

UNOFFICIAL COPY

96517582

F	313	A
F		P
T	125	1
I		

DEPT-01 RECORDING \$39.50
 147777 TRAN 5486 07/08/96 15:28:00
 #2506 : FH *-96-517582
 COOK COUNTY RECORDER

FIRST AMENDMENT TO DECLARATION
 OF EASEMENTS, COVENANTS AND RESTRICTIONS

Property of Cook County Clerk's Office

96517582

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

This First Amendment to Declaration of Easements, Covenants and Restrictions is made and entered as of the 26th day of June, 1996 by Washington National Insurance Company ("Declarant").

WHEREAS, Declarant previously entered into that certain Declaration of Easements, Covenants and Restrictions dated September 21, 1995 and recorded as Document No. 95-645919 with the Cook County Recorder of Deeds (the "Declaration").

WHEREAS, Declarant desires to amend the Declaration as further described below. All terms with initial capital letters herein and not otherwise defined herein shall have the meanings ascribed to them in the Declaration.

NOW THEREFORE, Declarant declares as follows:

1. Definitions.

a. "Parcel 1" shall mean the northerly 34 feet of Lot 5, rather than the northerly 16 feet of Lot 5 as originally stated in the Declaration. Similarly, Parcel 4 shall include, in addition to Lots 2, 3 and 4, Lot 5 (except the northerly 34 feet of said Lot 5).

b. "Garage Area" shall mean the area located primarily under the Surface of the Annex Land and the Surface of the Bank Land (and, in addition, the Garage Area includes vault areas located to the west of the Annex Land under the surface of the public sidewalks) in which a parking garage, elevator pit and other equipment serving the Annex Property and the Office Property are currently located.

c. "Annex Property" shall mean the Surface of the Annex Land together with any buildings or other improvements now or hereafter located on or above the Surface of the Annex Land.

d. "Bank Property" shall mean the Surface of the Bank Land together with any buildings or other improvements located on the Surface of the Bank Land.

e. "Owner" shall mean a legal or beneficial Owner, from time to time, of any one or more of the "Annex Property", the Bank Property, or the Garage Area, or any portion of any of them.

f. "Surface" shall mean the elevation lying at the horizontal plane which is 19.66 feet above City of Evanston datum.

96517382

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

g. "Maintenance" shall mean and include the maintenance, repair, construction, reconstruction, reconditioning, refurbishing, inspection, cleaning, painting, installation and replacement when necessary or desirable of such facilities as the context may require.

2. **Easement In and Over Garage Area.** The Annex Property is hereby granted a perpetual easement in, over and under the Garage Area:

a. for the purposes of performing Maintenance to (i) all structural components necessary for the support of the Annex Property ("Annex Structural Components"), and (ii) all mechanical, plumbing, electrical, telephone and other utility systems or other services used by or in common with the Annex Property ("Annex Utility Systems");

b. to the extent reasonably necessary, for the purposes of performing Maintenance to any building or other improvements constituting a part of the Annex Property; and

c. permitting encroachments due to the settling or shifting of the Annex Property.

The easement contained in Paragraph 2.b. above shall also extend to the extent reasonably necessary to the northerly 15 feet of the Bank Land.

In the event that the act or omission to act of the Owner of the Bank Property or the Garage Area (or any operator, manager, tenant, invitee, agent, employee or contractor) results in damage or interruption of service to the Annex Property, the Annex Utility System or the Annex Structural Components, it shall be the responsibility of the Owner of the Bank Property or the Garage Area, whichever is applicable, to repair or to correct such damage or interruption of services in a prompt manner which will not interfere with the enjoyment of the Annex Property by the owner and tenant thereof.

3. **Plaza Area.** Until March 28, 2036, the Owner of the Annex Property, its tenants and invitees shall have the non-exclusive right to use and enjoy the plaza area (the "Plaza") and the sidewalks located between the Annex Property and the building on the Bank Property. The Owner of the Bank Property shall maintain the Plaza in a sightly and usable condition as an open area for pedestrians and patrons of the area. No material changes to the Plaza may occur, without the written consent of the Owner of the Annex Property, which shall not be unreasonably withheld or delayed (and without limiting the generality of the foregoing, the Owner of the Annex Property shall not be deemed to have unreasonably withheld or delayed its consent if it has requested the consent of any tenant or other user of the Annex Property, and is diligently endeavoring to obtain such consent, but such consent has not been obtained). In addition, to the extent of sidewalks located on the Bank Property, if any, and necessary or desirable for the use of the Annex

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property, the Owner of the Bank Property shall use reasonable efforts to make available for such use by the Owner of the Annex Property, and their invitees, such sidewalks, subject to unavoidable temporary closings or temporary relocations necessitated by public authority.

4. **Relocation of Easements.** The Owner of the Garage Area shall have the right, at its sole cost and expense, to relocate any Annex Structural Components or Annex Utility Systems provided the benefits provided thereby are not reduced or diminished, and that disruption to utilities or services occurs to the maximum extent feasible during hours when the tenant in the Annex Property is not open for business (provided, however, that the Owner of the Garage Area shall give prior notice of such disruption to the Owner of the Annex Property and that in no event shall any interruption of utilities occurring, to any extent, last more than 24 hours), and in such event the easements for such structural components and/or such utility systems shall be automatically relocated to the new location of such structural components and/or utility systems.

5. **Maintenance.** The Owner of the Bank Property shall perform or cause to be performed maintenance and replacement when, as and if required in its reasonable judgment, to the following items:

- a. interior (under slab) and perimeter drain tile, pumps and drainage system for the Garage Area, to the extent the same may impact upon the use or operation of the Annex Property;
- b. Garage Area sprinkling and fire protection system including, but not limited to, dry standpipes and fire extinguisher;
- c. Garage Area exhaust and in-take fan systems;
- d. the elevator located to the rear of the Annex Property;
- e. the loading dock and trash pick-up area located at the rear of the first floor level of the Annex Property;
- f. the structural support system contained in the Garage Area to the extent such structural support system also gives support to the Annex Property. The Owner of the Bank Property further agrees not to do anything to interfere with such structural support system; and
- g. all sanitary and storm sewer systems contained in or under the Garage Area which serve both the Annex Property and either the Garage Area or the Bank Property.

The Owner of the Bank Property, in performing such Maintenance, or any other activities at or around the Garage Area or the Bank Property, shall cause the same to be performed in a

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

manner which will not unreasonably interfere with the enjoyment of the Annex Property by the Owner of the Annex Property, its tenants or invitees thereof.

In consideration of the services to be performed by the owner of the Bank Land pursuant to (d) and (e) above, the Owner of the Annex Property shall pay to the Owner of the Bank Property the annual sum of Three Hundred and No/100 Dollars (\$300.00), increasing by ten percent (10%) simple interest on each five (5) year anniversary of June 1, 1996.

6. **Loading Dock Easement.** Section 2 of the original Declaration is hereby modified to provide that such easement is non-exclusive and that the owner of the Annex Land, its tenants and invitees shall have the free and unrestricted right to use the loading dock for delivery of merchandise and storage of trash and garbage for off-site disposal; provided, however, that tenants of the Bank Property shall have the right to utilize the loading dock for receiving deliveries and utilizing the trash compactor substantially as currently located at the loading dock.

7. **Damage or Destruction.** If any building or buildings (or portions thereof) located on or in or constituting the Bank Land or the Garage Area are damaged or destroyed (partially or totally) by fire, the elements or any other casualty, the Owner thereof shall use its best efforts to promptly and with due diligence repair, rebuild and restore the same as nearly as practicable to the condition existing just prior to such damage or destruction, or in the alternative, shall use its best efforts, to clear, clean and raze the damaged buildings, structures or areas.

8. **Tax Division.**

a. **General.** The Owner of the Annex Property and of the Bank Property shall reasonably cooperate to have the Annex Property separately assessed as soon as possible. Until such time as such separate assessment is effected such Owners shall allocate and pay taxes in accordance with the terms of this Section.

b. **Payment.** The Owner of the Annex Property shall pay to the Owner of the Bank Property the Annex Property's Proportionate Share of all ad valorem real estate taxes and assessments attributable to the Property and the improvements thereon (exclusive of areas separately assessed) which come due prior to the effectiveness of such separate assessment ("Taxes") within thirty (30) days following receipt of written notification that such Taxes are due. For Taxes which come due in 1996 the Owner of the Annex Property shall pay only 278/366 of the amount which would otherwise be due hereunder in recognition of the fact that the Borders' store in the Annex Property opened for business on March 29, 1996.

c. **Proportionate Share.** The Annex Property's Proportionate Share shall be a fraction based on the relative square foot floor areas of the building located on the Annex Property (i.e. 31,357) and of the office tower located on the Bank Property (which Declarant represents to be 303,607) or 9.3613%.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9. **Notices.** All notices, demand, elections or other communications required, permitted or desired to be served hereunder upon an Owner ("Notices") shall be in writing and shall be delivered by telecopy, in person or sent by overnight courier service or mailed as certified or registered matter, postage prepaid, return receipt requested. Any Notice delivered by telecopy, in person or by courier service as aforesaid, shall be deemed received when actually received and any Notice mailed as aforesaid shall be deemed received three (3) business days after deposit in the United States mail, or upon actual receipt, whichever is earlier. Notices shall be sent to the Owner at its address at the Property and such addresses for service of Notice may be changed by written notice served as hereinabove provided. Nothing herein contained, however, shall be construed to preclude service of any Notice in the same manner that service of a summons or legal process may be made.

10. **Restrictions of Use.** For so long as the Annex Property is used as a book/record store, no portion of the Bank Property or the Garage Area may be occupied or used, directly or indirectly, for a flea market, swap shop or "outlet store" selling merchandise that is used, damaged or discontinued, bowling alley, arcade, game room, skating rink, billiard room, massage parlor, adult book store, bar, tavern, pub, restaurant occupying more than 8,000 square feet of space or having an entrance within 300 feet from any entrance to the Annex Property, ballroom, dance hall, discotheque, beauty shop, barber, college, theatre, health club, place of instruction, reading room or any operation catering primarily to students or trainees rather than to customers, funeral parlors, facility for the sale of paraphernalia for the use with illicit drugs, off-track betting parlor, carnival, amusement park or circus, new or used car dealership, gas station or auto repair shop. For so long as the Annex Property is used as a book/record store, Declarant will not permit any occupant of the Bank Property or the Garage Area (including any subtenant, licensee, concessionaire or occupant thereof) to engage in the sale of (i) books, (ii) periodicals, (iii) video products and/or (iv) music products (in any current or future format of such enumerated items) unless the subject matter of such items is directly related and ancillary to the primary use of such other tenant's premises (e.g., a computer store which sell books or periodicals dealing with computer products) and not more than 100 square feet of surface display is devoted to the retail display of such related items. The restrictions of this Section 7 shall be subject to all leases in existence for the Bank Property as of October 9, 1995.

11. **Rights and Remedies.**

a. In the event of the failure of the Owner of any portion of the Property to perform its obligations as herein provided, which failure continues for more than five days after the giving of notice to such Owner (a "responsible Owner") by any other Owner (a "non-responsible Owner") of any portion of the Property (provided that no such notice shall be necessary in the event that any imminent danger of damage or personal injury to person or property exists, or in the event that the non-responsible Owner has reasonable grounds to believe that performance must occur immediately in order to mitigate against the possibility of economic or other damages), the non-responsible Owner shall have the immediate

06517102

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

right of access to the Property owned by or controlled by the responsible Owner to take such actions as are reasonable and appropriate in order to cause such obligation to be performed. The non-responsible Owner shall have a right to recover from the responsible Owner such amounts as represent the actual out of pocket costs incurred by the non-responsible Owner in performing such obligations.

b. The rights and remedies of an Owner provided for in this paragraph or elsewhere in the Declaration, as hereby amended, are cumulative and not intended to be exclusive of any other remedies to which an Owner may be entitled at law or in equity or by statute. Any Owner may enforce, by a proceeding in equity for mandatory injunction, any other Owner's obligation. The exercise by any Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

c. In the event of any litigation or other legal action by and between any Owners arising from the subject matter of the Declaration, as hereby amended, the non-prevailing Owner shall pay to the prevailing Owner all reasonable legal fees and costs incurred in connection therewith. Furthermore, in the event that, through no fault of its own, any Owner is involved in litigation or other legal action initiated by a third party and which arises or is alleged to arise out of the act or conduct of another Owner hereunder, the reasonable legal fees and costs incurred by an Owner in connection with such litigation or other legal action shall be reimbursed to it, upon demand, by the Owner whose conduct was alleged to have been responsible for the initiation of litigation or other legal action.

12. General.

a. All the easements, covenants, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each Owner and their grantees, mortgagees, heirs, successors, personal representatives and assigns.

b. Except as stated in Paragraph no. 11.a. above, this Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary.

c. The illegality, invalidity or unenforceability of any provision of the Declaration, as hereby amended, shall not impair or affect in any manner the validity, enforceability or effect of the remaining provisions of the Declaration, as hereby amended.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

d. The headings of sections in this First Amendment are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the provisions hereof.

e. The Owners shall reasonably cooperate to cause the requirements of Evanston Ordinance 50-0-67 as amended, modified, or superseded to be complied with at all times.

IN WITNESS WHEREOF, Declarant has caused this First Amendment to Declaration of Easements, Covenants and Restrictions to be executed as of the date first written above.

WASHINGTON NATIONAL INSURANCE
COMPANY

By: *Mr. James E. Whelan*
Print Name and Title

Pin Nos. 11-18-306-005; 11-18-306-032; 11-18-306-003; 11-18-306-031.

C:\WPS\DOCS\WANA\BORDER\1\AMEND.3\425\9610:07am\WNB/bn:

Mail To:

Phillip J. Bowen
Conlin, McKenney
700 City Center Bldg.
Ann Arbor, Michigan
49104



UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

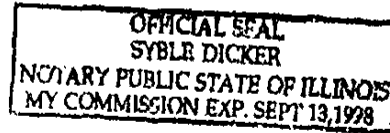
I, Syble Dicker a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that James F. Diagonal, as Vice President of Washington National Insurance Company, known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26th day of June, 1996.

Syble Dicker
Notary Public

My Commission Expires:

9-13-98



Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

LEGAL DESCRIPTION

PARCEL 1:

THAT PART OF LOTS 4 AND 5, TAKEN AS A SINGLE TRACT, IN BLOCK 19, IN EVANSTON, IN SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 4; THENCE SOUTH ON THE WEST LINE OF SAID TRACT, 100.56 FEET, TO THE NORTH FACE, AND ITS EXTENSION, OF A BRICK WALL; THENCE EAST ALONG THE NORTH FACE AND ITS EXTENSION, OF SAID BRICK WALL, 210.44 FEET TO THE EAST LINE OF SAID LOTS 4 AND 5; THENCE NORTH ON THE EAST LINE OF SAID TRACT, 100.10 FEET TO THE NORTHEAST CORNER OF LOT 4; THENCE WEST ON THE NORTH LINE OF SAID LOT 4, 210.42 FEET TO THE PLACE OF BEGINNING, SAID TRACT TO HAVE A LOWER LIMIT OF 19.66 FEET, CITY OF EVANSTON DATUM, WHICH LIES WITHIN AN UNDISTURBED CONCRETE SLAB, USED AS A FLOOR FOR SAID TRACT AND USED AS A CEILING FOR AN UNDERGROUND PARKING GARAGE.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1, CREATED IN THE DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS MADE SEPTEMBER 21, 1995 BY WASHINGTON NATIONAL INSURANCE COMPANY, RECORDED SEPTEMBER 25, 1995 AS DOCUMENT 95645919, AS AMENDED BY FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS MADE 6-26, 1996, RECORDED _____ AS DOCUMENT _____

96517582

UNOFFICIAL COPY

Property of Cook County Clerk's Office

5/16/11

96517582