



This Document Prepared by and following Recording, Return to:

7669432-DI KML

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Chicago, IL 60606

**FIRST AMENDMENT TO MORTGAGE,  
SECURITY AGREEMENT  
AND FINANCING STATEMENT,  
ASSIGNMENT OF RENTS AND LEASES  
AND OTHER LOAN DOCUMENTS**

This First Amendment to Mortgage, Security Agreement and Financing Statement, Assignment of Rents and Leases, and Other Loan Documents is entered into as of January 30, 2000, by and between FLAIR COMMUNICATIONS AGENCY, INC., an Illinois corporation (the "Original Borrower"), with its principal place of business at 223 W. Erie Street, Chicago, Illinois 60610 and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO not individually but as Trustee under a Trust Agreement dated April 1, 1983 and known as Trust No. 57442 (the "Land Trust") (From time to time hereinafter, Original Borrower and the Land Trust shall be collectively referred to as the "Borrower") and AMERICAN NATIONAL BANK and TRUST COMPANY OF CHICAGO, a national banking association (the "Lender"), having an address at 120 South LaSalle Street, Chicago, Illinois 60602, Attention: Patrick Favel

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**RECITALS:**

A. On October 23, 1997, pursuant to a Mortgage Note, Lender made a \$990,000 loan (the "Loan") to Original Borrower, the proceeds of which loan were used to refinance a building located at 214-218 Erie Street, Chicago, Illinois;

B. The Loan is secured by the following documents:

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(i) Mortgage Note (the "Original Note") dated October 23, 1997, in the original principal amount of \$990,000, which Original Note matured on September 30, 1998;

(ii) Mortgage, Security Agreement and Financing Statement (the "Mortgage") dated October 23, 1997, for the property commonly known as 214-216 West Erie Street, Chicago, Illinois, and recorded on October 24, 1997, as Document No. 97797159 in the Office of the Cook County Recorder of Deeds (the "Recorder's Office");

(iii) Assignment of Rents and Leases dated October 23, 1997, and recorded on October 24, 1997, as Document No. 97797159 in the Recorder's Office;

(iv) Security Agreement dated December 17, 1998, executed by Borrower for the benefit of Lender;

(v) Environmental Indemnity Agreement dated October 23, 1997 executed for the benefit of Lender;

(vi) other miscellaneous documents dated October 23, 1997, such as UCC Financing Statements, (the loan documents referred to herein and in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) above are collectively referred to as the "Loan Documents").

C. WHEREAS, Borrower has requested that Lender (i) increase the amount of the Loan secured by the Mortgage to the sum of \$1,528,663.00 and (ii) extend the maturity date of the Mortgage to September 30, 2004;

D. WHEREAS, as a condition to increasing the amount of the Loan and extending the Maturity Date, in addition to the collateral granted by the Mortgage, Lender is requiring (i) the Land Trust to grant as collateral its entire right and title to the property commonly known as 220-228 West Erie, Chicago, Illinois (the "Additional Property") and that (ii) Lee Flaherty, an officer and director of Borrower ("Guarantor") execute a Guaranty whereby he guarantees the Loan up to the amount of \$500,000 plus Guaranty Collection Costs as defined in that certain Guaranty of even date herewith.

E. WHEREAS, the sole beneficiary of the Land Trust is Original Borrower.

F. WHEREAS, Original Borrower and the Land Trust agree to the conditions set forth in Recital D above.

G. WHEREAS contemporaneously upon execution of this First Amendment to Mortgage, Original Borrower has executed a Mortgage Note in the principal sum of \$1,528,663.00 (the "\$1,528,663 Mortgage Note") which shall amend and restate the original Note in its entirety.

H. The parties intend that the Loan Documents shall secure the \$1,528,663 Mortgage Note upon the terms and conditions set forth herein.

NOW, THEREFORE, in order to induce Lender to increase the amount of the Loan, extend the Maturity Date, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows: (Except as otherwise expressly indicated herein, all capitalized terms used herein shall have the same meanings ascribed to them in the Mortgage, as amended.)

1. Recitals. The Recitals set forth above are incorporated by reference herein with the intent that Lender may rely upon the matters therein recited as representations and warranties of Borrower, Guarantor and Lender.

2. Amendment to Mortgage

(a) The Mortgage is hereby amended by deleting all references to the maturity date of September 30, 1998 and in its place substituting a maturity date of September 30, 2004;

(b) The Legal Description attached to the Mortgage is hereby deleted and the Legal Description attached hereto as Exhibit A is substituted in its place. Borrower hereby specifically agrees that the Loan and the \$1,528,663 Mortgage Note are secured by the real property commonly known as 214 and 216-218 West Erie Street, Chicago, Illinois and the Additional Property commonly known as 220-228 West Erie, Chicago, Illinois, both of which properties are legally described on Exhibit A attached hereto and specifically made a part hereof (the "Property").

(c) The "WITNESSETH" paragraph of the Mortgage is hereby deleted and the following paragraph substituted in its place:

"WITNESSETH:

WHEREAS the Mortgagor is justly indebted to the Mortgagee in the principal sum of ONE MILLION FIVE HUNDRED TWENTY-EIGHT THOUSAND SIX HUNDRED SIXTY-THREE AND NO/100 DOLLARS (\$1,528,663.00) (the "Loan") evidenced by one certain MORTGAGE NOTE

of the Mortgagor dated January \_\_, 2000, (the "Note"), whereby the Mortgagor promises to pay the said principal sum, late charges and interest (collectively, the "Indebtedness") at the rate or rates and in installments, all as provided in the Note, the terms of which are hereby incorporated herein by this reference. The final payment of principal and interest, if not sooner paid, shall be due on September 30, 2004 (the "Maturity Date"). All such payments on account of the Indebtedness secured hereby shall be applied first to interest on the unpaid principal balance, second to any other sums due thereunder, third to all other advances and sums secured hereby, and the remainder to principal, all of said principal and interest being made payable at the office of Mortgagee or such place as the holder of the Note may from time to time in writing appoint."

(d) The following paragraph is added to the Mortgage:

37. Financial and other Covenants. Mortgagor hereby warrants, represents and covenants to Mortgagee as follows:

37.1 Cash Flow Ratio. Commencing on August 31, 2000, Mortgagor agrees to maintain a minimum annual cash flow ratio of at least 1.1:1.0. The Cash Flow Coverage Ratio shall be calculated as of the end of each fiscal quarter during the term of this Mortgage on a rolling four (4) fiscal quarter basis. Cash Flow Ratio is defined as the ratio of the sum of net income after taxes plus depreciation expense, plus interest, plus amortization expense, less any distributions to shareholders, less capital expenditures not funded by increases in long term debt provided by Mortgagee to all required debt service payments for such immediately preceding four-quarter period.

37.2 Minimum Shareholders Equity. During the term of the Mortgage, the equity of the shareholders of Mortgagor, as determined in accordance with GAAP must at all times be equal to the total assets of Mortgagor minus all direct and contingent liabilities plus any subordinated liabilities of Mortgagor.

37.3 Negative Pledge of Assets. Mortgagor warrants and represents to and covenants to Mortgagee that Mortgagor shall not, without Mortgagee's prior written consent thereto, other than in the Ordinary Course of Business, and other than the lien of the Loan Documents, encumber, pledge, mortgage, sell, assign, convey, lease or otherwise dispose of or transfer whether by sale, loan distribution, merger, consolidation or otherwise, or enter into any agreement

to do any of the foregoing to any assets now or hereafter owned by Mortgagor. "Ordinary Course of Business" means, in respect of any transaction involving the Mortgagor, the ordinary course of Mortgagor's business, as conducted by Mortgagor in accordance with past practice and undertaken by Mortgagor in good faith and not for purposes of evading this covenant.

37.4 No New Indebtedness. Mortgagor shall incur no new Indebtedness without the prior written consent of Mortgage, which consent shall not be unreasonably withheld. "Indebtedness" means, without duplication: (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business pursuant to ordinary terms); (c) all non-contingent reimbursement or payment obligations with respect to Surety Instruments; (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement or incurred as financing, in either case with respect to property acquired by Mortgagor (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property); (f) all capital lease obligations; (g) all indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon or in property (including accounts and contracts rights) owned by the Mortgagor, even though the Mortgagor has not assumed or become liable for the payment of such Indebtedness; and (i) all obligations under direct or indirect guaranties in respect of indebtedness or obligations of other entities of the kinds referred to in clauses (a) through (g) above.

37.5 Year 2000 Compliance. The Mortgagor has reviewed the areas within its business and operations which could be adversely affected by, and has developed or is developing a program to address on a timely basis, the "Year 2000 Problem" (that is, the risk that computer applications used by the Mortgagor may be unable to recognize and perform properly date-sensitive functions involving certain dates prior to and any dates on or after December 31, 1999). Based on such review and program, the Mortgagor believes that the "Year 2000 Problem" will not have a material adverse effect on the Mortgagor. From time to time, at the request of the Mortgagee the Mortgagor

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shall provide to the Mortgagee such updated information or documentation as is requested and is available regarding the status of its efforts to address the Year 2000 Problem.

3. Amendment to Loan Documents.

(a) In each and every Loan Document, every reference to "a Mortgage Note of even date herewith in the amount of \$990,000.00" is hereby deleted and in its place the following clause is substituted: "a Mortgage Note dated January 30, 2000, in the amount of \$1,528,663.00".

(b) The Loan Documents are hereby amended by deleting all references to the maturity date of September 30, 1998 and in its place substituting the maturity date of September 30, 2004.

(c) The Environmental Indemnity Agreement dated October 23, 1997, is superseded and replaced by an Environmental Indemnity Agreement of even date herewith executed by Borrower as Indemnitor with respect to the Property for the benefit of Lender.

4. Warranties and Representations. Borrower hereby represents and warrants to Lender as follows:

(a) Borrower has the full power and authority to execute and deliver this Amendment, and to perform its respective obligations hereunder. Upon the execution and delivery hereof, this Amendment and the Loan Documents amended hereby shall be valid, binding and enforceable against Borrower in accordance with their respective terms, except to the extent the same are limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally or by general equitable principles. Execution and delivery of this Amendment does not and will not contravene, conflict with, violate or constitute a default under (i) the Articles of Incorporation creating Borrower, or the Bylaws governing its operation, or (ii) any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which Borrower is a party or is bound or which is binding upon or applicable to the Property, or any portion thereof.

(b) To the knowledge of Borrower, no default, event or condition which could become a default with the giving of notice or passage of time, or both, exists under the \$1,528,663.00 Mortgage Note, the Mortgage or any of the Loan Documents, all as amended by this Amendment.

(c) There is not any condition, event or circumstances existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands

pending or, to Borrower's knowledge, threatened affecting Borrower or the Property, which, if determined adversely, could reasonably be expected to result in any material adverse change in the financial condition of Borrower or which would prevent Borrower from complying with or performing its obligations under the \$1,528,663.00 Mortgage Note, the Mortgage, and the other Loan Documents, all as amended by this Amendment, within the time limits set forth therein for such compliance or performance, and no basis for any such matter exists.

5. Conditions Precedent. The obligation of Lender to enter into this First Amendment document is subject to the following conditions precedent:

- (a) Lender shall have received this Agreement.
- (b) Lender shall have received resolutions of Borrower in form and content acceptable to Lender.
- (c) Lender shall have received a date-down endorsement to Chicago Title Insurance Company Policy Number 7669432 dated October 27, 1997, which shall insure the Property describing the insured Mortgage thereunder as including this Amendment and extending the effective date of such Title Policy to the date of the recording of this Amendment, which endorsement shall show title to the Property in the same condition as currently shown in said Title Policy except for (i) the recording of this Amendment and (ii) exceptions relating to the Additional Property acceptable to Lender.
- (d) Guarantor shall deliver his Guaranty in form acceptable to Lender.
- (e) Lender shall have received the Environmental Indemnity Agreement.
- (f) Lender shall have received a Collateral Assignment under Land Trust executed by the Land Trust.
- (g) Legal Counsel to Borrower shall deliver its opinion in form acceptable to Lender.
- (h) Lender shall be reimbursed for all reasonable fees and expenses, including attorneys fees in documenting this First Amendment and all related loan documents.
- (i) Lender shall have received such other documents as may be reasonably requested by Lender or its counsel.

6. Miscellaneous.

(a) Borrower hereby ratifies and confirms its respective liabilities and obligations under the Loan Documents, all as amended by this Amendment, and the liens and security interests created thereby, and acknowledge that it has no defense, claim or set-off to the enforcement by Lender of the obligations and liabilities of Borrower under the \$1,528,663 Mortgage Note, the Mortgage, and the other Loan Documents, all as amended by this Amendment.

(b) This Amendment shall be binding on the Borrower and its respective successors and permitted assigns, and shall inure to the benefit of Lender, its successors and assigns.

(c) As amended hereby, the Loan Documents shall remain in full force and effect in accordance with their respective terms.

(d) This Amendment shall be construed in accordance with and governed by the laws of the State of Illinois.

IN WITNESS WHEREOF the parties have caused this instrument to be signed and sealed as of the date first above written.

**BORROWER:**

**FLAIR COMMUNICATIONS AGENCY, INC.,**

By: Robert Walz 1/30/00  
Robert Walz

Title: Chief Operating Officer

**AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, solely as Trustee aforesaid and not personally**

By: David Rosenfield

Its: ASSISTANT VICE PRESIDENT

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Peter Taddeo, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Robert Walz is personally known to me to be the Chief Operating Office of Flair Communications Agency, Inc., an Illinois Corporation, and the same persons whose name is subscribed to the foregoing instrument, that said person appeared before me this day in person and acknowledged that he signed the foregoing instrument as his free and voluntary act for the use and purpose therein set forth.

GIVEN under my hand and Notarial Seal this 14 day of February, 1999.

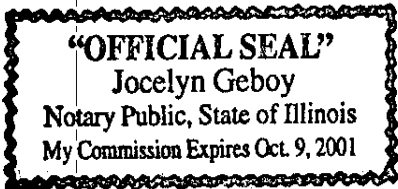


[Signature]  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that DAVID S. ROSENFELD, personally known to me and known by me to be the ASSISTANT VICE PRESIDENT of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association having trust powers, and \_\_\_\_\_ personally known to me to be the \_\_\_\_\_ of said association, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such \_\_\_\_\_ and \_\_\_\_\_ of said association as trustee as aforesaid, and caused the seal of said association to be affixed thereto, pursuant to authority given by the Board of Directors of said association, as their free and voluntary act, and as the free and voluntary act and deed of said association, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18TH day of Feb January, 2000.



[Signature]  
Notary Public

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## EXHIBIT "A"

### PARCEL 1:

LOTS 18, 19, 20, 21, 22, 23, 24, 25 AND 26 IN BLOCK 16 IN NEWBERRY'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE EAST ½ OF THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST, OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

Address: 214; 216-218 and 220-228 W. Erie, Chicago, Illinois

Tax Id Numbers: 17-19-216-003

17-19-216-004

17-19-216-005

17-19-216-008

17-19-216-009

17-19-216-015