

# UNOFFICIAL COPY

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## ATTORNMENT, SUBORDINATION AND NON-DISTURBANCE AGREEMENT

This Attornment, Subordination and Non-Disturbance Agreement (the "Agreement") is made and entered into as of the 29<sup>th</sup> day of January, 1991, by and among Alholm and Monahan, an Illinois partnership ("Tenant"), American National Bank and Trust Company of Chicago, not personally, but as Trustee under a Trust Agreement dated January 22, 1980 and known as Trust No. 48896 ("Landlord"), and SMA Life Assurance Company, a Delaware corporation ("Lender").

### I

#### Recitals

1.1 Tenant is the tenant under a certain Lease dated January 29, 1991 between Landlord and Tenant, pertaining to and covering a portion of that certain real estate which is legally described on Exhibit A attached hereto and the buildings and improvements located thereon (the "Property").

1.2 Lender is presently contemplating the making of a loan (the "Loan") to Landlord secured by the Property. Accordingly, this Agreement is entered into by the parties hereto with the intention of having Lender rely thereon in disbursing the Loan.

### II

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COOK COUNTY RECORDER

#### Warranties, Covenants and Agreements

2.1 Said Lease, all extensions, modifications, replacements and renewals thereof (the "Lease"), and all of Tenant's rights and interests thereunder, shall be, are hereby made and shall remain completely subject and subordinate to that certain Mortgage and Security Agreement dated December 17, 1986 and recorded in the Office of the Cook County Recorder of Deeds on December 18, 1986 as Document No. 86606711, and all extensions, modifications, replacements and renewals thereof (the "Mortgage"), and all other documents, including an Assignment of Leases and Rents (the "Assignment"), and all extensions, modifications, replacements and renewals thereof, now or hereafter securing the Loan (the Mortgage, Assignment and other documents being together referred to herein as the "Loan Instruments"), to the same extent as if the Loan Instruments had been executed, delivered and recorded prior to execution of the Lease.

2.2 Tenant agrees that it will not after the date hereof subordinate the Lease to any mortgage, deed of trust or other lien encumbering the Property, other than the Loan Instruments, without first obtaining the written consent of Lender.

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2.3 Lender shall have the right at any time to elect, by a notice in writing given to Tenant, to make the Lease superior to the Loan Instruments, and, upon the giving of such notice to Tenant, the Lease shall be deemed to be prior and superior to such Loan Instruments and the interest thereby created and evidenced.

2.4 The Lease shall not, after the date hereof, be terminated, surrendered, renewed (except as specifically permitted by the Lease), or modified without first obtaining the prior written consent of Lender, and rent shall not be paid more than one month in advance.

2.5 Tenant hereby acknowledges that the interest of the Landlord under the Lease shall be assigned to Lender solely as security for the Loan and Lender (i) shall not be liable for any claims for damages or setoffs arising out of Landlord's interest in the Property, for the return of any security deposit unless it has specifically been received by Landlord, for any act committed by the Landlord or any breach or failure to perform by the Landlord, and (ii) shall not be obligated by reason of the Assignment or the exercise of any rights granted therein to perform any obligation of the Landlord, including without limitation, any obligation to complete improvements to the demised premises.

2.6 In the event of any default by Landlord under the Lease, Tenant shall promptly give notice of such default to Lender and, in such event and prior to the exercise by Tenant of any of its rights or remedies under the Lease or otherwise with respect to such default, Lender shall have the right, but not the obligation, to cure such default within thirty (30) days following the receipt of such notice (except that if Lender cannot cure such default within such period of time, such period shall be extended for a reasonable additional period of time, provided that Lender commences to take action in order to cure such default within such period and proceeds diligently thereafter to effect such cure), and, if Lender does cure such default, then the Lease shall remain in full force and effect.

2.7 Notwithstanding the subordination of the Lease as aforesaid, in the event that Lender or any other party succeeds to the rights of Landlord under the Lease ("Successor Landlord"), whether through foreclosure, the acceptance of a deed in lieu of foreclosure or any possession, surrender, assignment, judicial action or any other action taken by Lender, then Tenant agrees that (i) it shall attorn to, and be liable to and recognize Successor Landlord as the lessor under the Lease for the balance of the term of the Lease upon and subject to all the terms and conditions of this Agreement and of the Lease; (ii) thereafter, it shall make payments of rent (minimum, basic, percentage, additional or otherwise) to Successor Landlord, and otherwise perform all of Tenant's obligations set forth in the Lease; (iii) Successor Landlord shall be responsible only for the performance of those of

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lessor's obligations to be performed during the period of its ownership; and (iv) Tenant shall look solely to the interest of Successor Landlord in the Property for recovery of any judgment, it being specifically agreed that neither Successor Landlord, nor Lender, nor anyone claiming under Landlord or Lender, shall ever be personally liable for any such judgment. So long as Tenant shall pay, when due, such rent and impositions and otherwise perform such other tenant obligations as set forth in the Lease, Tenant shall not be joined as an adverse party defendant in any action or proceeding which may be instituted or commenced by Lender to foreclose or enforce the Mortgage, Tenant shall not be evicted from the Property, nor shall any of Tenant's rights to use and possession under the Lease be affected in any way by reason of the subordination or any modification of or default under the Mortgage, and Tenant's leasehold estate under the Lease shall not be terminated or disturbed during the term of the Lease by reason of any default under the Mortgage.

2.8 Tenant agrees that on the written request of Lender made from time to time, Tenant will promptly execute and deliver to Lender an estoppel certificate addressing such matters pertaining to the Lease as Lender may request.

2.9 Whenever any of the parties hereto desires to give any notice to any of the others under this Agreement, it shall be sufficient for all purposes if such notice is hand delivered or sent by registered or certified U.S. mail, postage prepaid, return receipt requested, addressed to the intended recipient at the following addresses (or such other address as may be designated by the addressee in a written notice to the other parties hereto):

Lender:	SMA Life Assurance Company 440 Lincoln Street Worcester, Massachusetts 01605 Attention: Investment Management Department
Tenant:	Alholm and Monahan 6th Floor 180 North Wacker Drive Chicago, Illinois 60606
Landlord:	American National Bank and Trust Company of Chicago, T/U/T 48896 33 North LaSalle Street Chicago, Illinois 60690

2.10 This Agreement shall inure to the benefit of and shall be binding upon Tenant, Landlord, Lender and their respective heirs, personal representatives, successors and assigns. In the event any one or more of the provisions contained in this Agreement

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shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein. This Agreement shall be governed by and construed according to the laws of the State of Illinois.

2.11 Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage, except as specifically set forth herein.

2.12 This instrument is executed by American National Bank and Trust Company of Chicago, not personally, but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by said bank are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against said bank by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

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DeKalb County Clerk's Office

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in manner and form sufficient to bind them, as of the day and year first above written.

**TENANT:**

ALHOLM AND MONAHAN, an Illinois partnership

By *Anthony T. Alholm*  
Its *Partner*

**LANDLORD:**

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee as aforesaid

By *J. P. [Signature]*  
Its *2nd Vice Pres*

**LENDER:**

SEA LIFE ASSURANCE COMPANY, a Delaware corporation

By *W. [Signature]*  
Its *Asst. Treasurer*

**THIS INSTRUMENT PREPARED BY AND AFTER RECORDING RETURN TO:**

Stephen B. Bell, Esq.  
Goldberg, Kohn, Bell, Black,  
Rosenbloom & Moritz, Ltd.  
55 East Monroe Street, Suite 3900  
Chicago, Illinois 60606

Property of Cook County Clerk's Office

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**ACKNOWLEDGMENT**  
Tenant

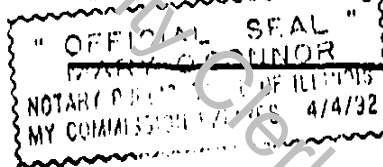
STATE OF Illinois )  
COUNTY OF Cook ) SS

I, Mary D' Connor, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Anthony S. Williams, a partner of ALHOLM AND MONAHAN, an Illinois partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said partnership for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 5th day of February, 1991.

Mary D' Connor  
Notary Public

My Commission Expires:



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### ACKNOWLEDGMENT

Landlord

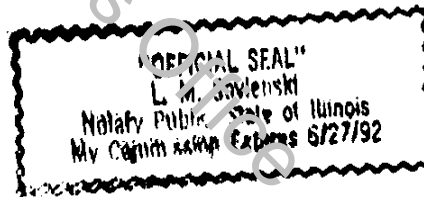
STATE OF ILLINOIS )  
                          ) SS  
COUNTY OF C O O K )

I, C. M. SOVIENSKI, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT P. JOHANSEN 2ND VP, of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said bank for the uses and purposes therein set forth.

FEB 11 1991 GIVEN under my hand and notarial seal this \_\_\_ day of \_\_\_\_\_, 1991.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



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**ACKNOWLEDGMENT**

**Lender**

COMMONWEALTH  
STATE OF MASSACHUSETTS )  
COUNTY ) SS  
~~COMMONWEALTH~~ OF Worcester )

I, Jane Greenlees, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Michael S. Dean, of SMA LIFE ASSURANCE COMPANY, a Delaware corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29th day of January, 1991.

*Jane Greenlees*  
Notary Public  
My Commission Expires:  
July 18, 1997

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Notary of Cook County Clerk's Office



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## EXHIBIT A

### Legal Description

PROPERTY ADDRESS: 180 North Wacker Drive, Chicago, Illinois  
 TAX I.D. NUMBER: 17-09-427-001

Wharfing Lot 28 in the original town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, except the part lying East of a line described as follows: Commencing at a point in the South Line of West Lake Street 40 feet West of (measured along the South Line of West Lake Street) the Westerly Line of North Market Street as located July 26, 1922, thence Southeasterly to a point 15 feet South of the South Line of West Lake Street and 105 feet West of the East Line of North Market Street, thence South along a line 105 feet West of and parallel with the East Line of North Market Street 49 feet more or less to the intersection of a line 105 feet West and parallel with the East Line of North Market Street and a line 14.5 feet Westerly of (measured at right angles to the Westerly Line of North Market Street) the Westerly Line of North Market Street, thence Southerly along line 14.5 feet Westerly of (measured at right angles to the Westerly Line of North Market Street) and parallel with the Westerly Line of North Market Street to the South Line of said Wharfing Lot, which part was conveyed by the University of Chicago to the City of Chicago by Quit Claim Deed recorded as Document Number 9221025, in Cook County, Illinois.

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Clerk's Office