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## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (this "Memorandum") is made as of this 3rd day of November, 1994, by and between PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION OF COLORADO, an instrumentality of the State of Colorado ("Developer"), and SEARS, ROEBUCK AND CO., a New York corporation ("Sears").

### RECITALS

A. Developer is the owner of that certain real property located in the Village of Matteson, County of Cook, State of Illinois, more particularly described on Exhibit A, attached hereto and by this reference incorporated herein, more commonly known as Lincoln Mall (the "Shopping Center").

B. Sears is the owner of that certain real property located in the Village of Matteson, County of Cook, State of Illinois, more particularly described on Exhibit B, attached hereto and by this reference incorporated herein (referred to as the "Sears Tract").

C. Developer and Sears have entered into an Agreement dated November 3, 1994, whereby the parties have made certain agreements with respect to the operation and use of the Shopping Center and the Sears Tract. All undefined capitalized terms in this Memorandum will have the same meaning as set forth in the Agreement, unless the context clearly indicates otherwise.

### MEMORANDUM

1. Operating Covenants. Developer and Sears have entered into various operating covenants. Developer agreed that so long as Sears is operating the Building as a retail store in the Shopping Center pursuant to the Operating Covenant (defined below), Developer will endeavor to keep the mall shop space within the Shopping Center leased and operating as retail stores similar to other first class regional malls in the suburban Chicago area. Accordingly, Sears agreed to continuously use and operate the Sears Tract and the Building for a period of 10 years from the date of opening the Building for business as a "Sears" store occupying the entire Building and for an additional five-year period after the expiration of such 10-year period (15 years after the date of the opening the Building for business) as a retail department store occupying the entire Building (collectively the "Operating Covenant").

2. Purchase Option. Sears granted to Developer the option to purchase the Sears Tract on the terms set forth in the Agreement, to be exercisable by Developer (1) each time Sears defaults under the Operating Covenant, or (2) one time within 180 days after Sears ceases its operations after the expiration of the Operating Covenant.

3. Assignment.

a. The Agreement may not be assigned by Sears during the period the 10 Year Covenant is in effect without the prior written consent of Developer, which Developer may

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withhold in its sole discretion. Notwithstanding the foregoing, during the period of the 10 Year Covenant, Sears may assign the Agreement to a third party, without the prior written consent of Developer but with prior written notice to Developer, in connection with a sale-leaseback transaction, whereby Sears leases the Sears Tract and Sears continues to operate a Sears store in accordance with the requirements of the Agreement. The then owner of the Sears tract will be the assignee and the provisions of the Agreement will continue to apply to Sears and such assignee as set forth below.

b. After the expiration of the 10 Year Covenant, Sears may assign the Agreement without Developer's consent, but with prior written notice to Developer.

c. After the expiration of the Operating Covenant (the 15 year period), Sears may assign the Agreement to a party reasonably approved by Developer, and Developer may consider such factors as the character, reputation and financial responsibility of such party, and upon such consent by Developer, Sears will be released from its obligations under the Agreement accruing from and after the assignment; provided, however, Developer may elect to terminate the Agreement by notice to Sears, rather than to consent to such proposed assignment.

d. Except for an assignment pursuant to subparagraph c above, no assignment of the Agreement by Sears will release Sears from the obligations of Sears and its successors or assigns thereunder, and any assignee of the Agreement must assume the obligations of Sears thereunder and agree to be bound by the terms of the Agreement. Thereafter, Sears and all subsequent assignees of Sears interest thereunder will be jointly and severally liable to Developer.

e. The Agreement may be assigned by Developer at any time without Sears consent, whereupon the then Developer will be released of all obligations of Developer arising from and after the date thereof, provided that the new Developer assumes and agrees to be responsible for all such obligations of the Developer thereunder.

4. Status of PERA. PERA is a nominee for Public Employees' Retirement Association of Colorado. The partners of PERA, and the officers, trustees, directors, employees and agents of Public Employees' Retirement Association of Colorado will not be responsible for Developer's covenants and will not be otherwise liable under the Agreement.

5. Other Terms and Provisions. The Agreement contains other terms and provisions which are not set forth herein, but which are acknowledged by Developer and Sears and reference is hereby made to the Agreement for a complete statement thereof.

6. Memorandum. This Memorandum is executed for the purpose of being recorded in the office of the Clerk and Recorder of Cook County, Illinois, to give notice of the existence of the Agreement and in no event shall be deemed to modify any of the terms and conditions of the Agreement.

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7. Addresses of the Parties. The respective addresses of the parties are as follows:

Developer:

Public Employees' Retirement Association of Colorado  
1300 Logan Street  
Denver, Colorado 80203  
Attention: Director, Real Estate

Sears:

Sears, Roebuck and Co.  
3333 Beverly Road  
Hoffman Estates, Illinois 60179  
Attention: Divisional Vice President, Real Estate

8. Application of Agreement. With respect to application of the Agreement to Sears and Developer, in the event of any conflict between the terms and conditions of the Agreement and the RCOEA, the Agreement will control. With respect to application of the Agreement to Sears and the Parties (other than Developer), in the event of any conflict between the terms of the Agreement and the RCOEA, the RCOEA will control.

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

DEVELOPER:

PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION OF COLORADO, an instrumentality of the State of Colorado

By: THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation, advisor to and authorized agent of Public Employees' Retirement Association of Colorado

By: [Signature]  
Its: Vice President

SEARS:

SEARS, ROEBUCK AND CO., a New York corporation

By: [Signature]  
Its: Barry D. Kaufman  
Divisional Vice President  
3 Real Estate

R. E. DIRECTOR  
[Signature]  
LEGAL  
JKH SNA

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*Prepared by and after recording mail to:*

*William J. Ulrich Jr.  
% Hinshaw & CULBERTSON  
4343 COMMERCE Ct. #415  
Lisle, Ill.  
60532*

*Box 333*

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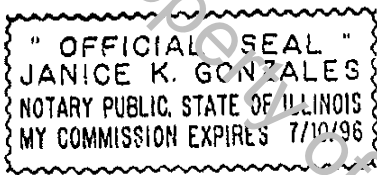
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STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF Cook )

The foregoing Memorandum of Agreement was acknowledged before me this 4<sup>th</sup> day of November, 1994, by Marc Poggiali as Authorized Agent of Public Employees' Retirement Association of Colorado, an instrumentality of the State of Colorado.

Witness my hand and official seal.

[SEAL]



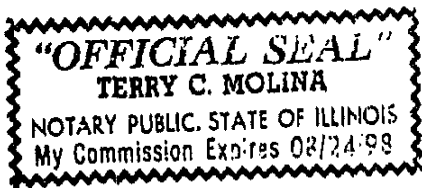
Janice K. Gonzales  
Notary Public

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

The foregoing Memorandum of Agreement was acknowledged before me this 3<sup>rd</sup> day of NOVEMBER 1994, by BARRY D. KAUFMAN as DIVISIONAL VICE PRESIDENT of Sears, Roebuck and Co., a New York corporation.

Witness my hand and official seal.

[SEAL]



Terry C. Molina  
Notary Public

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## EXHIBIT A

### THE SHOPPING CENTER

Lots 1 and 6 in Lincoln Mall; the said Lincoln Mall being a subdivision of part of the South West Quarter (SW1/4) of Section 22, Township 35 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois, according to the plat thereof recorded in Cook County, Illinois, on March 20, 1972, as Document 21840371.

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Lincoln Mall, Matteson, Illinois

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## EXHIBIT B

### THE SEARS TRACT

Lot 5 in Lincoln Mall; the said Lincoln Mall being a subdivision of part of the South West Quarter (SW1/4) of Section 22, Township 35 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois, according to the plat thereof recorded in Cook County, Illinois, on March 20, 1972, as Document 21840371.

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Lincoln Mall, Matteson, IL.

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