

# UNOFFICIAL COPY

## ASSIGNMENT OF RENTS AND LESSOR'S INTEREST IN LEASES

THIS ASSIGNMENT is made as of the 2 day of September, 1997, by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee under Trust Agreement dated September 1, 1983 and known as Trust No. 59155 ("Trustee") and LAKE SOUTHPOINT PROPERTIES PARTNERSHIP, an Illinois general partnership ("Beneficiary"; Trustee and Beneficiary are hereinafter together referred to as "Assignor") to BERKSHIRE LIFE INSURANCE COMPANY ("Assignee").

97646824

### WITNESSETH:

Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, transfers, sets over and assigns to Assignee, the entire lessor's interest in and to any and all leases and subleases (including all extensions and renewals thereof), now or hereafter existing (the "Leases"), and any and all rents, issues, income and profits, or and from that certain real estate located in Cook County, Illinois, commonly known as Southpoint Plaza, 635 Chicago Avenue, Evanston, Illinois and legally described in Exhibit A attached hereto and made a part hereof, and all buildings, structures and improvements now or hereafter constructed thereon (the "Premises").

DEPT-01 RECORDING 153.50  
T#0012 TRAN 6537 09/03/97 11:23:00  
#3028 # CG #-97-646824  
COOK COUNTY RECORDER

5350

### THIS ASSIGNMENT OF RENTS IS GIVEN TO SECURE:

(a) Payment by Assignor of the indebtedness evidenced by, and observance and performance by Assignor of each and every one of the covenants, terms, conditions and agreements contained in, a certain Mortgage Note of even date herewith (the "Note") in the principal sum of ONE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,800,000.00) (the "Loan") made by Assignor and delivered to Assignee simultaneously with the execution and delivery of this Assignment; and

(b) Observance and performance by Assignor of the covenants, terms, conditions and agreements contained in this Assignment, the Note, the Security Agreement, the Mortgage (the "Mortgage") of even date herewith made by Assignor to Assignee and creating a first mortgage lien on the Premises, the Environmental Indemnity Agreement of even date herewith made by Assignor to Assignee (the "Environmental Indemnity"), the Security Agreement of even date herewith made by Assignor to Assignee, the Certificate of Representations and Warranties of even date herewith made by Assignor to Assignee, and

RETURN TO: Box 15 N24-24144-14NHL 339036

97646824

FIGOR TITLE INSURANCE

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any and all other documents executed in connection therewith (collectively, the "Loan Documents").

AND ASSIGNOR HEREBY COVENANTS, AGREES, REPRESENTS AND WARRANTS AS FOLLOWS:

1. Representations of Assignor. Trustee represents and Beneficiary represents and warrants to Assignee that:

(a) This Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor has not heretofore made any other assignment of its entire or any part of its interest in and to any or all of the Leases, or any or all of the rents, issues, income or profits assigned hereunder or entered into any agreement to subordinate any of the Leases, or Assignor's right to receive any of the rents, issues, income or profits assigned hereunder; and

(c) Assignor has not heretofore executed any instrument or performed any act which may or might prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation.

2. Covenants of Assignor. Assignor covenants and agree that so long as this Assignment shall be in effect:

(a) Assignor shall not, without Assignee's prior written consent: (i) enter into, renew, cancel, modify or amend any Lease for all or any portion of the Premises; (ii) assign or pledge any rents and/or any Leases affecting all or any portion of the Premises; (iii) grant extensions or renewals of existing Leases. Assignor shall not accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, other than security and other like deposits. Notwithstanding the foregoing, Assignee's prior written consent shall not be required for the execution by Beneficiary or Assignor of (i) any Lease of less than 4,000 square feet that is on a pre-approved, standard form and that is at the prevailing market rental rate; and (ii) any extension or renewal of any existing Lease of less than 4,000 square feet that is on a pre-approved, standard form and that is at the prevailing market rental rate;

(b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and shall not do or suffer to be done anything to impair the security thereof, or, without the express written consent of Assignee, (i) release the liability of any tenant thereunder, or (ii) permit any tenants thereunder to withhold the payment of rent or to make monetary advances and offset the same against future rentals, or (iii) permit any tenant thereunder to claim a total or partial eviction, or (iv) permit any tenant thereunder to terminate or cancel any Lease;

(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits;

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(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all of the Leases, or any or all rents, issues, income or profits assigned hereunder without the prior written consent of Assignee;

(e) Except as may be permitted pursuant to subparagraph 2(a) above, Assignor shall not alter, modify or change the terms and provisions of any Lease or give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease) or approval, required or permitted by such terms and provisions, or cancel or terminate any Lease without the prior written consent of Assignee;

(f) Assignor shall not accept a surrender of any Lease, or convey or transfer, or suffer or permit a conveyance or transfer of, the Premises demised under any Lease or any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder;

(g) Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or suffer to be done anything which would terminate any such guaranty as a matter of law, without the prior written consent of Assignee;

(h) Assignor shall not waive or excuse the obligation to pay rent under any Lease;

(i) Assignor shall enforce the Leases and all rights and remedies of the lessor thereunder in case of default thereunder by any tenant;

(j) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or of any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including attorneys' fees, in any such action or proceeding in which Assignee may appear.

(k) Assignor shall give prompt notice to Assignee of any notice of any default on the part of the lessor with respect to any Lease received from any tenant or guarantor thereunder; and

(l) Assignor shall enforce the observance and performance of each and every covenant, term, condition and agreement contained in each and every Lease to be observed and performed by the tenant(s) thereunder.

3. Rights Prior to Default. So long as Assignor is not in default hereunder, Assignor shall have the right to collect at the time, but not more than thirty (30) days in advance of the date provided for the payment thereof, all rents, issues, income or profits assigned hereunder (other than security or similar deposits), and to retain, use and enjoy the same. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

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4. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" for purposes of this Assignment:

- (a) Failure by Assignor to pay on the date when due any installment of the principal sum of the Note and/or of any interest thereon, subject to any applicable cure period contained therein;
- (b) Breach of any representation, covenant, warranty or agreement made by Assignor in this Assignment or in any of the other Loan Documents, subject to any applicable cure period contained herein or therein; and
- (c) Any other event of default under the Note or any of the Loan Documents, subject to any applicable cure period contained therein.

5. Rights and Remedies Upon Default. At any time upon or following the occurrence of any one or more Events of Default, Assignee may, at its option and without any obligation to do so, without in any way waiving such Event or Events of Default, without notice to or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor from any obligation hereunder, and with or without bringing any action or proceeding:

- (a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;
- (b) Enter upon and take possession of the Premises, either in person or by an agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs and replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act or acts which Assignee deems necessary or proper;
- (c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect and give acquittance for all rents, issues, income or profits of or from the Premises, and pursue all remedies for enforcement of the Leases and all of the lessor's rights therein or thereunder, provided that, for such purpose, this Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice thereafter to pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided, further, that Assignor will facilitate in all reasonable ways Assignee's collection of such rents, issues, income or profits, and upon request will execute written notices to the tenants under the Leases thereafter to pay all such rents and other amounts to Assignee; and
- (d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary or proper, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest;

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thereon until paid at an annual rate equal to the Default Rate (as defined in the Note) and shall be secured by this Assignment.

(c) Notwithstanding the foregoing, Assignee agrees that in the event the Mortgage is foreclosed, Assignee shall not file any claim, suit, action or other demand against Assignor on account of any deficiency judgment obtained by Assignee during the foreclosure proceedings.

6. Application of Proceeds. All sums collected and received by Assignee out of the rents, issues, income or profits of the Premises following the occurrence of any one or more Events of Default shall be applied as follows:

(a) First, to reimbursement of Assignee for and of all expenses of: taking and retaining possession of the Premises; managing the Premises and collecting the rents, issues, income or profits thereof or therefrom, including, without limitation, salaries, fees or wages of a managing agent and such other employees as Assignee may deem necessary or proper, and attorneys' fees; operating and maintaining the Premises, including without limitation, taxes, charges, claims, assessments, water rents, sewer rents and other liens, and premiums for any insurance provided for in the Mortgage; and the cost of all alterations, renovations, repairs or replacements of or to the Premises which Assignee may deem necessary or proper, with interest thereon at the Default Rate;

(b) Second, to reimbursement of Assignee for and of all sums expended by Assignee pursuant to Paragraph 5(a) hereof to make any payment or do any act required herein of Assignor, together with interest thereon at the Default Rate;

(c) Third, to reimbursement of Assignee for and of all other sums with respect to which Assignee is indemnified pursuant to Paragraph 7 hereof, together with interest thereon at the Default Rate;

(d) Fourth, to reimbursement of Assignee for and of all other sums expended or advanced by Assignee pursuant to the terms and provisions of, or constituting additional indebtedness under, any of the Loan Documents, with interest thereon at the Default Rate;

(e) Fifth, to the payment of all accrued and unpaid interest on the principal sum of the Note;

(f) Sixth, to the payment of the unpaid balance of the principal sum of the Note; and

(g) Seventh, any balance remaining to Assignor, its successors and assigns.

7. Limitation of Assignee's Liability. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises following the occurrence of any one or more Events of Default or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of any one or more Events of Default. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenants, term, condition or agreement contained



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in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify Assignee for, and to hold Assignee harmless of or from, any and all liability, loss or damage which Assignee may or might incur under any Lease or under or by reason of this Assignment and of or from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions or agreements contained in any Lease. Should Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions or agreements contained in any Lease upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger.

8. Non-Waiver. Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the guaranties thereof or any of the Loan Documents; this Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments; and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

9. Further Assurances. Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, such general or specific assignments of such Leases as Assignee may designate), and shall do or cause to be done such further acts, as Assignee may request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.

10. Severability. The invalidity or unenforceability of any particular provision of this Assignment shall not affect the other provisions, and this Assignment shall be construed in all respects as if such invalid or unenforceable provision were not contained herein.

11. Benefit. This Assignment is binding upon Assignor, its successors and assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns.

12. Written Modifications. This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

13. Duration. This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall

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have fully paid and performed all of the other obligations evidenced or secured hereby and by the other Loan Documents.

14. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

15. Counterparts. This Assignment may be executed in counterparts, all of which, taken together, shall be deemed one original.

16. Limitation of Liability. The Loan is a non-recourse loan, and neither Trustee nor Beneficiary shall be personally liable for payment of the Loan, except as provided in the Note, Mortgage, Environmental Indemnity and other Loan Documents.

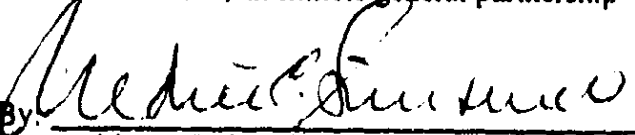
17. Trust Exculpation. This Assignment is executed by American National Bank and Trust Company of Chicago (the "Trust Company"), not personally but solely as trustee, as aforesaid, in the exercise of power and authority conferred upon and vested in it as such trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by the Trust Company 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 the Trust Company by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this Assignment.


[Signature Page to Follow]

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IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment as of the day and year first above written.

**LAKE SOUTHPOINT PROPERTIES PARTNERSHIP, an Illinois general partnership**

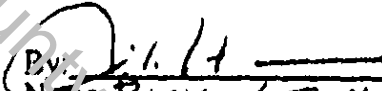
By:   
Name: Monte C. Strusiner  
Its: Partner

By:   
Name: Rick Strusiner  
Its: Partner

By: Rick Steven Strusiner Irrevocable Trust  
Its: Partner

By:   
Name: Monte C. Strusiner  
Its: Trustee

By: Monte C. Strusiner Irrevocable Trust  
Its: Partner


By:   
Name: RICK STRUSINER  
Its: TRUSTEE

By: Lakewest Equity Properties, an Illinois limited partnership  
Its: Partner

By:   
Name: Roger F. Ruttenberg  
Its: General Partner

By: Lakewest Equity, Inc., an Illinois corporation, General Partner  
Its: General Partner

By:   
Name: Roger F. Ruttenberg  
Its: President

Attest:   
Its: Secretary

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AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, as trustee under Trust  
Agreement dated September 1, 1983 and known as  
Trust No. 59155

By:   
Its: \_\_\_\_\_

Attest: Attestation not required by American National  
Its: BANK and Trust Company of Chicago Bylaws

This instrument was prepared by  
and, after recording return, to:

Marc S. Joseph, Esq.  
D'Ancona & Pflaum  
30 North LaSalle Street  
Chicago, Illinois 60602

Address of Property:

635 Church Avenue  
Evanston, Illinois  
Permanent Index No. 11-19-407-028

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STATE OF ILLINOIS        )  
                                  )        SS.  
COUNTY OF COOK        )

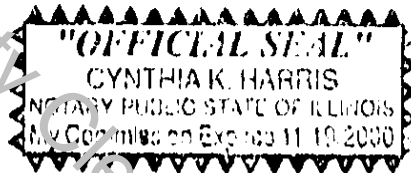
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gregory S. Kasprzyk, VICE President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee and \_\_\_\_\_ Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE President and \_\_\_\_\_ 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 AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 2nd day of September, 1997.

Cynthia K. Harris  
NOTARY PUBLIC

(SEAL)

My commission expires: \_\_\_\_\_



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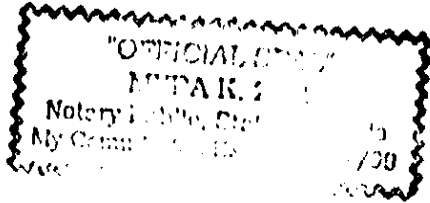
STATE OF ILLINOIS        )  
                                  )        SS.  
COUNTY OF LAKE        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Monte C. Strusiner a partner of LAKE SOUTHPPOINT PROPERTIES PARTNERSHIP, an Illinois general 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 the 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 22<sup>nd</sup> day of <sup>SEPTEMBER</sup> June, 1997.

*Monte C. Strusiner*  
NOTARY PUBLIC

(SEAL)



My commission expires: *10/30/99*

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STATE OF ILLINOIS       )  
                                  )  
COUNTY OF LAKE       )       SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Rick Strusiner a partner of LAKE SOUTHPOINT PROPERTIES PARTNERSHIP, an Illinois general 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 the 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.

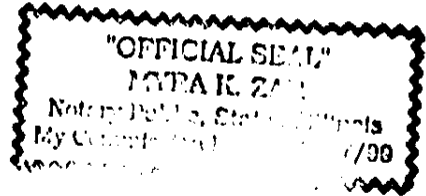
GIVEN under my hand and notarial seal, this 2nd day of ~~June~~ <sup>SEPTEMBER</sup>, 1997.

*[Handwritten Signature]*

NOTARY PUBLIC

(SEAL)

My commission expires: 01/01/99



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STATE OF ILLINOIS )  
COUNTY OF LAKE ) SS.

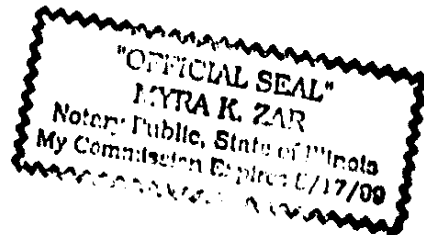
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Myra K. Zar Co-Trustee of the Rick Steven Strusiner Irrevocable Trust, a partner of LAKE SOUTHPOINT PROPERTIES PARTNERSHIP, an Illinois general partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, as the free and voluntary act of said Trust 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 20<sup>th</sup> day of September, 1997.

Myra K. Zar  
NOTARY PUBLIC

(SEAL)

My commission expires: 6/17/99



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STATE OF ILLINOIS        )  
                                  )  
COUNTY OF LAKE        )        SS.

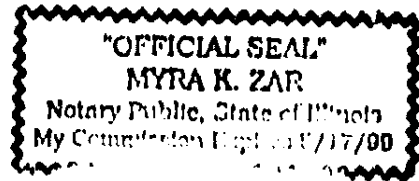
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Richard Strusiner, Co-Trustee of the Monte C. Strusiner Irrevocable Trust, a partner of LAKE SOUTHPOINT PROPERTIES PARTNERSHIP, an Illinois general partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, as the free and voluntary act of said Trust 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 22<sup>nd</sup> day of June, 1997.

Myra K. Zar  
NOTARY PUBLIC

(SEAL)

My commission expires: 5/17/00



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STATE OF ILLINOIS )  
COUNTY OF LAKE ) SS.

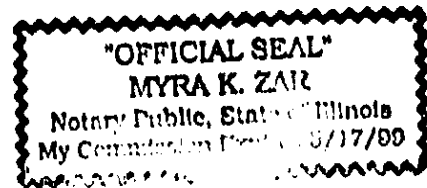
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Roger F. Ruttenberg, general partner of Lakewest Equity Properties, an Illinois limited partnership, a partner of LAKE SOUTHPOINT PROPERTIES PARTNERSHIP, an Illinois general partnership, personally 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 the said instrument as his own free and voluntary act, as the free and voluntary act of said limited partnership 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 2<sup>ND</sup> day of ~~June~~ <sup>SEPTEMBER</sup>, 1997.

Myra K. Zar  
NOTARY PUBLIC

(SEAL)

My commission expires: 5/17/99



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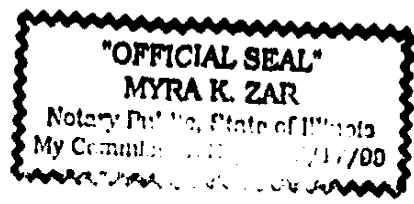
STATE OF ILLINOIS )  
COUNTY OF LAKE ) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Roger F. Rutenberg, President of Lakewest Equity, Inc., an Illinois corporation, general partner of Lakewest Equity Properties, an Illinois limited partnership, a partner of LAKE SOUTHPOINT PROPERTIES PARTNERSHIP, an Illinois general 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 the said instrument as his own free and voluntary act, as the free and voluntary act of said limited partnership and as the free and voluntary act of said corporation, limited partnership and partnership for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 20<sup>th</sup> <sup>SEPTEMBER</sup> day of June, 1997.

Myra K. Zar  
NOTARY PUBLIC  
(SEAL)

My commission expires: 30/1/99



97646824

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## EXHIBIT A

### LEGAL DESCRIPTION

Lot 1 of the Southpoint Consolidation of Lots 11 to 18, both inclusive, in Block 2 in Kedzie and Keeney's Addition to Evanston in the West 1/2 of the Southeast 1/4 of Section 19, Township 41 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois, per plat recorded March 7, 1984 as Document No. 26,996,718.

Property of Cook County Clerk's Office

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