

(EXECUTION)
1000/68

SUBORDINATION, NON-DISTURBANCE,
AND ATTORNMENT AGREEMENT

94730877

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") made and entered into as of the 26 day of FEB, 1993 by and among HARRIS TRUST AND SAVINGS BANK, not personally or individually but as trustee (the "Trustee") under Trust No. 95044 dated September 14, 1992 (the "Trust") having an office c/o Citicorp Real Estate, Inc., 599 Lexington Avenue, New York, New York 10043 ("Owner"), CITICORP REAL ESTATE, INC., a Delaware corporation having an office at 599 Lexington Avenue, New York, New York 10043 ("Mortgagee"), and INDUSTRIAL RISK INSURERS, an unincorporated association, having an office at 85 Woodland Street, P.O. Box 5010, Hartford, Connecticut 06102-5010 ("Tenant").

DEPT OF RECORDING 435.50
749999 TRAN 5147 08/17/94 15:19:00
88234 DW *-94-730877
COOK COUNTY RECORDER

WITNESSETH:

WHEREAS, Owner owns the improved real property described in Schedule A annexed hereto (the "Premises");

WHEREAS, Mortgagee is the owner and holder of the mortgage listed in Schedule B annexed hereto (which mortgage, together with all amendments, increases, renewals, modifications, consolidations, spreaders, replacements, combinations, supplements, substitutions and extensions thereof, now or hereafter made, are hereinafter collectively referred to as the "Mortgage," and which Mortgage, together with the promissory note or notes and the loan agreement(s), and other documents executed in connection therewith and any amendments, increases, renewals, modifications, consolidations, spreaders, replacements, combinations, supplements, substitutions and extensions thereof, are hereinafter collectively referred to as the "Loan Documents" and each of them is individually hereinafter referred to as a "Loan Document");

WHEREAS, pursuant to a lease dated as of July 1, 1992 (the "Lease"), Tenant has leased from Owner, as landlord, a portion of the Premises (the "Leased Premises") more particularly described therein; and

WHEREAS, Mortgagee has agreed to recognize the status of Tenant in the event Mortgagee shall acquire the title to Premises by foreclosure, by the acceptance of a deed in lieu thereof, or by any other means and Tenant has agreed to attorn to Mortgagee in any such event.

NOW THEREFORE, in consideration of the foregoing, the mutual covenants hereinafter mentioned and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Mortgagee hereby consents to the Lease.
2. Tenant hereby agrees that the Lease is and shall be under, subject and subordinate at all times to the lien, right, title and terms of the Loan Documents and all advances and/or payments made, or to be made, under any Loan Document. In confirmation of such subordination, Tenant shall promptly execute, acknowledge and deliver any instrument that Mortgagee may request to evidence such subordination, and Tenant hereby irrevocably constitutes and appoints Mortgagee as Tenant's attorney-in-fact, coupled with an interest, to execute and deliver any such instruments for and on behalf of Tenant if Tenant fails to execute, acknowledge or deliver any such instrument within ten (10) days after request therefor.

FIRST AMERICAN TITLE INSURANCE

94730877

355

UNOFFICIAL COPY

3. So long as Tenant (a) is not in default under the Lease beyond the expiration of any applicable grace or cure periods, (b) has not canceled or terminated the Lease (without regard to whether Owner or Tenant is then in default under the Lease), nor surrendered, vacated or abandoned the Leased Premises, and (c) except as specifically required pursuant to the terms of the Lease, has not made any advance payment of rent or additional rent, in the event that Mortgagee shall commence an action to foreclose the Mortgage or to otherwise acquire title to, and possession of, the Premises, Tenant shall not be joined as a party defendant in any such action or proceeding and Tenant shall not be disturbed in its possession of the Leased Premises nor shall the Lease be terminated unless, as a condition precedent to commencing or proceeding with any such action to foreclose the Mortgage or to otherwise acquire title to, and possession of, the Premises, Mortgagee is required by statute, judicial decision or the court in which such action or proceeding has been commenced or is pending so to name Tenant as a party defendant. For the purposes of this Agreement, any rent abatements or free rent periods expressly provided for in the Lease shall not be deemed to be an advance payment of rent or additional rent.

4. If (a) Mortgagee shall acquire title to, and possession of, the Premises upon foreclosure in an action in which Mortgagee shall have been required to name Tenant as a party defendant, and (b) Tenant is not in default under the Lease beyond any applicable cure or grace periods, has not canceled or terminated the Lease (without regard to whether Owner or Tenant is then in default under the Lease) nor surrendered, vacated or abandoned the Leased Premises and remains in actual possession of the Leased Premises at the time Mortgagee shall so acquire title to, and possession of, the Premises, then, in such event, Mortgagee shall enter into a new lease with Tenant upon the same terms and conditions as were contained in the Lease, except that (x) the obligations and liabilities of Mortgagee under any such new lease shall be subject to the terms and conditions of this Agreement (including, without limitation, the provisions of Paragraphs 5, 6 and 7 hereof), (y) without limiting the generality of clause (x) above, Mortgagee shall, in no event, have any obligations or liabilities to Tenant under any such new lease beyond those of Owner (or its predecessors-in-interest) as were contained in the Lease (to the extent assumed by Mortgagee under this Agreement), and (z) the expiration date of such new lease shall coincide with the original expiration date of the Lease. Tenant shall execute any such new lease and shall attorn to Mortgagee or its nominee, successors or assigns or any purchaser (as the case may be) as to establish direct privity between Mortgagee and Tenant.

5. If (a) Mortgagee shall acquire title to, and possession of, the Premises upon foreclosure in an action in which Tenant has not been named as a party defendant, or by deed in lieu of foreclosure, or by any other means and (b) Tenant is not in default under the Lease beyond any applicable cure or grace periods and Tenant has not surrendered, vacated or abandoned the Leased Premises at the time Mortgagee shall so acquire title to and possession of the Premises:

(i) Tenant shall be deemed to have made a full and complete attornment to Mortgagee so as to establish direct privity between Mortgagee and Tenant;

(ii) all obligations of Tenant under the Lease shall continue in full force and effect and be enforceable against Tenant by Mortgagee, with the same force and effect as if the Lease had originally been made and entered into directly by and between Mortgagee, as landlord thereunder, and Tenant; and

(iii) Mortgagee shall recognize and accept the rights of Tenant under the Lease and, subject to the provisions of Paragraphs 6 and 7 hereof, shall thereafter assume the obligations of Owner under the Lease in respect of Owner's obligations under the Lease thereafter falling due subject, in all events, to (A) the provisions of Paragraph 6 and 7 below and (B) Tenant's waiver, as against Mortgagee, of any defaults of Owner

94730577

UNOFFICIAL COPY

(whether or not curable) which occurred prior to Mortgagee acquiring title to, and possession of, the Premises.

6. (a) Nothing herein contained shall impose any obligation upon Mortgagee to perform any of the obligations of Owner under the Lease, unless and until Mortgagee shall take possession of the Premises, and, in any event, Mortgagee shall have no liability with respect to any acts or omissions of Owner occurring prior to the date on which Mortgagee shall take possession of the Premises.

(b) Notwithstanding anything to the contrary contained herein, officers, directors, shareholders, agents, servants and employees of Mortgagee shall have no personal liability to Tenant and the liability of Mortgagee, in any event, shall not exceed and shall be limited to Mortgagee's interest in the Premises.

7. Tenant hereby agrees that notwithstanding anything to the contrary in this Agreement or the Lease:

(a) no amendment, modification, termination, assignment or sublease of the Lease shall be effective against Mortgagee, unless consented to in writing by Mortgagee;

(b) Mortgagee shall not be bound by any advance payment of rent or additional rent to Owner (or its predecessors-in-interest) in excess of one month's prepayment thereof, in the case of rent, or in excess of one periodic payment in advance, in the case of additional rent, except as specifically provided in the Lease or expressly approved in writing by Mortgagee;

(c) Mortgagee shall not be liable for any act or omission of Owner (or, its predecessor-in-interest);

(d) Mortgagee shall not be subject to any offsets or defenses which Tenant might have against Owner;

(e) Mortgagee shall not be bound by any covenant to undertake or complete any construction of the Premises, the Leased Premises or any portion thereof;

(f) Mortgagee shall not be bound by any obligation of Owner to make any payment to Tenant, except that (i) Mortgagee shall be liable for the timely return of any security or other deposit actually received by Mortgagee and (ii) Mortgagee shall be liable on account of any prepayments of rent or other charges owing to Tenant if the funds are actually received by Mortgagee;

(g) Mortgagee shall not be bound by any obligation to repair, replace, rebuild or restore the Premises, the Leased Premises, or any part thereof, in the event of damage by fire or other casualty, or in the event of partial condemnation, beyond such repair, replacement, rebuilding or restoration as can reasonably be accomplished with the use of the net insurance proceeds or the net condemnation award actually received by or made available to Mortgagee; and

(h) Mortgagee shall not be required to remove any person occupying the Leased Premises or any part thereof.

8. Tenant hereby agrees to provide Mortgagee with prompt notice of any asserted default by Owner of its obligations under the Lease. In the event any such asserted default constitutes a legal basis for the cancellation of the Lease by Tenant, Tenant hereby agrees that the Lease shall not be canceled or terminated

UNOFFICIAL COPY

until Mortgagee shall have a reasonable period of time within which to (a) obtain possession of the Leased Premises, and (b) cure such default.

9. Tenant and Owner hereby agree that, in the event that Mortgagee delivers to Tenant a notice (i) stating that an Event of Default (as defined in the Mortgage) has occurred under the Mortgage or any other Loan Document and (ii) requesting that all rent and additional rent due under the Lease be thereafter paid to Mortgagee, Tenant shall pay, and is hereby authorized and directed by Owner to pay, such rent and additional rent directly to Mortgagee. Delivery to Tenant of the aforescribed notice from Mortgagee shall be conclusive evidence of the right of Mortgagee to receive such rents and payment of the rents by Tenant to Mortgagee pursuant to such notice shall constitute performance in full of Tenant's obligation under the Lease to pay such rents to Owner. If and to the extent that the Lease or any provision of law shall entitle Tenant to notice of any mortgage, Tenant acknowledges and agrees that this Agreement shall constitute such notice to Tenant of the existence of the Mortgages. Tenant acknowledges that it has notice that the Lease and the rent and all other sums due thereunder have been assigned to Mortgagee as part of the security for the Loan Documents.

10. Each of Owner and Tenant represents and warrants to Mortgagee that, as of the date hereof, there are no agreements other than the Lease in existence or contemplated between Owner and Tenant, relating to the Premises or the Leased Premises or with respect to any other matter related to Tenant's occupancy of the Leased Premises.

11. Owner, by its execution of this Agreement, agrees to be bound by and to act in accordance with the terms and conditions hereinabove contained.

12. This Agreement (i) shall be governed by and construed in accordance with the laws of the state in which the Premises are located, (ii) contain the entire agreement among the parties with respect to the subject matter hereof and (iii) may not be modified, nor may any provision hereof be waived, orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors, administrators and assigns.

13. All notices to be given hereunder shall be in writing and shall be deemed sufficiently given if (a) hand delivered, (b) delivered by reputable overnight courier or (c) mailed by certified mail, return receipt requested, in each case to the address of each party as set forth above. Each such notice shall be deemed to be effective, in the case of mail deliveries, on the second business day after mailing, and otherwise, upon receipted delivery. Any party may change its address for notice by notifying the other parties hereunder in accordance with the provisions of this Paragraph 13.

14. All rights of Mortgagee hereunder shall accrue to, and all obligations of Mortgagee shall be binding upon, Mortgagee, its successors, assigns and nominees, including, without limitation, the grantee under a deed in lieu of foreclosure and/or the purchaser of the Premises at a foreclosure sale or at any sale of the Premises following the granting of a deed in lieu of foreclosure or following foreclosure; provided, however, that following any sale or other transfer of its interest in the Premises, Mortgagee, any such grantee or purchaser (as the case may be) shall be fully released and discharged of and from any and all obligations and liabilities of any kind hereunder or under the Lease and/or under any such new lease. Without limiting the generality of the

34720577

UNOFFICIAL COPY

foregoing, this Agreement shall be binding upon and inure to the benefit of the successors, administrators and permitted assigns of Owner and Tenant hereto.

15. It is expressly understood and agreed that nothing herein shall be construed as creating any liability whatsoever against the Trustee (or any successor 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 the Trust, and that all personal liability of the Trustee of every sort, if any, is hereby expressly waived by Tenant, and by every person now or hereafter claiming any right or security hereunder, and that so far as the Trustee (or any successor Trustee) is concerned, the owner of any indebtedness or liability accruing hereunder shall look solely to the assets of the Trust and the proceeds thereof for the payment thereof.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above set forth.

Owner: HARRIS TRUST AND SAVINGS BANK,
not personally or individually but as
trustee

By: [Signature]
Name: Kenneth E. Pickett
Title: REAL ESTATE VICE PRESIDENT

Mortgagee: CITICORP REAL ESTATE, INC.

By: [Signature]
Name: Angela Pawlowny McCann
Title: Vice President

Tenant: INDUSTRIAL RISK INSURERS

By: [Signature]
Name: R. S. BELANGER
Title: AVP - HUMAN RESOURCES

94720677

UNOFFICIAL COPY

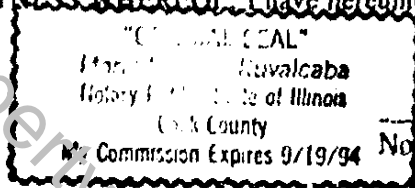
State of Illinois)

) ss.:

County of Cook)

On this 22nd day of Feb., 1993, before me personally came Kenneth E. Piekut, to me known, who, being duly sworn, did depose and say that he resides at _____, that he is ~~VICE PRESIDENT~~ VICE PRESIDENT of HARRIS TRUST AND SAVINGS BANK, the entity described in, and which executed, the foregoing instrument, not individually or personally but as Trustee; and that he had authority to sign the same, and acknowledged that he executed the same as the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of Feb., 1993



Maria Soomo Arvalcaba
Notary Public

My Commission Expires: _____

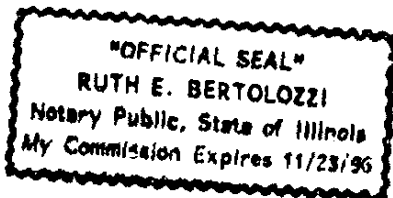
State of Illinois)

) ss.:

County of Cook)

On this 26 day of Feb., 1993, before me personally came Hester McArthur, to me known, who, being duly sworn, did depose and say that he is a Vice President of CITICORP REAL ESTATE, INC., the corporation described in, and which executed, the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand this 26 day of Feb., 1993



Ruth E. Bertolozzi
Notary Public

My Commission Expires: 11/23/96

94730877

State of Connecticut)

) ss.:

County of Hartford)

On this 5 day of February, 1993, before me personally came R.T. Belanger, to me known, who being duly sworn, did depose and say that he is a AVP, H.R. of INDUSTRIAL RISK INSURERS, the unincorporated association described in, and which executed, the foregoing instrument, and that he has the authority to sign the same, and acknowledged that he executed the same as the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand this 5 day of February, 1993.

Beverly A. Dutton
Notary Public

My Commission Expires: Mar. 31, 1994

UNOFFICIAL COPY

RECEIVED RECORDING

\$35.50

SCHEDULE A

149997 TRAN 5147 08/17/94 15:20:00

0234 : DW *-94-730877

COOK COUNTY RECORDER

THE LAND DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT 7, EXCEPT THE WEST 122.53 FEET, OF RAILROAD COMPANIES RESUBDIVISION OF BLOCKS 62 TO 76, INCLUSIVE, 78, PARTS OF 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 29, 1924 IN BOOK 188 ON PAGES 11 TO 28, INCLUSIVE, AS DOCUMENT NUMBER 8339751, EXCEPTING THEREFROM THAT PART THEREOF LYING BELOW OR BENEATH THE AIR RIGHTS LIMITING PLANE OR ELEVATION SET FORTH IN APPENDIX "B" TO LEASE DATED APRIL 8, 1980 WHICH APPEARS OF RECORD AS AN ATTACHMENT TO ASSIGNMENT OF LEASE RECORDED OCTOBER 2, 1980 AS DOCUMENT NUMBER 25607453, AND WHICH IS INDICATED IN SAID APPENDIX "B" TO BE 32 FEET 10 INCHES ABOVE CHICAGO CITY DATUM, ALL IN COOK COUNTY, ILLINOIS

PARCEL 2:

ALL LAND AND SPACES BELOW THE AIR RIGHTS LIMITING PLANE DESCRIBED IN PARCEL 1 ABOVE AS ARE OCCUPIED BY COLUMNS, TRUSSES, HORIZONTAL STRUCTURAL MEMBERS, INCLUDING THE FINISHED MEZZANINE FLOOR, FOUNDATIONS AND OTHER SUPPORTS FOR THE BUILDING CONTEMPLATED BY THE LEASE DESCRIBED IN PARCEL 1 ABOVE, AND SMOKE EXHAUST PLENUMS, ELEVATOR PITS, FUEL TANKS, PUMPING STATIONS AND MECHANICAL EQUIPMENT LOCATED BELOW SAID AIR RIGHTS LIMITING PLANE FOR THE PURPOSE OF SAID CONTEMPLATED BUILDING IN COOK COUNTY, ILLINOIS

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AND PARCEL 2 ABOVE FOR THE CONSTRUCTION, USE, MAINTENANCE, REPAIR, REPLACEMENT OR RENEWAL FROM TIME TO TIME OF ADEQUATE COLUMNS, TRUSSES, HORIZONTAL STRUCTURAL MEMBERS, INCLUDING THE FINISHED MEZZANINE FLOOR, FOUNDATIONS, AND OTHER SUPPORTS FOR THE BUILDING CONTEMPLATED UNDER THE LEASE DESCRIBED IN PARCEL 1 ABOVE, AND SMOKE EXHAUST PLENUMS, ELEVATOR PITS, FUEL TANKS, PUMPING STATIONS AND MECHANICAL EQUIPMENT, IN THE LAND AND SPACE BELOW THE AIR RIGHTS LIMITING PLANE DESCRIBED IN PARCEL 1 ABOVE IN COOK COUNTY, ILLINOIS

PARCEL 4:

A NONEXCLUSIVE APPURTENANT EASEMENT IN FAVOR OF PARCELS 1, 2 AND 3 AS CREATED BY DEED OF EASEMENT DATED JANUARY 16, 1990 AND RECORDED JANUARY 31, 1990 AS DOCUMENT 90047309 AND AS AMENDED BY FIRST AMENDMENT TO DEED OF EASEMENT RECORDED OCTOBER 9, 1990 AS DOCUMENT 90491486, MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 17, 1983 AND KNOWN AS TRUST NUMBER 107292 TO GATEWAY IV JOINT VENTURE, AN ILLINOIS GENERAL PARTNERSHIP, AND OTHERS FOR THE USE OF 1,100 PUBLIC PARKING SPACES IN THE GARAGE, AS DEFINED THEREIN, WITH RIGHTS OF INGRESS AND EGRESS AND AN EASEMENT FOR THE PURPOSE OF CONSTRUCTION OF SUCH REPAIRS OR RESTORATION FOR THE PERIOD REQUIRED TO COMPLETE SUCH REPAIRS OR RESTORATION ON, OVER, AND ACROSS THE FOLLOWING DESCRIBED LEGAL DESCRIPTION: LOTS 5, 6, 7, AND 8 (EXCEPT FROM SAID LOTS THAT PART FALLING IN ALLEY) IN BLOCK 49 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

TAX# 17-16-121-003

UNOFFICIAL COPY

SCHEDULE B

Description of Mortgage

Amended and Restated Mortgage dated as of November 12, 1986 and recorded December 5, 1986 as Document 86582629 in Cook County, Illinois made by and between Gateway IV Joint Venture, an Illinois General Partnership, and Citicorp Real Estate, Inc., a Delaware corporation, as Mortgagee, as amended by Amendment to Amended and Restated Mortgage dated May 11, 1988 and recorded May 18, 1988 as Document 88213063 in Cook County, Illinois.

Property of Cook County Clerk's Office

94730877

RECORDED
INDEXED
MAY 18 1988
CLERK OF COOK COUNTY
CHICAGO, ILLINOIS

UNOFFICIAL COPY

Property of Cook County Clerk's Office



RETURN TO:
COHN & BIRNBAUM, P.C.
100 PEARL STREET
HARTFORD, CT 06103-4500
PSS # 308 96-2