

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (hereinafter called the "Agreement"), made and entered into as of the 8<sup>th</sup> day of February, 1991, by and among MONTGOMERY WARD & CO., INCORPORATED, an Illinois corporation (hereinafter called "Tenant"), THE TRAVELERS INSURANCE COMPANY, a Connecticut corporation (hereinafter called "Mortgagee"), and AMALGAMATED TRUST AND SAVINGS BANK, as Trustee under Trust Agreement dated June 21, 1984 and known as Trust Number 4951 (hereinafter called "Landlord").

DEPT-01 RECORDING

\$18.00

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WITNESSETH:

#2292 #H \*-71-085168

COOK COUNTY RECORDER

WHEREAS, Tenant and Landlord are concurrently herewith entering into a First Amendment to Lease (the "First Amendment") which amends that certain Lease between Landlord and Zayre Corp., Tenant's predecessor-in-interest, dated October 21, 1985 (the "Lease") in that, among other things, the Demised Premises, as defined in the Lease, shall be modified to include the Expansion Area, as defined in the First Amendment, which Demised Premises and Expansion Area are located in The Landings Shopping Center, Lansing, Cook County, Illinois, which shopping center is legally described in Exhibit A attached thereto and made a part hereof by reference (the "Real Estate"); and

WHEREAS, Mortgagee has made a loan in the principal amount of Twenty-One Million Five Hundred Thousand Dollars (\$21,500,000.00) (hereinafter called the "Loan") to Landlord, which Loan is secured by (i) that certain Mortgage dated May 5, 1988, made by Landlord to Mortgagee encumbering the Real Estate (hereinafter called the "Mortgage"), and (ii) other Loan Documents (as defined in the Mortgage), and evidenced by that certain Promissory Note dated May 5, 1988, made by Landlord to Mortgagee in the principal amount of Twenty-One Million Five Hundred Thousand Dollars (\$21,500,000.00) (hereinafter called the "Note");

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and in consideration of Ten Dollars (\$10.00) by each of the parties hereto paid to the other, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

1. Tenant hereby covenants and agrees that the First Amendment, and any renewal, extension, modification or amendment thereof, is and shall be subordinate to the lien of the Mortgage insofar as and to the extent that it affects the Expansion Area, and to all renewals, modifications, consolidations and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, with the same force and effect as if the Mortgage, or any renewal, modification, amendment or extension thereof, had been executed, delivered and recorded prior to the execution, delivery and recordation of the First Amendment.

2. In the event any proceedings are brought by Mortgagee (a) to foreclose the Mortgage or any renewal, modification, consolidation or extension thereof, for any reason whatsoever, or (b) to succeed to the interest of Landlord by power of sale, foreclosure or deed in lieu thereof, or in the event Mortgagee exercises any other rights under the Mortgage, the right of possession of Tenant to the Expansion Area and the other rights to Tenant which relate to the Expansion Area under the First Amendment will not be affected or disturbed by Mortgagee except in accordance with the terms of the First Amendment.

3. In the event that Mortgagee shall, in accordance with the foregoing, succeed to the interest of Landlord under the First Amendment, Mortgagee agrees to be bound to Tenant under all of the terms, covenants and conditions of the First Amendment, and Tenant agrees, from and after such event, to attorn to Mortgagee and/or the purchaser at any foreclosure sale of the Expansion Area, all rights and obligations under the First Amendment which relate to the Expansion Area to continue as though the interest of Landlord had not terminated or such foreclosure proceedings had not been brought, and Tenant shall have the same remedies against Mortgagee for the breach of an agreement contained in the First Amendment which relates to the Expansion Area that Tenant might

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have had under the First Amendment against Landlord if Mortgagee had not succeeded to the interest of Landlord; provided, however, that, in connection with such rights, obligations and agreements which relate to the Expansion Area, Mortgagee shall not be:

- (a) liable for any damages then accrued as the result of any act or omission of any prior landlord (including Landlord) insofar as and to the extent that they relate to the Expansion Area; or
- (b) subject to any offsets or defenses which Tenant then has against any prior landlord (including Landlord) insofar as and to the extent that they relate to the Expansion Area and the rents or other charges payable on account of the Expansion Area; or
- (c) bound by any rent or additional rent which Tenant then had paid for more than the current month to any prior landlord (including Landlord), except as otherwise paid in accordance with the terms of the First Amendment, insofar as and to the extent that it relates to the Expansion Area; or
- (d) bound by any amendment or modification of the First Amendment made without its consent subsequent to the date hereof insofar as and to the extent that it relates to the Expansion Area; or
- (e) liable for any security deposit held by any prior landlord (including Landlord) unless the same has been actually delivered to Mortgagee, insofar as and to the extent that it relates to the Expansion Area.

Said attornment shall be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto; provided, however, that upon the election and written demand of Mortgagee, Tenant shall execute an instrument reasonably satisfactory to Mortgagee, confirming and acknowledging said attornment.

4. In addition to the foregoing, in the event that Mortgagee, in accordance with Paragraph 2 hereof, succeeds to the interest of the Landlord under the Lease, as amended by the First Amendment, and notifies the Tenant hereof, the Tenant shall make all payments payable by the Tenant under the Lease, as amended by the First Amendment, directly to the Mortgagee upon Mortgagee's written instructions to the Tenant, provided that the Mortgagee hereby agrees that it shall cure any outstanding default(s) of the Landlord which exists at the time Mortgagee succeeds to the interest of the Landlord of which the Tenant has given the Mortgagee written notice and the parties shall have the rights and obligations with regard to such default which exist under the Lease, as amended by the First Amendment. Furthermore, the Landlord hereby irrevocably authorizes and directs the Tenant, upon receipt from the Mortgagee of said written notice to do so, to pay all rents and other monies payable by the Tenant under the Lease, as amended by the First Amendment, to or at the direction of the Mortgagee. The Landlord irrevocably releases the Tenant of any liability to the Landlord for all payments so made, and the Landlord agrees to defend, indemnify and hold the Tenant harmless from and against any and all claims, demands, losses, or liabilities (including, without limitation, attorneys' fees) asserted by, through, or under the Landlord (except by the Mortgagee) for any and all payments so made. The Tenant agrees that, in accordance with the foregoing, upon receipt of such notice it will, subject to the other terms and conditions of the Lease, as amended by the First Amendment, pay all monies then due and becoming due from the Tenant under the Lease, as amended by the First Amendment, to or at the direction of the Mortgagee, notwithstanding any provision of the Lease, as amended by the First Amendment, to the contrary.

5. This Agreement shall inure to the benefit of the parties hereto and their respective successors or assigns, notwithstanding anything in the immediately preceding sentence to the contrary; Tenant agrees that the original or any successor Mortgagee hereunder shall be liable hereunder or under the First Amendment only for the performance of the obligations of Landlord under the First Amendment which relate to the Expansion Area and which exist during the period of such Mortgagee's or successor Mortgagee's ownership of the Expansion Area, provided that, upon the transfer of the

interest of such Mortgagee or successor Mortgagee in the First Amendment, any successor Mortgagee shall, in a written instrument in recordable form, assume, and agree with Tenant to perform and observe, all of the terms and conditions on the part of Landlord in the First Amendment to be observed and performed.

6. Notwithstanding anything to the contrary contained herein, the parties hereto hereby agree that (i) neither the execution and delivery of the First Amendment nor this Agreement shall in any way affect the rights or claims of either Mortgagee or Tenant regarding the applicability of the existing Subordination, Non-Disturbance and Attornment Agreement between Mortgagee and Tenant or the priority of the Lease as it relates to the Demised Premises (exclusive of the Expansion Area) against the Mortgagee, and (ii) the terms and conditions of this Agreement shall in no way affect any right, obligation or agreement of Tenant, Mortgagee or Landlord insofar as and to the extent that it relates to the Demised Premises (exclusive of the Expansion Area) and that, in the event of any proceeding or exercise of rights referred to in Paragraph 2 hereof, this Agreement shall affect only Tenant's right of possession and other rights as they relate to the Expansion Area and the rents or other charges payable on account of the Expansion Area.

7. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement as of the date and year first above written.

TENANT:

MONTGOMERY WARD & CO.,  
INCORPORATED, an Illinois corporation

By: [Signature]  
Name: Spencer H. Hume  
Title: Senior Vice President

ATTEST:

By: [Signature]  
Name: G. J. Morgan  
Title: Assistant Secretary

MORTGAGEE:

THE TRAVELERS INSURANCE COMPANY,  
a Connecticut corporation

By: [Signature]  
Name: Arthur J. Burrows  
Title: Director

ATTEST:

By: [Signature]  
Name: John J. Derby  
Title: Assistant Secretary

# UNOFFICIAL COPY

LANDLORD:

AMALGAMATED TRUST AND SAVINGS  
BANK, as Trustee under Trust Agreement dated  
June 21, 1984 and known as Trust Number 4951

By: See attached Rider for  
Name: signature of Trustee  
Title: \_\_\_\_\_

ATTEST:

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

The terms and conditions contained in this instrument to the  
contrary notwithstanding this instrument is subject to the  
provisions of the Trustee's Exculpatory Rider attached  
hereto and made a part hereof.

State of Illinois

County of Cook

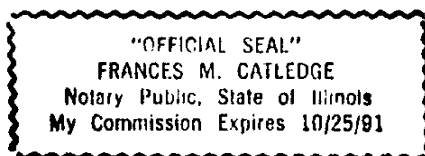
I, Frances M. Catledge, a Notary Public in and for the County and State  
aforesaid, DO HEREBY CERTIFY that Spencer H. Heine and G. T. Morgan,  
the Senior Vice President and Assistant Secretary, respectively, of  
MONTGOMERY WARD & CO., INCORPORATED, an Illinois corporation, who are  
personally known to me to be the same persons whose names are subscribed to the  
foregoing instrument as such Senior 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 corporation, for the uses and purposes therein set forth, and did affix  
the corporate seal of said corporation to said instrument as their own free and voluntary  
act, and as the free and voluntary act of said corporation, for the uses and purposes  
therein set forth.

Given my hand and Notarial Seal this 11th day of February, 1991.

Frances M. Catledge  
Notary Public

My Commission Expires:

10/25/1991

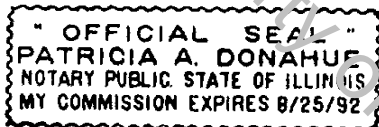


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STATE OF ILLINOIS     )  
                                      ) SS  
COUNTY OF DU PAGE )

Before me, a Notary Public in and for said County and State, on this day, personally appeared Arthur J. Burrows and John J. Derby to me known to be the identical persons who subscribed the name of **THE TRAVELERS INSURANCE COMPANY** to the foregoing instrument as its Director and Assistant Secretary who, being by me duly sworn, did state that they are the Director and Assistant Secretary of said corporation, that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed by them on behalf of said corporation by authority of its Board of Directors, and said Arthur J. Burrows and John J. Derby acknowledged to me that they executed the same for the uses, purposes, and consideration therein set forth and in the capacity therein stated as their free and voluntary act and deed and as the free and voluntary act and deed of said corporation.

Given under my hand and seal of office this 8th day of February, 1991.



Patricia A. Donahue  
NOTARY PUBLIC

For the State of Illinois residing in DuPage County.

STATE OF ILLINOIS     )  
                                      ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, of AMALGAMATED TRUST AND SAVINGS BANK, who is 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 (she) signed and delivered the said instrument as such officer of said Bank as his (her) own free and voluntary act and as the free and voluntary act of said Bank as aforesaid, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_ day of \_\_\_\_\_, 1991.

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

My Commission Expires:

\_\_\_\_\_  
This instrument was prepared  
by and after recording  
should be mailed to:

Howard J. Kirschbaum, Esq.  
Barack, Ferrazzano, Kirschbaum & Perlman  
333 West Wacker Drive  
Suite 2700  
Chicago, Illinois 60606



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**Exhibit A**

## To Subordination and Non-Disturbance Agreement

Southwest 1/4 of Section 19, Township 36 North, Range 19 East of the Third Principal Meridian, lying Northwesterly of the Northwesterly right of way line of the Public Service Company of Northern Illinois, as established by Warranty Deed recorded May 1, 1924 as Document No. 8 393 986; lying South and Southwesterly of a line more particularly described as follows: Beginning at a point on the west line of the Southwest 1/4 of said Section 19 distant 2319.74 feet North (as measured along the West line of said Southwest 1/4) of the Southwest Corner of the Southwest 1/4 of said Section 19; thence South 89°44'50" East on a line 2319.72 feet North of and parallel with the South line of the Southwest 1/4 of said Section 19, a distance of 1294.47 feet to a point of curve; thence Southwesterly on the arc of a circle convex to the Northeast having a radius of 241.23 feet for a distance of 172.28 feet to a point of tangency; thence South 48°49'39" East a distance of 156.50 feet, more or less to the Northwesterly right of way line of the Public Service Company of Northern Illinois as established by Document No. 8 393 986 aforesaid, and lying Easterly of the Easterly right of way line of Torrence Avenue, as established by deed recorded October 4, 1901 as Document No. 10 293 853 (excepting from said part of the North 1/2 of the Southwest 1/4 that part of Old Torrence Avenue lying East of the Easterly line of Torrence Avenue as established by said Document No. 10 293 853).

**Also:**

That part of the Southwest 1/4 of the Southwest 1/4 of said Section 19 lying Northerly of the Northerly right of way line of the Public Service Company of Northern Illinois, as established by Quit Claim Deed recorded September 17, 1926 as Document No. 9 404 921 and Deed recorded July 24, 1926 as Document No. 9 350 318; lying Easterly of the Easterly right of way line of Torrence Avenue, as established by Quit Claim Deed recorded February 24, 1943 as Document No. 13 034 828, and lying Northerly of the Northerly right of way line of the Chicago and Great Eastern Railway Co., as established by Warranty Deed recorded November 1, 1884 as Document No. 87 873; (excepting therefrom that first taken by the County of Cook for widening 170th Street).

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That part of the North 1/2 of the Southwest 1/4 of said Section 19 bounded and described as follows: Beginning at the point of curve (described above) on the North line of the above described tract; thence southeasterly on the arc of a circle curved to the Northeast having a radius of 241.25 feet a distance of 172.25 feet to a point of tangency; thence South 48°49'39" East a distance of 156.55 feet, more or less to the Northeasterly right of way line of the Public Service Company of Northern Illinois as established by Northern Deed recorded May 1, 1924 as Document No. 8 393 908; thence thence 25°22'17" East on the last described line a distance of 170.24 feet to a point on the above said line 2319.72 feet North of and parallel with the South line of the Southwest 1/4 of said Section 19; thence North 83°44'52" East on the last described line a distance of 351.90 feet to the point of beginning.

Clerk's Office

**91085168**

# UNOFFICIAL COPY

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RIDER ATTACHED TO: Subordination, Non-Disturbance & Assignment  
DATED: 2/8/91 Agreement

This instrument is executed by **AMALGAMATED TRUST & SAVINGS BANK**, not personally, but as Trustee as aforesaid, in the exercise of power and authority conferred upon and vested in said Trustee as such, and it is expressly agreed that nothing herein contained shall be construed as creating any liability on said **AMALGAMATED TRUST & SAVINGS BANK** in its individual corporate capacity to pay any indebtedness accruing thereunder, or with respect to any warranty or representation contained in this instrument, or to perform any covenant, either express or implied, herein contained, including but not limited to warranties, indemnifications, and hold harmless representations in said document all such liability, if any, being expressly waived by the parties hereto and by every person now or hereafter claiming any right or interest hereunder, and as so far as said Trustee is concerned, the owner of any indebtedness or right accruing under said document shall look solely to the premises described therein for the payment or enforcement thereof, it being understood that said, **AMALGAMATED TRUST & SAVINGS BANK** as Trustee merely holds legal title to the premises described therein and has no control over the management thereof or the income therefrom, and has no knowledge respecting any factual matter with respect to said premises, except as represented to it by the beneficiary or beneficiaries of said trust. In the event of conflict between the terms of this rider and of the agreement to which it is attached, on any questions of apparent liability or obligation resting upon said trustee, the provisions of this rider shall be controlling.

**AMALGAMATED TRUST & SAVINGS, NOT INDIVIDUALLY, BUT AS TRUSTEE UNDER TRUST NO. 4951**

BY:

Edward C. Sweigard  
VICE PRESIDENT

ATTEST:

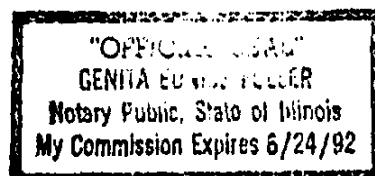
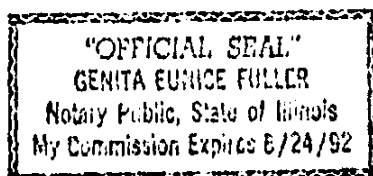
Michelle Holstra  
ASSISTANT SECRETARY

STATE OF ILLINOIS ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify, that Edward C. Sweigard, VICE PRESIDENT, of AMALGAMATED TRUST & SAVINGS BANK, and Michelle Holstra, ASSISTANT SECRETARY, of said banking corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such 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 acts, and as the free and voluntary act of said banking corporation, as Trustee, for the uses and purposes therein set forth; and the said Assistant Secretary did also then and there acknowledge that she, as custodian of the corporate seal of said banking corporation, did affix the said corporate seal of said banking corporation to said instrument as her own free and voluntary act, and as the free and voluntary act of said banking corporation as Trustee for the uses and purposes herein set forth.

GIVEN UNDER MY HAND AND NOTARIAL SEAL

THIS 12<sup>th</sup> DAY OF February, 19 91  
BY: Genita Eunice Fuller  
NOTARY PUBLIC



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