOIS  
COUNTY OF

ss.

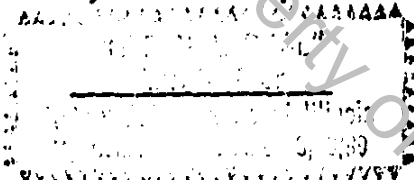
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I, Ann Riffner, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Michelle J. Miller and Paul Kaufman, who is/are personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instruments as Asst Vice Pres and Commodore Board of Officers of THE EXCHANGE NATIONAL BANK OF CHICAGO, appeared before me this day in person and acknowledged that he/she/they signed and delivered the said instrument as his/her/their own, free and voluntary act and as the free and voluntary act of THE EXCHANGE NATIONAL BANK OF CHICAGO for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 9th day of January, 1989.

Ann Riffner  
Notary Public

My Commission Expires:



CONNECTICUT  
STATE OF ILLINOIS  
COUNTY OF Hartford

ss.

I, Josephine A. Melusky, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Norman W. Douglass and Lewis A. Smith, who is/are personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instruments as Vice President and Secretary of PHOENIX MUTUAL LIFE INSURANCE COMPANY, appeared before me this day in person and acknowledged that he/she/they signed and delivered the said instrument as his/her/their own, free and voluntary act and as the free and voluntary act of PHOENIX MUTUAL LIFE INSURANCE COMPANY for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of January, 1989.

Josephine A. Melusky  
Notary Public

My Commission Expires:

March 31, 1990

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STATE OF Illinois }  
COUNTY OF Cook } ss.

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I, \_\_\_\_\_, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Cheryl Jaworsky, Trust Officer/, Vice President of Independent Trust Corporation an Illinois corporation, and Robert J. McCormick, Trust Officer

~~Assistant Secretary~~ of said \_\_\_\_\_ corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ Vice President <sup>Trust Officer</sup> and ~~Assistant Secretary~~ <sup>Trust Officer</sup>, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said \_\_\_\_\_ corporation

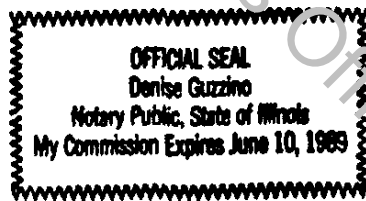
~~Trust Officer~~ \_\_\_\_\_, as Trustee, for the uses and purposes therein set forth; and the said ~~Assistant Secretary~~ <sup>Trust Officer</sup> did also then and there acknowledge that he, as custodian for the corporate seal of said \_\_\_\_\_ corporation, did affix the said instrument as his own free and voluntary act, and as the free and voluntary act of said \_\_\_\_\_ corporation

\_\_\_\_\_ as Trustee, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 10th day of January, 1989.

Denise Guzzino  
Notary Public

My Commission Expires:



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EXHIBIT A

LEGAL DESCRIPTION

LOT 1 IN BLOCK 41 IN ORIGINAL TOWN OF CHICAGO, IN SECTION 9,  
TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL  
MERIDIAN, IN COOK COUNTY, ILLINOIS.

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EXHIBIT B, 1013333

## OTHER JUNIOR DOCUMENTS

1. Assignment of Rents and Leases dated JANUARY 10, 1989 from Borrower, as assignor, to Junior Lender, as assignee, recorded with the Cook County, Illinois Recorder of Deeds (the "Recorder") on JANUARY 11, 1989, as Document No. 89015504
2. ~~Security Interest of Junior Lender pursuant to financing statement from Borrower, as debtor, recorded with the Recorder on JANUARY 11, 1989 as Document No. \_\_\_\_\_~~
3. ~~Security Interest of Junior Lender pursuant to financing statement from ITS Realty Co., beneficiary of Borrower, as debtor, recorded with the Recorder on JANUARY 11, 1989 as Document No. \_\_\_\_\_~~

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EXHIBIT C

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## OTHER SENIOR DOCUMENTS

1. Assignment of Rents and Leases dated JANUARY 10, 1989 from Borrower, as assignor, to Senior Lender, as assignee, recorded with the Cook County, Illinois Recorder of Deeds (the "Recorder") on JANUARY 11, 1989, as Document No. 09 of 000
2. Security Interest of Senior Lender pursuant to financing statement from Borrower, as debtor, recorded with the Recorder on JANUARY 11, 1989, as Document No. \_\_\_\_\_
3. ~~Security Interest of Senior Lender pursuant to financing statement from IIC Realty Acquisition, Ltd., beneficiary of Borrower, as debtor, recorded with the Recorder on \_\_\_\_\_, 19\_\_\_\_, as Document No. \_\_\_\_\_~~

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COOK COUNTY RECORDER

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23<sup>00</sup> Mail