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## 90172332 NON-DISTURBANCE AND ATTORNMENT AGREEMENT (Ground Lease)

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of the 13th day of April, 1990 between the CITY OF EVANSTON (hereinafter called "Mortgagee"), which has an office at 2100 Ridge Avenue, Evanston, Illinois 60204 (Attn: Joel Asprooth), and CHS 1033 UNIVERSITY ASSOCIATES LIMITED PARTNERSHIP, a limited partnership organized under the laws of the State of Illinois (hereinafter called "Tenant"), which has an office at 676 St. Clair Street, Suite 2200, Chicago, Illinois 60611 (Attn: Robert Winter).

TWR 255882

### WITNESSETH:

WHEREAS, Mortgagee is the present owner and holder of (i) the purchase money mortgage described in Exhibit A attached hereto and made a part hereof (hereinafter, as the same may be amended, supplemented, modified or restated from time to time, referred to as the "Mortgage") encumbering certain premises legally described in the Mortgage which includes that certain real property described in Exhibit B attached hereto and made a part hereof (hereinafter referred to as the "Premises") and of (ii) the note described in Exhibit A secured thereby;

WHEREAS, Tenant is the holder of a leasehold estate in the Premises under and pursuant to the provisions of a certain ground lease by and between Research Park, Inc., an Illinois corporation, as Landlord thereunder ("Landlord") and Tenant, as tenant thereunder, which ground lease is more particularly described in Exhibit C attached hereto and made a part hereof (hereinafter, together with any and all amendments, modifications, extensions, renewals, consolidations and replacements thereof now existing or hereafter entered into, referred to as the "Ground Lease"); and

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WHEREAS, the parties hereto desire to set forth their agreements as hereinafter set forth.

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

1. The Ground Lease (including all of the terms, covenants and provisions thereof) is and shall remain subject and subordinate to the Mortgage to the full extent of any and all amounts from time to time secured thereby and interest thereon

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and to any extensions, modifications, amendments or supplements thereto, all with the same force and effect as if the Mortgage (including all extensions, modifications, amendments or supplements thereto) had been executed, delivered and recorded prior to the execution and delivery of the Ground Lease.

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

3. Mortgagee, for itself and its successors and assigns, and for any purchaser at a foreclosure sale under the Mortgage, any transferee who acquires the Premises by deed in lieu of foreclosure or otherwise, and the successors and assigns of such purchaser and transferee (herein, Mortgagee and each such other party is called a "New Landlord"), covenants and agrees with Tenant that in the event New Landlord shall commence any proceedings to foreclose the Mortgage for any reason whatsoever or shall succeed to the interest of Landlord by foreclosure, deed in lieu thereof or otherwise, provided there exists no Event of Default by Tenant under the Ground Lease, and so long as there exists no Event of Default by Tenant under the Ground Lease, that: (a) the Ground Lease shall, in accordance with its terms, remain in full force and effect as a direct indenture of lease between Mortgagee, or such other New Landlord (as the case may be), and Tenant, with the same force and effect as if originally entered into with Mortgagee, or such other New Landlord (as the case may be); and (b) Tenant's possession of the Premises and Tenant's rights and privileges under the Ground Lease shall not be diminished, interfered with or disturbed by Mortgagee or such other New Landlord by foreclosure under the Mortgage or by any attempt to foreclose or to succeed to the interests of Landlord by foreclosure, deed in lieu thereof or otherwise.

4. Tenant agrees at any time and from time to time to execute, acknowledge and deliver to Landlord, to Mortgagee or to any third party designated by Landlord or by Mortgagee, within 30 days following Landlord's or Mortgagee's written request therefor, (a) a statement in writing certifying that the Ground Lease is unmodified and is in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Annual Rent and Additional Rent, if any, have been paid

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in advance, whether or not, to the knowledge of Tenant, there is any existing default or event of default by Landlord under the Ground Lease and, if so, specifying each such default, whether or not, to the knowledge of Tenant, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute such a default by Landlord under the Ground Lease and, if so, specifying each such event and specifying any further information about the Ground Lease or the Premises which Landlord or Mortgagee or said third party may reasonably request, (b) a statement in writing that Tenant will recognize Mortgagee as assignee of the Landlord's rights under the Ground Lease, and (c) a statement in writing acknowledging or denying receipt of notice of any conditional or security assignment of the Ground Lease to any third party. Tenant understands that Mortgagee and/or prospective purchasers, other mortgagees or lessors of the Premises or any part thereof will rely on such certificates. Tenant's obligation to deliver such certificates within 30 days as described above is a material obligation of Tenant hereunder and under the Ground Lease, and shall also be enforceable by injunction and other appropriate relief.

5. In the event that Mortgagee or any other New Landlord shall succeed to the interest of Landlord under the Ground Lease, Tenant agrees as follows:

(a) Mortgagee or such other New Landlord shall not be: (i) bound by or subject to any credit, right of offset, defense, claim or counterclaim which Tenant may have against any prior landlord (including, but not limited to, Landlord) except as expressly provided to the contrary in the penultimate sentence of this clause (a), (ii) bound by any payments of Annual Rent or Additional Rent or other amounts paid by Tenant under the Ground Lease which Tenant shall have paid more than one month in advance to any prior landlord (including, but not limited to, Landlord), (iii) bound by any covenant by any prior landlord (including, but not limited to, Landlord) to undertake or complete any improvement to the Premises, or (iv) bound by any waiver of any provision of the Ground Lease which has not been consented to in writing by Mortgagee (except that the consent of Mortgagee and such other New Landlord shall not be required for any waiver which, by the express terms of the Ground Lease, is automatically deemed granted if Landlord or any other party fails to act within a specified period of time). Anything contained in this clause (a) to the contrary notwithstanding, Mortgagee or such other New Landlord shall be subject to such credits or rights of offset with respect to the Ground Lease (or any other ground lease substantially in the form of the Ground Lease for any other Land in the Park between Landlord or its assignee, as landlord, and Tenant or an Affiliate, as tenant) to the extent, and only to the extent, expressly provided in the Ground Lease (or such other

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ground lease) or the Development Agreement. (All capitalized terms used but not defined in the preceding sentence shall have the respective meanings herein as ascribed thereto in the Ground Lease.)

(b) No New Landlord (including, without limitation, Mortgagee) shall be liable for: (i) any act or omission of any prior landlord (including Landlord), (ii) return of any security deposit made by Tenant to Landlord unless such New Landlord shall have actually received such security deposit from Landlord, or (iii) any payment to Tenant of, or obligation to pay Tenant, any sums, or the granting to Tenant of any credit, whether in the nature of a contribution towards the cost of preparing, furnishing, or moving into the Premises or any portion thereof, or otherwise.

(c) Tenant shall look solely to the Premises for recovery of any judgment or damages from Mortgagee or such other New Landlord, and neither Mortgagee nor such other New Landlord nor any present or future partner of Mortgagee or such other New Landlord or of any partnership which is now or hereafter a partner of Mortgagee or such other New Landlord (or of any partnership which is now or hereafter a partner of a partner of Mortgagee or such other New Landlord) shall have any personal liability, directly or indirectly, under or in connection with the Ground Lease or this Agreement or any amendment or amendments to either thereof made at any time or times, heretofore or hereafter, and Tenant hereby forever and irrevocably waives and releases any and all such personal liability. In addition, neither Mortgagee nor such other New Landlord nor any successor or assign of Mortgagee or such other New Landlord shall have at any time or times hereafter any personal liability, directly or indirectly, under or in connection with or secured by any agreement, lease, instrument, encumbrance, claim or right affecting or relating to the Premises or the Collateral (as defined in the Prior Mortgage) or to which the Premises or the other Collateral is now or hereafter subject. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation on liability applicable to Mortgagee or such other New Landlord provided by law or by any other contract, agreement or instrument.

6. Tenant, for itself and its successors and assigns, agrees that, without the prior written consent of Mortgagee, Tenant will not do any of the following (except as the same may be given to, and solely for the benefit of, the holder of any Construction Mortgage or Permanent Mortgage, both of which terms are defined in the Ground Lease and shall have the same respective meanings herein as they have therein): (a) enter into any subordination agreement with any person whereby Tenant's interest under the Ground Lease is subordinated to any person or interest; or (b)



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agree to attorn to or recognize any purchaser of the Premises at any foreclosure sale under any lien other than that of the Mortgage or any transferee who acquires the Premises by deed in lieu of foreclosure or otherwise under any lien other than that of the Mortgage (provided, however, that this provision shall not be deemed to constitute Mortgagee's consent to the placing of any lien other than the Mortgage on the Premises except as expressly permitted under the Ground Lease).

7. Any notice or communication which either party is required to give to the other hereunder shall be in writing and may be given by registered or certified mail, return receipt requested, addressed to the other at the address below set forth (or to such other address as either party may from time to time direct by written notice given in the manner herein prescribed), and such notice or communication shall be deemed to have been given on the earlier of the date it is actually received or three days after mailing, when mailed by U.S. mail in a properly addressed, sealed and first class postage prepaid wrapper:

To the Mortgagee:

City of Evanston  
2100 Ridge Avenue  
Evanston, Illinois 60204  
Attention: Joel M. Asprooth

with a copy to:

City of Evanston  
2100 Ridge Avenue  
Evanston, Illinois 60204  
Attention: Herbert Hill

and a copy to:

Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Robert M. Berger

To the Tenant:

CHS 1033 UNIVERSITY ASSOCIATES LIMITED PARTNERSHIP  
c/o The Charles H. Shaw Company  
676 St. Clair Street  
Suite 2200  
Chicago, Illinois 60611  
Attention: Robert J. Winter, Jr.  
Thomas R. Prescott

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with a copy to:

Skadden, Arps, Slate  
Meagher & Flom  
333 West Wacker Drive  
Suite 2100  
Chicago, Illinois 60606  
Attention: Marian P. Wexler

8. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

10. This Agreement shall be governed by and construed under the laws of the State of Illinois.

11. This Agreement shall remain in full force and effect until such time as the Mortgage is released of record.

12. The parties hereto agree that this Agreement may be recorded in the public records of Cook County, Illinois.

13. This Agreement may be executed in counterparts and each complete set of executed counterparts shall be interpreted for all purposes to be an executed original of this document.

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

Attest:

By: *Kristen Davis*  
Name: Kristen Davis  
Title: City Clerk

CITY OF EVANSTON, a  
municipal corporation

By: *Joel M. Asprooth*  
Name: Joel M. Asprooth  
Title: City Manager

CHS 1033 UNIVERSITY ASSOCIATES  
LIMITED PARTNERSHIP, an  
Illinois limited partnership

By: CHS Evanston, Inc.,  
a \_\_\_\_\_ corporation

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

Attest:

CITY OF EVANSTON, a  
municipal corporation

By: \_\_\_\_\_  
Name: Kristen Davis  
Title: City Clerk

By: \_\_\_\_\_  
Name: Joel M. Asprooth  
Title: City Manager

CHS 1033 UNIVERSITY ASSOCIATES  
LIMITED PARTNERSHIP, an  
Illinois limited partnership

Attest:

By: CHS Evanston, Inc.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: Joel N. Smith  
Title: Secretary

By: \_\_\_\_\_  
Name: Charles H. Shaw  
Title: President

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FOR MORTGAGEE

STATE OF ILLINOIS )  
                          ) SS  
COUNTY OF COOK   )

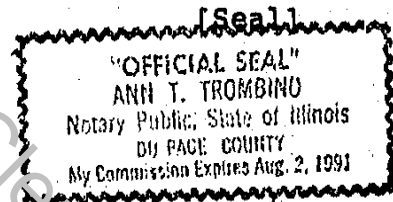
I, Ann T. Trombino, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Joel M. Asprooth, personally known to me to be the City Manager of the City of Evanston, a municipal corporation, and Kristen Davis, personally known to me to be the City Clerk of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such City Manager and City Clerk, respectively, of said corporation they signed and delivered the said instrument pursuant to proper authority given by the City Council of the City of Evanston as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 13th day of April, 1990.

Ann T. Trombino

Notary Public

My Commission expires:



This instrument was prepared by  
(and after recordation return  
this instrument to):

Robert V. Fitzsimmons  
Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, Illinois 60603  
(312) 782-0600

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FOR TENANT

STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

I, JUDY A. BECHER, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT CHARLES H. SHAW, personally known to me to be the PARTNER of CHS Evanston, Inc., a Delaware corporation, the general partner of CHS 1033 UNIVERSITY ASSOCIATES LIMITED PARTNERSHIP, a limited partnership organized and existing under the laws of the State of Illinois, and JOEL W. SMITH, personally known to me to be the SECRETARY of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such PRESIDENT and SECRETARY they signed and delivered the said instrument pursuant to proper authority given by the Partnership Agreement of said partnership as their free and voluntary act, and as the free and voluntary act and deed of said partnership for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 13th day of April, 1990.

Judy A. Becher  
Notary Public

[SEAL]

My Commission expires:

\_\_\_\_\_

" OFFICIAL SEAL "  
JUDY A. BECHER  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 5/30/93

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## EXHIBIT A

### Description of Mortgage

That certain Purchase Money Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated as of March 25, 1988 and recorded March 25, 1988 in the office of the Recorder of Deeds of Cook County, Illinois as Document No. 88124137, First Amendment to Purchase Money Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated as of December 7, 1989 and recorded December 8, 1989 in the office of the Recorder of Deeds of Cook County, Illinois as Document No. 89588165, and Second Amendment to Purchase Money Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated as of April 13, 1990 and recorded April 13, 1990 in the office of the Recorder of Deeds of Cook County, Illinois as Document No. 90172332 (collectively, the "Mortgage").

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## EXHIBIT B

### Legal Description of Premises

Lot 17 (except the West 26 feet thereof), all of Lots 18, 19 and 20, and the West 38 feet of Lot 21, all in Block 1 in Circuit Court Subdivision in Partition of Lot 22 in County Clerk's Division of unsubdivided lands, in Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

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Address: 1019-1035 University Place  
Evanston, Illinois

Permanent Index Numbers: 11-18-112-021  
11-18-112-022  
11-18-112-023  
11-18-112-024  
11-18-112-025  
11-18-112-026

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## EXHIBIT C

### Description of Ground Lease

That certain Ground Lease by and between Research Park, Inc. and CHS 1033 University Associates Limited Partnership, dated as of April 13, 1990.

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. DEPT-01 RECORDING 424.00  
. 149999 TRAN 2379 04/17/90 11:03:00  
. 45693 + 6 \*-90-172332  
. COOK COUNTY RECORDER

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