

24

2002 067107

2002 06 11 11:23

**INTERCREDITOR AND SUBORDINATION AGREEMENT**

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (this "Agreement") is entered into effective as of December 1, 2001, by and among THE CHASE MANHATTAN BANK, AS TRUSTEE, FOR THE REGISTERED HOLDERS OF PRUDENTIAL SECURITIES SECURED FINANCING CORP. COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 1999-NRF1, whose address is c/o Key Commercial Mortgage, 911 Main Street, Suite 1500, Kansas City, Missouri 64105, its successors and assigns (the "Trust") and KEYCORP REAL ESTATE CAPITAL MARKETS, INC., whose address is 911 Main Street, Suite 1500, Kansas City, Missouri 64105, its successors and assigns ("KRECM").

**RECITALS**

A. On or about January 6, 1998, KRECM originated the following three commercial mortgage loans (collectively, the "Loans") secured by real property located in the State of Indiana:

(1) KRECM Loan No. 010006261, memorialized by that certain Promissory Note dated January 6, 1998, originally payable to KRECM by Westfield Commons, an Indiana general partnership, in the original principal amount of \$585,000 (together with all interest, expenses, costs, fees, penalties, charges and all other amounts due and payable in connection therewith or with respect thereto, now or at any time and from time to time hereafter, the "Westfield Loan") for the financing of certain property located in Lake County, Indiana, legally described on Exhibit A attached hereto and by this reference made a part hereof (the real estate, together with all improvements thereon and personal property associated therewith, is hereinafter collectively called the "Westfield Property");

(2) KRECM Loan No. 010006260, memorialized by that certain Promissory Note dated January 6, 1998, originally payable to KRECM by Broadfield Square North, an Indiana general partnership, in the original principal amount of \$1,185,000 (together with all interest, expenses, costs, fees, penalties, charges and all other amounts due and payable in connection therewith or with respect thereto, now or at any time and from time to time hereafter, the "Broadfield Loan") for the financing of certain property located in Lake County, Indiana, legally described on Exhibit B attached hereto and by this reference made a part hereof (the real

Polsinelli, Shalton & Welte  
700 W. 47th St., Ste 1000  
Kansas City, MO 64112

60.00  
M.V.  
263871

estate, together with all improvements thereon and personal property associated therewith, is hereinafter collectively called the “**Broadfield Property**”); and

(3) KRECM Loan No. 4159799, memorialized by that certain Promissory Note dated January 6, 1998, originally payable to KRECM by Gough Medical Building, an Indiana general partnership, in the original principal amount of \$870,000 (together with all interest, expenses, costs, fees, penalties, charges and all other amounts due and payable in connection therewith or with respect thereto, now or at any time and from time to time hereafter, the “**Gough Loan**”) for the financing of certain property located in Lake County, Indiana, legally described on **Exhibit C** attached hereto and by this reference made a part hereof (the real estate, together with all improvements thereon and personal property associated therewith, is hereinafter collectively called the “**Gough Property**”).

The Westfield Property, the Broadfield Property and the Gough Property are hereinafter sometimes collectively referred to as the “**Mortgaged Properties**”.

B. As security for the Westfield Loan, the related borrower executed and delivered to KRECM a Mortgage and Security Agreement dated January 6, 1998 and recorded in the real estate records of Lake County, Indiana, on January 8, 1998, as Document No. 98001936 (the “**Westfield Mortgage**”).

C. As security for the Broadfield Loan, the related borrower executed and delivered to KRECM a Mortgage and Security Agreement dated January 6, 1998 and recorded in the real estate records of Lake County, Indiana, on January 8, 1998, as Document No. 98001932 (the “**Broadfield Mortgage**”).

D. As security for the Gough Loan, the related borrower executed and delivered to KRECM a Mortgage and Security Agreement dated January 6, 1998 and recorded in the real estate records of Lake County, Indiana, on January 8, 1998, as Document No. 98001934 (the “**Gough Mortgage**”).

E. The Westfield Loan is secured by a first lien on the Westfield Property. The Broadfield Loan is secured by a first lien on the Broadfield Property. The Gough Loan is secured by a first lien on the Gough Property. In addition to the first mortgage liens described in the preceding sentences of this paragraph, the mortgage loan documents memorializing and evidencing the Loans and the other documents securing or guaranteeing the related indebtedness, including the respective promissory notes and mortgages, together with all extensions,

modifications, and substitutions thereof (the “**Loan Documents**”), contain various provisions that cause all three Loans to be cross-collateralized with one another (the “**Cross-Collateralization Provisions**”). For example, the Westfield Loan is secured by a first mortgage lien on the Westfield Property and additional mortgage liens on the Broadfield Property (which lien is subordinate to the first mortgage lien in favor of the holder of the Broadfield Loan) and on the Gough Property (which lien is subordinate to the first mortgage lien in favor of the holder of the Gough Loan).

F. KRECM subsequently transferred the Westfield Loan and the Broadfield Loan, and the Trust is currently the owner and holder of all right, title, and interest in and to the Westfield Loan and the Broadfield Loan (collectively, the “**Securitized Loans**”) and the respective Loan Documents related thereto (the “**Securitized Loan Documents**”). KRECM remains the owner and holder of all right, title, and interest in and to the Gough Loan and the Loan Documents related thereto (the “**Gough Loan Documents**”).

G. The Cross-Collateralization Provisions have not been altered or modified to date. The Trust and KRECM desire to set forth their relative rights and priorities with respect to the Mortgaged Properties, including with respect to the Cross-Collateralization Provisions.

**NOT OFFICIAL!**

**AGREEMENT**

**This Document is the property of**

NOW THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into and made a material part of this Agreement, the covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the parties agree as follows, intending to be legally bound:

1. **Certain Definitions.** In addition to the terms defined in the preamble, recitals, and other sections of this Agreement, the following terms shall have the following meanings in this Agreement:

1.1 “**Bankruptcy Code**” means Title 11 of the United States Code, as amended from time to time and any successor statute and all rules and regulations promulgated thereunder.

1.2 “**Distribution**” means, with respect to any Mortgaged Property, any payment or distribution by any Person of cash, securities or other property (including, without limitation, post-petition interest, adequate protection payments or other payments in a Proceeding), by set-off or otherwise, on account of such Mortgaged Property.

1.3 “**Enforcement Action**” means the taking of any action under the provisions of any state or federal law, or under any contract or agreement, to enforce any lien on or security interest in (other than a validly obtained judgment lien), foreclose upon, take possession of or sell any of the Mortgaged Property and does not mean taking any other action under state or federal law or any contract or agreement, including, without limitation, any action to require specific performance of any obligations or to prosecute or liquidate any monetary damages claim or any action to collect a judgment against any borrower under any Loan or any action to enforce any judgment liens obtained in connection therewith.

1.4 “**Person**” means any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other entity, whether acting in an individual, fiduciary or other capacity.

1.5 “**Proceeding**” means any voluntary or involuntary insolvency, bankruptcy, receivership, custodianship, liquidation, dissolution, reorganization, assignment for the benefit of creditors, appointment of a custodian, receiver, trustee or other officer with similar powers or any other proceeding for the liquidation, dissolution or other winding up of a Person.

2. **Release of Liens; Subordination.**

2.1 *Subordination of Liens and Security Interests; Agreement Not to Contest; Agreement to Release Liens.*

(a) Until all amounts due or payable with respect to the Securitized Loans and under the Securitized Loan Documents have been indefeasibly paid in full in cash:

(i) the Trust shall have full and complete authority, at any time and from time to time (including in connection with a release by the Trust of any of its liens or security interests in the Westfield Property or the Broadfield Property, or both, in connection with the sale or other disposition thereof or pursuant to a foreclosure or similar action with respect to either or both such Mortgaged Properties) to cause to be released and terminated permanently and for all purposes (without any notice of any kind to any person, including KRECM) any and all liens in favor of KRECM in either the Westfield Property or the Broadfield Property, or both. In furtherance of the foregoing, KRECM hereby irrevocably appoints the Trust, and any authorized agent of the Trust acting under its authority and in accordance with this Agreement, its attorney-in-fact, with full authority in the place and stead of KRECM and in the name of KRECM or otherwise, to execute and deliver any document or instrument which

KRECM may be required to deliver to accomplish the release of liens contemplated by, and otherwise satisfy the terms and provisions of, this Section 2.1(a). This limited power of attorney and the rights, powers, and authority herein granted are coupled with an interest and are irrevocable. Without in anyway limiting the rights, including the power of attorney, granted herein, KRECM shall (or shall cause its agent to) promptly execute and deliver to the Trust or its designee such releases and termination statements as the Trust or its designee shall request to effectuate the release of the liens and security interests of KRECM in the Westfield Property and/or the Broadfield Property; and

(ii) all liens and security interests of KRECM on and in the Westfield Property and the Broadfield Property shall be and hereby currently and hereafter are subordinated for all purposes and in all respects to the liens and security interests of the Trust on and in the Westfield Property and the Broadfield Property, regardless of the time, manner or order of perfection of any such liens and security interests. The provisions of this Section 2.1(a) shall apply notwithstanding the availability of other collateral to the Trust and notwithstanding the fact that the Securitized Loans or any claim for any of such Securitized Loans is subordinated, avoided or disallowed, in whole or in part, in any Proceeding. In the event of a Proceeding, the applicable Securitized Loans shall include all interest accrued on such Securitized Loans, in accordance with and at the rates specified in the Securitized Loan Documents, both for periods before and for periods after the commencement of any of such proceedings, and all other amounts included in the Securitized Loans, even if the claim for such interest is not allowed pursuant to applicable law; and all claims of KRECM with respect to Cash Collateral (as hereinafter defined) related thereto hereby are, and shall be, subordinate in lien and payment to the claims of the Trust in such Cash Collateral; and

(iii) KRECM hereby agrees that it will not at any time contest the validity, perfection, priority or enforceability of the Securitized Loans, the Securitized Loan Documents, or the liens and security interests of the Trust on and in the Westfield Property and the Broadfield Property securing the Securitized Loans.

In the event of any breach in any of the obligations that are set forth in this Section 2.1(a), the holder and owner of the Gough Loan and the Gough Loan Documents (the "**Gough Lender**") shall defend, hold harmless and indemnify the Trust and its agents, beneficiaries, and representatives from any loss, liability, damage, cost and expense (including reasonable attorneys' fees) paid or incurred by such indemnified Persons as the result of any prohibition on, limitation on, restriction of, delay of, or obstruction to any transfer of any right,

title or interest in or to the Westfield Property or the Broadfield Property free and clear of any right, title or interest of the Gough Lender or any related Person, successor, or assign thereof, in and to such property as contemplated by this Section 2.1(a).

(b) Until all amounts due or payable with respect to the Gough Loan and under the Gough Loan Documents have been indefeasibly paid in full in cash:

(i) KRECM shall have full and complete authority, at any time and from time to time (including in connection with a release by KRECM of any of its liens or security interests in the Gough Property in connection with the sale or other disposition thereof or pursuant to a foreclosure or similar action with respect thereto) to cause to be released and terminated permanently and for all purposes (without any notice of any kind to any person, including the Trust) any and all liens in favor of the Trust in the Gough Property. In furtherance of the foregoing, the Trust hereby irrevocably appoints KRECM, and any authorized agent of KRECM acting under its authority and in accordance with this Agreement, its attorney-in-fact, with full authority in the place and stead of the Trust and in the name of the Trust or otherwise, to execute and deliver any document or instrument which the Trust may be required to deliver to accomplish the release of liens contemplated by, and otherwise satisfy the terms and provisions of, this Section 2.1(b). This limited power of attorney and the rights, powers, and authority herein granted are coupled with an interest and are irrevocable. Without in anyway limiting the rights, including the power of attorney, granted herein, the Trust shall (or shall cause its agent to) promptly execute and deliver to KRECM or its designee such releases and termination statements as the Trust or its designee shall request to effectuate the release of the liens and security interests of the Trust in the Gough Property; and

(ii) all liens and security interests of the Trust on and in the Gough Property shall be and hereby currently and hereafter are subordinated for all purposes and in all respects to the liens and security interests of KRECM on and in the Gough Property, regardless of the time, manner or order of perfection of any such liens and security interests. The provisions of this Section 2.1(b) shall apply notwithstanding the availability of other collateral to KRECM and notwithstanding the fact that the Gough Loan or any claim for any of the Gough Loan is subordinated, avoided or disallowed, in whole or in part, in any Proceeding. In the event of a Proceeding, the Gough Loan shall include all interest accrued on the Gough Loan, in accordance with and at the rates specified in the Gough Loan Documents, both for periods before and for periods after the commencement of any of such proceedings, and all other amounts included in the Gough Loan, even if the claim for such interest is not allowed pursuant to applicable law; and

all claims of the Trust with respect to Cash Collateral (as hereinafter defined) related thereto hereby are, and shall be, subordinate in lien and payment to the claims of KRECM in such Cash Collateral; and

(iii) the Trust hereby agrees that it will not at any time contest the validity, perfection, priority or enforceability of the Gough Loan, the Gough Loan Documents, or the liens and security interests of KRECM on and in the Gough Property securing the Gough Loan.

(c) The parties hereby acknowledge and agree that they are in the process, and will use reasonable efforts to continue such process following execution of this Agreement, of effectuating a modification (“**Release Modification**”) with the related borrowers with respect to each of the Loans that will cause the Cross-Collateralization Provisions to be terminated so that (i) the Gough Loan will no longer be secured by a lien on all or any portion of either the Westfield Property or the Broadfield Property and (ii) the Securitized Loans will no longer be secured by a lien on all or any portion of the Gough Property. Notwithstanding anything in this Agreement to the contrary, the parties further acknowledge and agree that neither party will have any liability to the other under this Agreement for any failure or inability to release all or any portion of any lien on the Mortgaged Properties, or to effectuate the Release Modification, to the extent such failure or inability is caused solely by or results solely from a failure or refusal to cooperate, respond, or participate on the part of one of the related borrowers, or any of them, provided that such cooperation, response, or participation is necessary to effectuate such release and after reasonable efforts have been used by the parties to obtain such cooperation, response, or participation from the applicable borrowers.

## 2.2 *Liquidation; Dissolution; Bankruptcy.*

(a) If there is any Proceeding involving the borrower under the Gough Loan (the “**Gough Borrower**”) or any sale, transfer or other disposition of all or substantially all of the assets of the Gough Borrower in connection with the liquidation or dissolution of the Gough Borrower, the Gough Loan shall first be indefeasibly paid in full in cash before any Distribution with respect to the Gough Property may be made to the Trust. During any Proceeding, the Trust agrees that KRECM may consent to the use of Cash Collateral or provide financing to the Gough Borrower on such terms and conditions and in such amounts as KRECM in its sole and absolute discretion may decide and, in connection therewith, the Gough Borrower may grant to KRECM liens and security interests on and in the Gough Property, which liens and security interests (i) shall secure payment of all the Gough Loan (whether such amounts arose prior to the commencement of any Proceeding or at any time thereunder) and all other financing provided by

KRECM during the Proceeding and (ii) shall be superior in priority to the liens and security interests, if any, in favor of the Trust on and in the Gough Property. The Trust agrees that it will not object to or oppose, upon the basis of its lien and security interest in the Gough Property pursuant to the Securitized Loan Documents, a sale or other disposition of any of the Gough Property free and clear of security interests, liens or other claims of the Trust under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code if KRECM has consented to such sale or disposition. The Trust agrees not to assert any right it may have to “adequate protection” of its interest in the Gough Property in any Proceeding and agrees that it will not seek to have the automatic stay lifted with respect to the Gough Property without the consent of KRECM, which consent may be withheld in KRECM’s sole and absolute discretion.

Without limitation of the rights provided to KRECM in the preceding paragraph, KRECM shall have the exclusive right to exercise any voting rights in respect of the Gough Loan Documents, and the Trust shall have the exclusive right to exercise any voting rights in respect of its claims under the Securitized Loan Documents against the Gough Borrower. The Trust agrees that it shall not object to any request or motion by KRECM for an order establishing that proceeds, product, offspring, rents and profits of the Gough Property constitute cash collateral under Section 363 of the Bankruptcy Code (“**Cash Collateral**”) and the Trust hereby consents to any application by KRECM to have such Cash Collateral applied to the payment of the Gough Loan prior to the application of any such sums to the related Securitized Loans until the Gough Loan is paid in full to KRECM. If KRECM consents to any use of the Cash Collateral, the Trust shall also consent, and if KRECM objects to any such use, the Trust shall also object.

(b) If there is any Proceeding involving the borrower under either the Westfield Loan (the “**Westfield Borrower**”) or the Broadfield Loan (the “**Broadfield Borrower**”) or any sale, transfer or other disposition of all or substantially all of the assets of any such Person in connection with the liquidation or dissolution of any such Person, the Securitized Loans shall first be indefeasibly paid in full in cash before any Distribution with respect to the Westfield Property or the Broadfield Property, as applicable, may be made to KRECM. During any such Proceeding, KRECM agrees that the Trust may consent to the use of Cash Collateral or provide financing to the Westfield Borrower or the Broadfield Borrower, as applicable, on such terms and conditions and in such amounts as the Trust in its sole and absolute discretion may decide and, in connection therewith, the Westfield Borrower or the Broadfield Borrower, as applicable, may grant to the Trust liens and security interests on and in the Westfield Property or the Broadfield Property, as applicable, which liens and security interests (i) shall secure payment of all the Securitized Loans (whether such amounts arose prior to the commencement of any



Proceeding or at any time thereunder) and all other financing provided by the Trust during the applicable Proceeding and (ii) shall be superior in priority to the liens and security interests, if any, in favor of KRECM on and in the Westfield Property and the Broadfield Property. KRECM agrees that it will not object to or oppose, upon the basis of its lien and security interest in the Westfield Property or the Broadfield Property pursuant to any Loan Documents, a sale or other disposition of any of the Westfield Property or the Broadfield Property free and clear of security interests, liens or other claims of KRECM under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code if the Trust has consented to such sale or disposition. KRECM agrees not to assert any right it may have to "adequate protection" of its interest in either the Westfield Property or the Broadfield Property in any Proceeding and agrees that it will not seek to have the automatic stay lifted with respect to the Westfield Property or the Broadfield Property without the consent of the Trust, which consent may be withheld in the Trust's sole and absolute discretion.

Without limitation of the rights provided to the Trust in the preceding paragraph, the Trust shall have the exclusive right to exercise any voting rights in respect of the Securitized Loan Documents, and KRECM shall have the exclusive right to exercise any voting rights in respect of its claims under the Gough Loan Documents against the Westfield Borrower or the Broadfield Borrower, as applicable. KRECM agrees that it shall not object to any request or motion by the Trust for an order establishing that proceeds, product, offspring, rents and profits of the Westfield Property or the Broadfield Property, as applicable, constitute cash collateral under Section 363 of the Bankruptcy Code ("Cash Collateral") and KRECM hereby consents to any application by the Trust to have such Cash Collateral applied to the payment of the Securitized Loans prior to the application of any such sums to the Gough Loan until the Securitized Loans are paid in full to the Trust. If the Trust consents to any use of the Cash Collateral, KRECM shall also consent, and if the Trust objects to any such use, KRECM shall also object.

(c) The provisions of this Agreement shall continue to govern the relative rights and priorities of KRECM and the Trust even if all or part of any of the Loans or the Loan Documents or the liens and security interests securing the Loans are subordinated, set aside, avoided, invalidated or disallowed in connection with any Proceeding, sale, or transfer or other distribution of all or substantially all of the assets of any borrower, and this Agreement shall be reinstated if at any time any payment of any of the Loans is rescinded or must otherwise be returned by any holder of a Loan or Loan Documents or any representative of such Person.

2.3 *Standstill Provisions.*

(a) Until the Gough Loan is indefeasibly paid in full in cash, the Trust shall not, without the prior written consent of KRECM, which consent may be withheld in KRECM's sole and absolute discretion, take any Enforcement Action with respect to the Gough Property. Notwithstanding the foregoing, the Trust may file proofs of claim against the Gough Borrower in any Proceeding involving the Gough Borrower. Any Distributions or other proceeds of any Enforcement Action with respect to the Gough Property obtained by the Trust shall in any event be held in trust by it for the benefit of KRECM and promptly paid or delivered to KRECM for the benefit of KRECM in the form received until the entire Gough Loan is indefeasibly paid in full in cash.

(b) Until the Securitized Loans are indefeasibly paid in full in cash, KRECM shall not, without the prior written consent of the Trust, which consent may be withheld in the Trust's sole and absolute discretion, take any Enforcement Action with respect to either the Westfield Property or the Broadfield Property. Notwithstanding the foregoing, KRECM may file proofs of claim against the Westfield Borrower or the Broadfield Borrower, as applicable, in any Proceeding involving such Person. Any Distributions or other proceeds of any Enforcement Action with respect to either the Westfield Property or the Broadfield Property obtained by KRECM shall in any event be held in trust by it for the benefit of the Trust and promptly paid or delivered to the Trust for the benefit of the Trust in the form received until the entire Westfield Loan and the entire Broadfield Loan are indefeasibly paid in full in cash.

2.4 *Incorrect Payments.* If any Distribution on account of any Mortgaged Property not expressly permitted to be made by the applicable borrower or accepted by any party under this Agreement is made and received by a party hereto, such Distribution shall not be commingled with any of the assets of such party, shall be held in trust by such party for the benefit of the party entitled to such Distribution under this Agreement and shall be promptly paid over to such entitled party.

2.5 *Application of Proceeds from Sale or other Disposition of the Collateral.*

(a) If there is any sale, transfer or other disposition (including a casualty loss or taking through eminent domain or condemnation) of the Gough Property, the proceeds resulting therefrom (including insurance proceeds) shall be applied in accordance with the terms of the Gough Loan Documents or as otherwise consented to or directed by KRECM until such time as the Gough Loan is indefeasibly paid in full in cash.

(b) If there is any sale, transfer or other disposition (including a casualty loss or taking through eminent domain or condemnation) of either the Westfield Property or the Broadfield Property, the proceeds resulting therefrom (including insurance proceeds) shall be applied in accordance with the terms of the Westfield Loan Documents or the Broadfield Loan Documents, as applicable, or as otherwise consented to or directed by the Trust until such time as both the Westfield Loan and the Broadfield Loan are indefeasibly paid in full in cash.

2.6 *Other Covenants of the Parties.*

(a) KRECM and the Trust each shall send to the other notice of all defaults under the Loan Documents held by such Person as well as copies of all notices required to be delivered to the applicable borrower under the applicable Loan Documents, simultaneously with notice sent to such borrower.

(b) In the event of (i) a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of any of the Mortgaged Properties (collectively, a “**Condemnation Proceeding**”), or (ii) the occurrence of a fire or other casualty resulting in damage to all or a portion of a Mortgaged Property (collectively, a “**Casualty**”), the following provisions shall apply:

(i) With respect to the Westfield Property of the Broadfield Property, as applicable,

(A) KRECM hereby agrees that its rights (under the Gough Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation Proceeding and/or a Casualty with respect to either the Westfield Property or the Broadfield Property, or to participate or join in any settlement of, or to adjust, any claims resulting from such a Condemnation Proceeding or a Casualty shall be and remain subordinate in all respects to the Trust’s rights under the Securitized Loan Documents with respect thereto, and KRECM shall be bound by any settlement or adjustment of a claim resulting from such a Condemnation Proceeding or a Casualty made by the Trust;

(B) all proceeds received or to be received on account of such a Condemnation Proceeding or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the related Securitized Loan) in the manner determined by the Trust in its sole and absolute discretion; provided

however, that if the Trust elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Securitized Loans, any proceeds remaining after the satisfaction in full of both Securitized Loans shall be paid to, and may be applied by, KRECM in accordance with the applicable provisions of the Gough Loan Documents;

(C) if the Trust releases, for the purposes of restoration of all or any part of the improvements on or within any of the applicable Mortgaged Property, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or its right, title and interest in and to any awards, or its right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of such a Condemnation Proceeding, KRECM shall release for such purpose all of its right, title and interest, if any, in and to all such insurance proceeds, awards and compensation and KRECM agrees that the balance of such proceeds, awards and compensation remaining shall be applied in accordance with the preceding clause (B), and if the Trust holds such proceeds, awards or compensation and/or monitors the disbursement thereof, KRECM agrees that the Trust shall also hold and monitor the disbursement of such proceeds, awards or compensation, if any, to which KRECM is entitled; and

(D) In furtherance of all of the foregoing, KRECM hereby irrevocably appoints the Trust, and any authorized agent of the Trust acting under its authority and in accordance with this Agreement, its attorney-in-fact, with full authority in the place and stead of KRECM and in the name of KRECM or otherwise, to execute and deliver any document or instrument which KRECM may be required to deliver to accomplish the releases and other matters contemplated by, and otherwise satisfy the terms and provisions of, this Section 2.6(b)(i). This limited power of attorney and the rights, powers, and authority herein granted are coupled with an interest and are irrevocable.

(ii) with respect to the Gough Property,

(A) the Trust hereby agrees that its rights (under the Securitized Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation Proceeding and/or a Casualty with respect to the Gough Property, or to participate or join in any settlement of, or to adjust, any claims resulting from such a Condemnation Proceeding or a Casualty shall be and remain subordinate in all respects to

KRECM's rights under the Gough Loan Documents with respect thereto, and the Trust shall be bound by any settlement or adjustment of a claim resulting from such a Condemnation Proceeding or a Casualty made by KRECM;

(B) all proceeds received or to be received on account of such a Condemnation Proceeding or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the related Securitized Loan) in the manner determined by the Trust in its sole and absolute discretion; provided however, that if KRECM elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Gough Loan, any proceeds remaining after the satisfaction in full of the Gough Loan shall be paid to, and may be applied by, the Trust in accordance with the applicable provisions of the Securitized Loan Documents;

(C) if KRECM releases, for the purposes of restoration of all or any part of the improvements on or within any of the Gough Property, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or its right, title and interest in and to any awards, or its right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of such a Condemnation Proceeding, the Trust shall release for such purpose all of its right, title and interest, if any, in and to all such insurance proceeds, awards and compensation and the Trust agrees that the balance of such proceeds, awards and compensation remaining shall be applied in accordance with the preceding clause (B), and if KRECM holds such proceeds, awards or compensation and/or monitors the disbursement thereof, the Trust agrees that KRECM shall also hold and monitor the disbursement of such proceeds, awards or compensation, if any, to which the Trust is entitled; and

(D) In furtherance of all of the foregoing, the Trust hereby irrevocably appoints KRECM, and any authorized agent of KRECM acting under its authority and in accordance with this Agreement, its attorney-in-fact, with full authority in the place and stead of the Trust and in the name of the Trust or otherwise, to execute and deliver any document or instrument which the Trust may be required to deliver to accomplish the releases and other matters contemplated by, and otherwise satisfy the terms and provisions of, this Section 2.6(b)(ii). This limited power of attorney and the

rights, powers, and authority herein granted are coupled with an interest and are irrevocable.

**3. Modifications.**

3.1 *Modifications to Gough Loan Documents.* KRECM may at any time and from time to time without the consent of or notice the Trust, without incurring liability to the Trust and without impairing or releasing the obligations of the Trust under this Agreement, change the manner or place of payment or extend the time of payment of or renew or alter any of the terms of the Gough Loan, or amend in any manner any Gough Loan Document.

3.2 *Modifications to Westfield and Broadfield Loans Documents.* The Trust may at any time and from time to time without the consent of or notice to KRECM, without incurring liability to KRECM and without impairing or releasing the obligations of KRECM under this Agreement, change the manner or place of payment or extend the time of payment of or renew or alter any of the terms of either the Westfield Loan or the Broadfield Loan, or amend in any manner any of the Westfield Loan Documents or the Broadfield Loan Documents.

**4. Waiver of Certain Rights.**

4.1 *Marshaling.* Each of the parties hereto hereby waives any rights it may have under applicable law to assert the doctrine of marshaling or to otherwise require another party hereunder with a superior lien or security interest as herein provided to marshal any property of any borrower or any guarantor.

4.2 *Rights Relating to Actions with respect to the Mortgaged Properties.*

(a) The Trust hereby waives, to the extent permitted by applicable law, any rights which it may have to enjoin or otherwise obtain a judicial or administrative order preventing KRECM from taking, or refraining from taking, any action with respect to all or any part of the Gough Property. Without in any way limiting the foregoing, the Trust hereby agrees (i) that it has no right to direct or object to the manner in which KRECM applies the proceeds of the Gough Property resulting from the exercise by KRECM of rights and remedies under the Gough Loan Documents and (ii) that KRECM has not assumed any obligation to act as the agent for the Trust with respect to the Gough Property except to the extent expressly agreed to by the parties in this Agreement or in any other written agreement among such parties.

(b) KRECM hereby waives, to the extent permitted by applicable law, any rights which it may have to enjoin or otherwise obtain a judicial or administrative order preventing the Trust from taking, or refraining from taking, any action with respect to all or any part of either the Westfield Property or the Broadfield Property. Without in any way limiting the foregoing, KRECM hereby agrees (i) that it has no right to direct or object to the manner in which the Trust applies the proceeds of either the Westfield Property or the Broadfield Property resulting from the exercise by the Trust of rights and remedies under any of the Westfield Loan Documents or the Broadfield Loan Documents and (ii) that the Trust has not assumed any obligation to act as the agent for KRECM with respect to either the Westfield Property or the Broadfield Property except to the extent expressly agreed to by the parties in this Agreement or in any other written agreement among such parties.

5. **No Impairment of Subordination.** No right of any party hereunder to enforce the subordination and other rights and obligations hereunder shall be impaired by any act or failure to act by any borrower or any such Person's affiliates, or by any borrower's failure to comply with this Agreement. Without limiting the generality of the foregoing, the rights of each party under this Agreement (the "First Party") shall remain in full force and effect without regard to, and shall not be impaired by: (a) any act or failure to act of any borrower, any such Person's affiliates or any other party hereto, or any noncompliance by any borrower, any such Person's affiliates or any other party hereto with any agreement or obligation, regardless of any knowledge thereof which the First Party may have, (b) the validity or enforceability of any of the Loan Documents, (c) any extension or indulgence in respect of any payment or prepayment of any of the Loans or any part thereof or in respect of any other amount payable to the First Party, (d) any amendment, modification or waiver of any of the terms of any of the Loan Documents, (e) any exercise, delayed exercise or non-exercise by such party of any right, power, privilege or remedy under or in respect of any Loan, any Mortgaged Property or this Agreement, (f) any other action of the First Party permitted under any Loan Documents or this Agreement, or (g) the absence of any notice to, or knowledge by, any other party hereunder of the existence, creation or non-payment of all or any part of any Loan, or the occurrence of any of the matters or events set forth in the foregoing clauses (a) through (f), except as such notice shall be required pursuant to the terms of this Agreement.

6. **Modification.** Any modification or waiver of any provision of this Agreement, or any consent to any departure by any party from the terms hereof, shall not be effective in any event unless the same is in writing and signed by all parties hereto, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any

notice to or demand on any party hereto in any event not specifically required hereunder shall not entitle the party receiving such notice or demand to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

7. **Further Assurances.** Each party to this Agreement promptly will execute and deliver such further instruments and agreements and do such further acts and things as may be reasonably requested in writing by any other party hereto that may be necessary or desirable in order to effect fully the purposes of this Agreement.

8. **Successors and Assigns.** This Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of KRECM and the Trust and any successors and assigns thereof. To the extent permitted under the applicable Loan Documents, each party may, from time to time, without notice to the other party, assign or transfer any or all of the Loans, Loan Documents or any interest therein to any Person and, notwithstanding any such assignment or transfer, or any subsequent assignment or transfer, every such assignee or transferee shall be bound by and be entitled to rely upon and be the third party beneficiary of the subordination and related rights and obligations provided under this Agreement and shall be entitled to enforce, and obligated to comply with, the terms and provisions hereof to the same extent as if such assignee or transferee were initially a party hereto. Prior to any assignment of the of the Loans, Loan Documents, or any interest therein to any Person, the assigning party shall cause its assignee to acknowledge in writing, for the benefit of the other party to this Agreement, that such assignee and any future transferees or assigns thereof shall be bound by the terms of this Agreement. Notwithstanding any failure or absence of any assignee of either party to execute any assignment or assumption, the subordinations and related rights and obligations effected hereby with respect to the parties shall survive any assignment or transfer, and the terms of this Agreement shall be binding on all successors and assigns of the parties. In the event of any breach in any of the obligations that are set forth in this Section 8, the breaching party shall defend, hold harmless and indemnify the non-breaching party from any loss, liability, damage, cost and expense (including reasonable attorneys' fees) paid or incurred by the non-breaching party as the result of (i) any claim by any assignee of the breaching party that it is not bound by the terms and provisions of this Agreement or (ii) any action or failure to act by such an assignee that is contrary to the terms and provisions of this Agreement.

9. **Relative Rights.** This Agreement shall define the relative rights of KRECM and the Trust. Nothing in this Agreement shall impair, as among any borrower, KRECM, or the Trust,



the obligation of any such borrower with respect to the payment of any Loan or the performance of any obligations under any of the Loan Documents.

10. **Conflict.** If there is any conflict between any term, covenant or condition of this Agreement and any term, covenant or condition of any of the Loan Documents, the provisions of this Agreement shall control and govern.

11. **Headings; Construction.** The paragraph headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof. The terms “include”, “including” and similar terms used in this Agreement shall be construed as if followed by the phrase “without being limited to.” The term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” Words of masculine, feminine or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa.

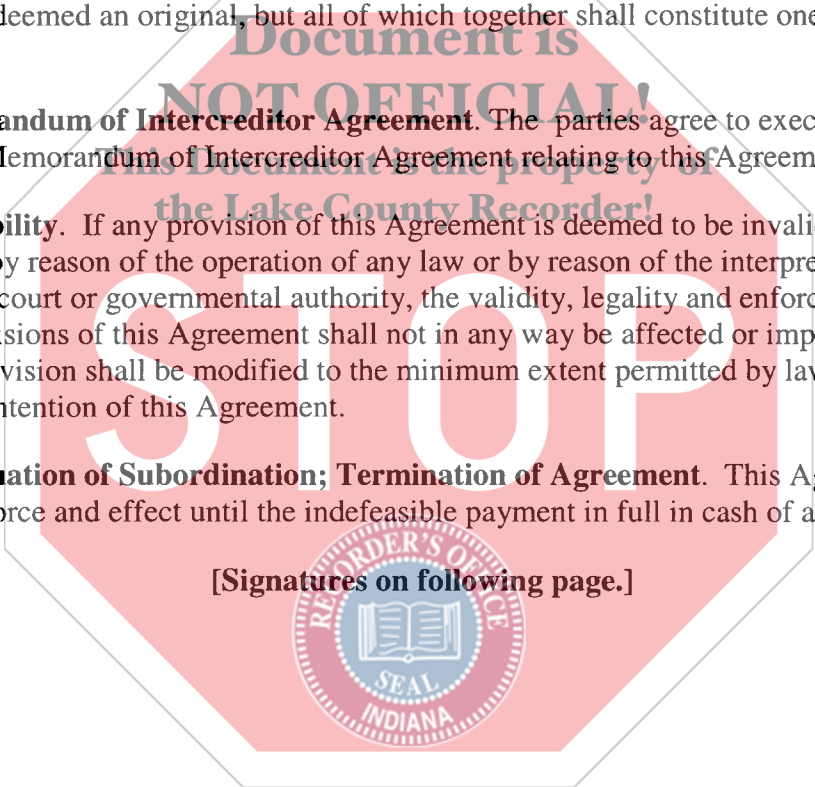
12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. **Memorandum of Intercreditor Agreement.** The parties agree to execute and cause to be recorded a Memorandum of Intercreditor Agreement relating to this Agreement.

14. **Severability.** If any provision of this Agreement is deemed to be invalid, illegal or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court or governmental authority, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby, and the affected provision shall be modified to the minimum extent permitted by law so as most fully to achieve the intention of this Agreement.

15. **Continuation of Subordination; Termination of Agreement.** This Agreement shall remain in full force and effect until the indefeasible payment in full in cash of all the Loans.

[Signatures on following page.]



IN WITNESS WHEREOF, KRECM and the Trust have caused this Agreement to be executed as of the date first above written.

**KEYCORP REAL ESTATE CAPITAL MARKETS, INC.**

By: *Edward J. Falicki*  
Name: EDWARD J. FALICKI  
Title: VICE PRESIDENT

**THE CHASE MANHATTAN BANK, AS TRUSTEE, FOR  
THE REGISTERED HOLDERS OF PRUDENTIAL  
SECURITIES SECURED FINANCING CORP.  
COMMERCIAL MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 1999-NRF1**

By: KeyCorp Real Estate Capital Markets, Inc.  
as Authorized Agent

By: *Edward J. Falicki*  
Name: EDWARD J. FALICKI  
Title: VICE PRESIDENT

**ACKNOWLEDGED, CONSENTED, AND AGREED TO:**

As purchaser, assignee, and holder of the Gough Loan and the Gough Loan Documents pursuant to that certain Mortgage Loan Purchase and Sale Agreement between KeyBank National Association (successor in interest to KRECM) and Beal Bank, S.S.B. dated as of January 31, 2002, Beal Bank, S.S.B. ("Beal") hereby agrees to be bound by all of the terms and provisions of this Intercreditor and Subordination Agreement that apply to KRECM in its capacity as a prior owner and holder of the Gough Loan and the Gough Loan Documents. Further, without in any way limiting the generality of the foregoing sentence, Beal hereby irrevocably appoints the Trust, and any authorized agent of the Trust acting under its authority and in accordance with this Agreement, including KRECM, its attorney-in-fact, with full authority in the place and stead of Beal and in the name of Beal, or otherwise, to execute and

deliver any document, agreement, or instrument that Beal may be required to deliver to satisfy the terms and provisions of Sections 2.1 and 2.6 of this Agreement. This limited power of attorney and the rights, powers, and authority herein granted are coupled with an interest and are irrevocable.

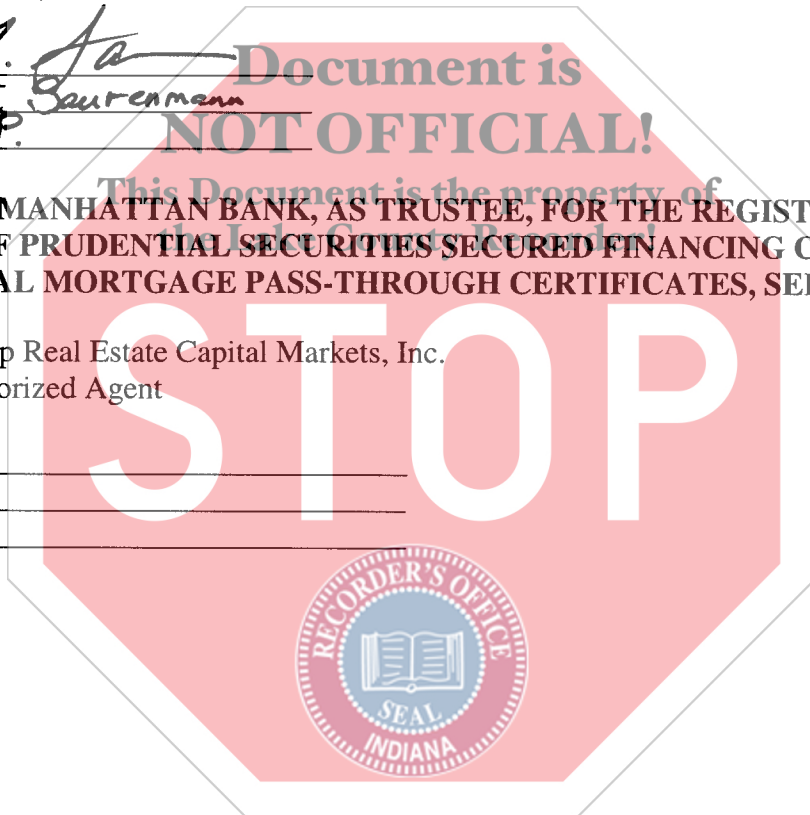
The Trust hereby irrevocably appoints Beal, and any authorized agent of Beal acting under its authority and in accordance with this Agreement, its attorney-in-fact, with full authority in the place and stead of the Trust and in the name of Beal, or otherwise, to execute and deliver any document, agreement, or instrument that the Trust may be required to deliver to satisfy the terms and provisions of Sections 2.1 and 2.6 of this Agreement. This limited power of attorney and the rights, powers, and authority herein granted are coupled with an interest and are irrevocable.

**BEAL BANK, S.S.B.**

By: W. T. Saurenmann  
Name: W. T. Saurenmann  
Title: S.V.P.

**THE CHASE MANHATTAN BANK, AS TRUSTEE, FOR THE REGISTERED  
HOLDERS OF PRUDENTIAL SECURITIES SECURED FINANCING CORP.  
COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 1999-NRF1**

By: KeyCorp Real Estate Capital Markets, Inc.  
as Authorized Agent  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



deliver any document, agreement, or instrument that Beal may be required to deliver to satisfy the terms and provisions of Sections 2.1 and 2.6 of this Agreement. This limited power of attorney and the rights, powers, and authority herein granted are coupled with an interest and are irrevocable.

The Trust hereby irrevocably appoints Beal, and any authorized agent of Beal acting under its authority and in accordance with this Agreement, its attorney-in-fact, with full authority in the place and stead of the Trust and in the name of Beal, or otherwise, to execute and deliver any document, agreement, or instrument that the Trust may be required to deliver to satisfy the terms and provisions of Sections 2.1 and 2.6 of this Agreement. This limited power of attorney and the rights, powers, and authority herein granted are coupled with an interest and are irrevocable.

**BEAL BANK, S.S.B.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

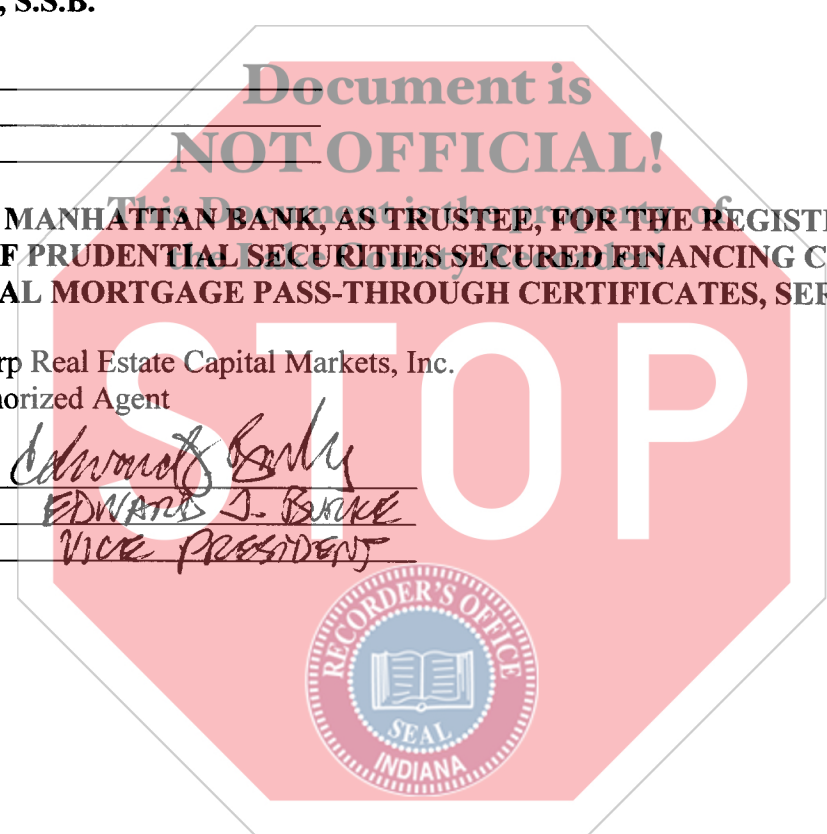
**THE CHASE MANHATTAN BANK, AS TRUSTEE, FOR THE REGISTERED  
HOLDERS OF PRUDENTIAL SECURITIES SECURED FINANCING CORP.  
COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 1999-NRF1**

By: KeyCorp Real Estate Capital Markets, Inc.  
as Authorized Agent

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



STATE OF Missouri )  
 ) ss.  
COUNTY OF Jackson )

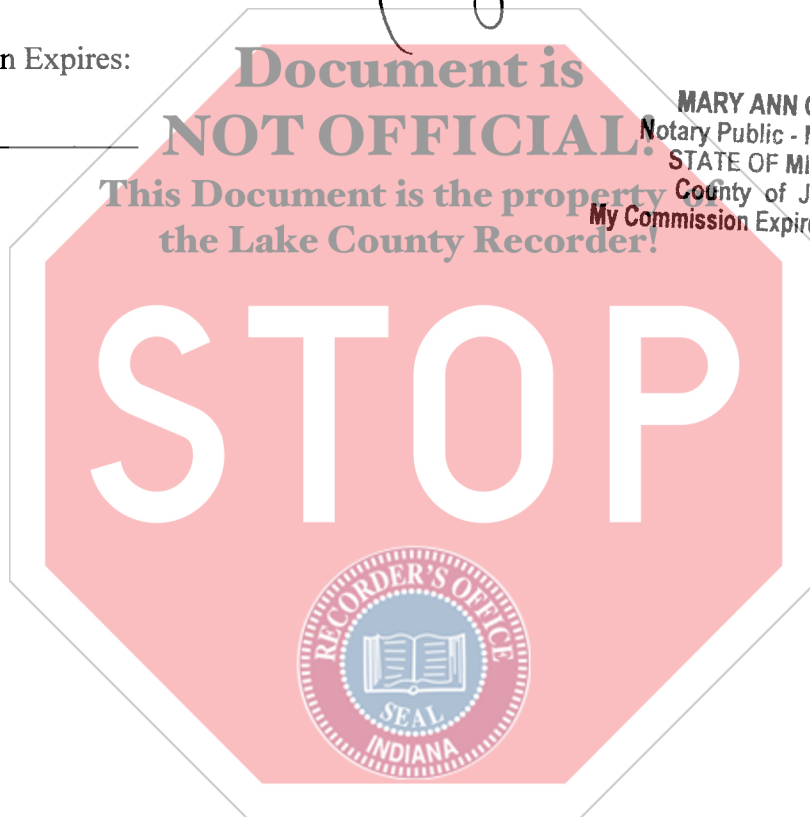
On this 8<sup>th</sup> day of February, 2002, before me appeared Edward J. Burke to me personally known, who being by me duly sworn did say that he/she is the Vice President of KEYCORP REAL ESTATE CAPITAL MARKETS, INC. and that he/she signed his/her name thereto on behalf of said corporation and acknowledged to me that s/he executed the same for the purposes therein stated.

WITNESS my hand and seal hereto affixed the day and year first above written.

Mary Ann Gripka  
NOTARY PUBLIC in and for said County and State

My Commission Expires:

\_\_\_\_\_



MARY ANN GRIPKA  
Notary Public - Notary Seal  
STATE OF MISSOURI  
County of Jackson  
My Commission Expires: Sept. 9, 2002

STATE OF Missouri )  
 ) ss.  
COUNTY OF Jackson )

On this 8<sup>th</sup> day of February, 2002, before me appeared Edward J. Burke to me personally known, who being by me duly sworn did say that he/she is the Vice President of KEYCORP REAL ESTATE CAPITAL MARKETS, INC., authorized agent for THE CHASE MANHATTAN BANK, AS TRUSTEE, FOR THE REGISTERED HOLDERS OF PRUDENTIAL SECURITIES SECURED FINANCING CORP. COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 1999-NRF1, known to me to be the person who executed the within instrument on behalf of said corporation and acknowledged to me that s/he executed the same for the purposes therein stated.

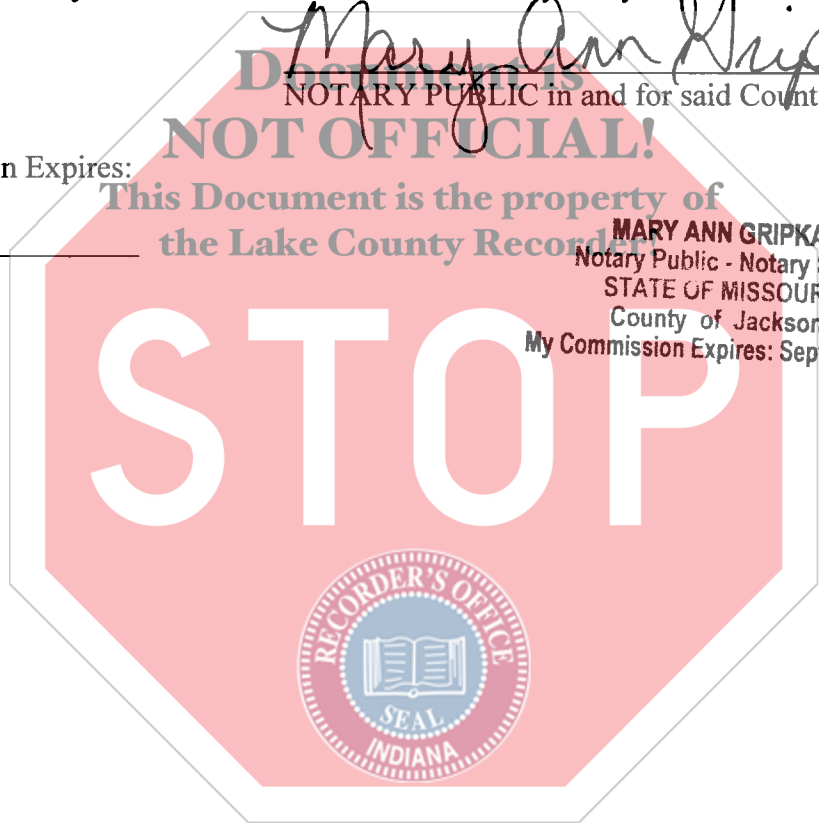
WITNESS my hand and seal hereto affixed the day and year first above written.

Mary Ann Gripka  
NOTARY PUBLIC in and for said County and State

My Commission Expires: \_\_\_\_\_

**NOT OFFICIAL!**  
This Document is the property of  
the Lake County Recorder

**MARY ANN GRIPKA**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
County of Jackson  
My Commission Expires: Sept. 9, 2002



STATE OF Texas )  
 ) ss.  
COUNTY OF Collin )

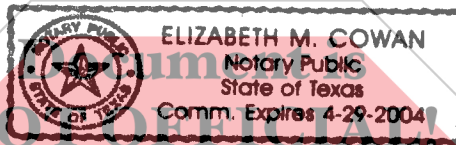
On this 12<sup>th</sup> day of February, 2002, before me appeared W. T. SAURENMAN to me personally known, who being by me duly sworn did say that he/she is the SVP of BEAL BANK, S.S.B. and that he/she signed his/her name thereto on behalf of said bank and acknowledged to me that s/he executed the same for the purposes therein stated.

WITNESS my hand and seal hereto affixed the day and year first above written.

Elizabeth M. Cowan  
NOTARY PUBLIC in and for said County and State

My Commission Expires:

4-29-04



**This Document is the property of  
the Lake County Recorder!**

This Instrument Prepared By And Record And Return To:

Kraig M. Kohring  
POLSINELLI SHALTON & WELTE  
700 W. 47th Street, Ste. 1000  
Kansas City, Missouri 64112  
(816)753-1000  
FAX (816) 753-1536



**EXHIBIT A**

**Westfield Legal Description:**

Lot 3, Westfield Commons, to the Town of Merrillville, Indiana, as shown in Plat Book 66, Page 36, in Lake County, Indiana.





**EXHIBIT B**

**Broadfield Legal Description:**

Lot 2, Resubdivision of Tract A, in Phase One Broadfield Center, in the Town of Merrillville, as shown in Plat Book 55, Page 14, in Lake County, Indiana.



**EXHIBIT C**

**Gough Legal Description:**

The west 400 feet to the south 170 feet of the north half of the northwest quarter of section 27, Township 35 north, Range 8 west of the second principal meridian, in Lake County, Indiana, except the west 40 feet thereof.

