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## FIRST AMENDMENT TO PROMISSORY NOTE, MORTGAGE AND OTHER LOAN DOCUMENTS

This First Amendment ("First Amendment") is entered into as of this 1st day of October, 1993 by and among American National Bank and Trust Company of Chicago, not personally, but as Trustee under Trust Agreement dated August 12, 1987 and known as Trust No. 103178-08 ("Trust"), Gantax Associates Limited Partnership, an Illinois limited partnership ("Beneficiary") (Trust and Beneficiary individually and collectively, as the context requires, herein referred to as "Borrower"), Seymour Taxman ("Taxman"), Scott Gendell ("Gendell") (Taxman and Gendell individually and collectively, as the context requires, herein referred to as "Guarantors") and NBD Chicago Bank, now known as NBD Bank ("Bank").

### R E C I T A L S

A. On October 19, 1988, Borrower, Guarantors and Bank entered into various loan documents (collectively "Loan Documents") in connection with an \$875,000 loan from Bank to Borrower ("Loan"), including a Note payable by Trust to Bank in the principal amount of \$875,000 ("Note"), a Mortgage from Trust to Bank recorded October 20, 1988 as Document No. 88483436 in the Office of the Recorder of Cook County, Illinois ("Mortgage"), an Assignment of Leases and Rents from Borrower to Bank recorded October 20, 1988 as Document No. 88483437 in the Office of the Recorder of Deeds of Cook County, Illinois ("Assignment of Leases and Rents"), Construction Loan Agreement between Borrower and Bank ("Construction Loan Agreement"), and a Guaranty from Guarantors in favor of Bank ("Guaranty").

B. The Loan is secured by certain property located in Wilmette, Illinois and legally described on Exhibit "A" attached hereto ("Premises").

C. Pursuant to a commitment letter (the "Commitment Letter") dated August 31, 1993 between Beneficiary and Bank the parties have agreed to extend the maturity date of the Loan, modify the interest rate and payment schedule, limit the obligation of the Guarantors in certain respects, and provide for a prepayment penalty.

### A G R E E M E N T S

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Bank, Borrower and Guarantors hereby agree that the Loan Documents are amended as follows:

1. As of September 30, 1993, after the required payment of interest due on such date, the parties agree that the outstanding principal balance of the Loan is Eight Hundred Forty-One Thousand Six Hundred Thirty-One and 71/100 Dollars (\$841,631.71).

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2. Accordingly, effective September 30, 1993, and without modifying Borrower's obligation to make the payment due on September 30, 1993 pursuant to the Loan Documents as they existed prior to this First Amendment.

(a) Section 1.2 of the Construction Loan Agreement is deleted in its entirety and the following is substituted therefor:

"1.2. Interest. The Loan shall bear interest at the rate per annum equal to seven and four tenths percent (7.4%)"

(b) Section 1.3 of the Construction Loan Agreement is deleted in its entirety and the following is substituted therefor:

"1.3. Maturity. All principal and accrued and unpaid interest on the Loan shall be due and payable on the Maturity Date as defined in the Note."

(c) Subparagraphs A. and B. on page 1 of the Note are deleted in their entirety and the following is substituted therefor:

"A. Interest on the principal balance outstanding from time to time shall be payable to Bank at a fixed rate per annum equal to seven and four tenths percent (7.4%). Interest shall be computed on the basis of a three hundred sixty (360) day year, it being understood that should such basis of a three hundred sixty (360) day year be or become illegal, then the basis for computing interest hereunder shall be on a three hundred sixty-five (365) day year. Commencing November 1, 1993, and continuing on the first day of each and every month thereafter until the Maturity Date, principal and interest payments shall be payable at the rate aforesaid in equal monthly installments of principal and interest of Seven Thousand Seven Hundred Fifty-Five Dollars (\$7,755.00).

B. The outstanding principal amount of this Note shall be payable to Bank on September 30, 1996, or, at Borrower's option, if all of the Extension Conditions as herein defined are satisfied, on September 30, 1998 (such date as may be applicable herein referred to as the "Maturity Date"). The term "Extension Conditions" as used herein means that:

(i) on September 30, 1996, the Bank determines and projects that for each of the periods October 1, 1996 through September 30, 1997, and October 1, 1997 through September 30, 1998, Projected Net Income for each such period will be equal to or greater than 115% of the required payments of interest and principal

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due under the Loan during each such respective period.

"Projected Net Income" for each such period shall be calculated by Bank based on information available to it on September 30, 1996 and shall be equal to Projected Revenues less Projected Expenses.

"Projected Revenues" shall mean all rental payments and expense reimbursements to be paid to Borrower pursuant to leases of space in the Premises expiring no earlier than September 30, 1998, for tenants in occupancy as of September 30, 1996, and for whom any period of rent abatement has expired by September 30, 1996, less a vacancy factor, which vacancy factor shall be equal to the greater of the then current market vacancy factor and the then current actual vacancy factor, but in no event less than five percent (5%).

"Projected Expenses" shall mean all expenses to be incurred by Borrower, and reserves to be established, during the period in question, including without limitation real estate taxes, insurance, operating expenses, market management fees, and reasonable reserves for future repairs and replacements. Borrower will promptly, upon request of Bank, provide Bank with all information and copies of books and records that Bank may reasonably from time to time request. In determining Projected Net Income there shall not be deducted payments of interest and principal due under the Loan; and

- (ii) On September 30, 1996, there is no outstanding default, or event which with the passage of time or giving of notice or both, could become a default, in connection with the Loan or Loan Documents; and
- (iii) At all times from and after September 30, 1993 through September 30, 1996, Borrower shall cause Bank to be the sole depository for all

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accounts in connection with the ownership, management or operation of the Premises."

- (d) In the third paragraph on page 1 of the Mortgage, in the fourth line, the date "September 30, 1993" is deleted and "Maturity Date as defined in the Note" is substituted therefor.
- (e) Section 5.11(a) and (b) of the Construction Loan Agreement are hereby modified such that the annual statements described therein are to be delivered to Lender within sixty (60) days of the end of each fiscal year of Beneficiary.
- (f) Section 5.11(c) of the Construction Loan agreement is deleted in its entirety and the following is substituted therefor:
- (c) within five (5) days of the filing of tax returns, copies of the tax returns of Beneficiary and all Guarantors and copies of the personal financial statements of all Guarantors.
- (g) The following is added as a new Section 8.17 to the Construction Loan Agreement:

8.17 Waiver of Jury Trial. The Trust, Beneficiary, Taxman and Gendell each waive the right to a trial by jury in any cause or action arising out of or connected with the Loan or the Loan Documents.

3. Effective October 1, 1993, the default interest rate applicable to the Loan, including the "Default Interest" referred to on page 1 of the Note shall equal ten and four tenths percent (10.4%) per annum.

4. Paragraph R-2 of the Rider to the Guaranty is deleted in its entirety and the following is substituted therefore

"Notwithstanding anything contained in this Guaranty or the other Loan Documents to the contrary, the obligation of each of Taxman and Gendell under the Guaranty shall be limited to fifty percent (50%) of the amounts from time to time due and owing pursuant to the Guaranty which represent principal and interest on guaranteed debt or costs and expenses (including court and legal fees) incurred by the Bank in collecting or attempting to collect the guaranteed debt. This limitation shall not, however, limit the right of

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the Bank to pursue each of the Guarantors individually or jointly, at the same time or different times, in connection with their respective liability amount. For example, if \$200,000 of principal, interest are owed under the Guaranty at a particular time the Bank could pursue claims against the Guarantors for \$100,000 each. Each of the Guarantors shall be liable to the Bank for one hundred percent (100%) of the costs and expenses (including court costs and legal fees) incurred by the Bank in enforcing or attempting to enforce this Guaranty against such Guarantor, but not against another Guarantor.

5. Section 1.4(a) of the Construction Loan Agreement, and the first sentence of page 3 of the Note, are deleted in their entirety, as is any other provision of the Loan Documents which permits the Loan to be prepaid in whole or in part at any time, without premium or penalty, and the following is substituted therefor as Section 1.4 (a) of the Construction Loan Agreement:

"(a) On one business day's notice, the Borrower may prepay all or any part of the outstanding principal balance of the Loan provided it also pays a prepayment premium equal to the Current Value of (i) the interest that would have accrued on the amount prepaid at the Note Rate, minus (ii) the interest that would have accrued on the amount prepaid if the Note Rate were equal to the Treasury Rate. In both cases, interest will be calculated from the prepayment date to the scheduled installment of principal in their inverse order of maturity, treating September 30, 1996 as the date of final payment unless the maturity date has been extended to September 30, 1998, in which case September 30, 1998 shall be treated as the date of final payment. "Treasury Rate" shall mean the yield, as of the date of prepayment, on United States Treasury bills, notes or bonds, selected by the Lender in its discretion, having maturities comparable to the scheduled maturities on the installments being prepaid. "Current Value" means the dollar amount of the interest to be earned discounted at Treasury Rate. The Borrower agrees that this prepayment premium is a reasonable estimate of loss and not a penalty. The prepayment premium is payable as liquidated damages for the loss of bargain and its payment shall not in any way reduce, affect or impair any other obligation of the Borrower to the Lender. In no event shall the prepayment premium be less than zero. The borrower's notice of its intent to prepay shall be irrevocable. If the balance of the Loan is accelerated in accordance with the terms of the Loan Documents for any reason, including a default of Borrower, the resulting balance due shall be

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considered a prepayment due and payable as of the date of acceleration.

6. The notice address to which notices are to be sent as provided in the Loan Documents is hereby modified as follows,

To Bank: NBD Bank  
8001 Lincoln Avenue  
Skokie Illinois 60077  
Attention: David Garcia

With a copy to: Foley & Lardner  
330 North Wabash  
One IBM Plaza  
Suite 3300  
Chicago, Illinois 60611  
Attention: Wesley N. Becker

To Trust, Beneficiary,  
Taxman or Gendell: American National Bank and Trust Company  
of Chicago as Trustee under Trust No.  
101178-08  
33 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Land Trust Department

and

Gentax Associates Limited Partnership  
8707 North Skokie Boulevard  
Suite 303  
Skokie, Illinois 60077  
Attention: Scott Gendell

7. This First Amendment may be executed in multiple counterparts. The provisions and modification set forth herein are hereby incorporated in all of the Loan Documents. In the event of any conflict between the terms of this First Amendment and the Loan Documents, the provisions of this First Amendment shall control. Except as hereby amended, the Loan Documents hereby remain in full force and effect, the first lien priority of the Mortgage, Assignment of Leases and Rents, and other security documents shall remain unaffected by this First Amendment, and the Guarantors hereby reaffirm their Guaranty, subject only to the modifications contained in this First Amendment.

8. This Amendment shall, be binding upon the parties hereto, and their respective heirs, legal representatives, successors and assigns.

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9. The Commitment Letter shall survive the execution of this First Amendment.

10. This First Amendment is executed by American National Bank and Trust Company of Chicago, not personally but as trustee under Trust No. 103178-08 in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this Agreement) and it is expressly understood and agreed that nothing contained herein or in any other instrument given to evidence the Loan shall be construed as creating any liability on the part of said Trustee; and that so far as said Trustee personally is concerned, Bank, its successors or assigns, shall look solely to Beneficiary and the collateral mortgaged or conveyed to secure the Note, to the enforcement of the liens created in the Loan Documents, and to action to enforce the personal liability of the Guarantors.

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IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed as of the date first above written.

## TRUST:

American National Bank and Trust company of Chicago, not personally but as Trustee under Trust Agreement dated August 12, 1987 and known as Trust No. 103178-08

By: [Signature]  
Title: TRUSTEE

Attest: [Signature]  
Title: ASSISTANT

## BENEFICIARY:

Gentax Associates Limited Partnership, an Illinois limited partnership

By: [Signature]  
Seymour Taxman,  
General Partner

By: [Signature]  
Scott Gerdell,  
General Partner

BANK:  
NBD Chicago Bank, now known as  
NBD BANK

By: [Signature]  
Its: [Signature]

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## Consent of Guarantor

Seymour Taxman and Scott Gendell join in the execution of this First Amendment for the purpose of acknowledging that (i) each consents and agrees to the terms hereof, (ii) except as specifically set forth herein, the execution of this First Amendment shall not modify, limit or alter any of their obligations under the Guaranty, (iii) they, accept, confirm, ratify and readopt their respective obligations under the Guaranty, as modified herein.

  
\_\_\_\_\_  
Seymour Taxman

  
\_\_\_\_\_  
Scott Gendell

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STATE OF ILLINOIS    )  
                                  )SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the said County and State aforesaid, DO HEREBY CERTIFY that

P. JOHANNSON, personally known to me to be the Second Vice President, of American National Bank and Trust Company of Chicago, a national banking association, as Trustee under Trust Agreement dated August 12, 1987 and known as Trust No. 103178-80, and

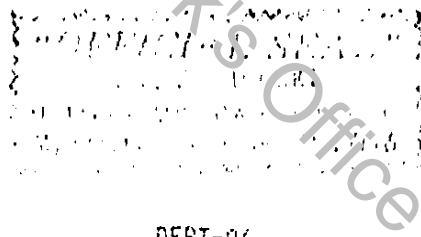
J. Michael Wholan, personally known to me to be the ASSISTANT SECRETARY of said bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as such ASSISTANT SECRETARY and ASSISTANT SECRETARY, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act and deed of said bank, as Trustee as aforesaid, for the uses and purposes therein acknowledged the said

ASSISTANT SECRETARY then and there acknowledged that he, as custodian of the corporate seal of said bank, did affix the corporate seal of said bank to said instrument as his own free and voluntary act and as the free and voluntary act and deed of said bank, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of NOV 14 1993, 19\_\_\_\_.

[Signature]  
Notary Public

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



DEPT-04  
T#4444 TRAN 0880 12/08/93 11:03:00 \$45.50  
#7047 † \*-03-003242  
COOK COUNTY RECORDER

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STATE OF ILLINOIS     )  
                                  )SS  
COUNTY OF COOK        )

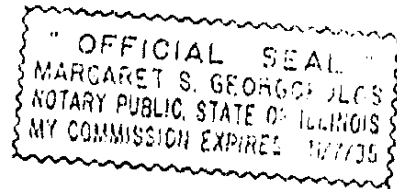
I, the undersigned, a Notary Public in and for the said County and State aforesaid, DO HEREBY CERTIFY that Seymour Taxman and Scott Gendell, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their free and voluntary act and deed in the capacities and for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17<sup>th</sup> day of November, 1995.

Margaret S. George JCS  
Notary Public

My Commission Expires:

11-7-95



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STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the said County and State aforesaid, DO HEREBY CERTIFY that

[Handwritten name], personally known to me to be the [Handwritten name], of NBD Chicago Bank, now known as NBD Bank, a national banking association, and

[Handwritten name], personally known to me to be the [Handwritten name] of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as such [Handwritten name] and

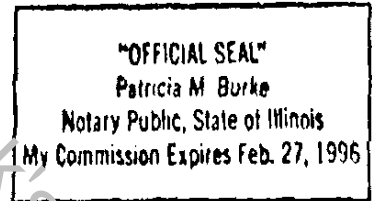
[Handwritten name], respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act and deed of said bank, for the uses and purposes therein set forth; and the said [Handwritten name] then and there acknowledged that he, as custodian of the corporate seal of said bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act and deed of said bank, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this [Handwritten date] day of [Handwritten month], 19[Handwritten year].

[Handwritten signature]
Notary Public

My Commission Expires:

\_\_\_\_\_



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## EXHIBIT "A"

### LEGAL DESCRIPTION

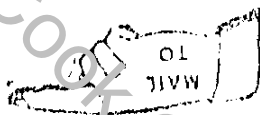
The South 200 feet as measured at right angles to the North line of Old Glenview Road of that part of Lot 31 of County Clerk's Division of Section 32, Township 42 North, Range 13, East of the Third Principal Meridian, lying West of the West line of Skokie Boulevard (Route 41) as occupied and North of the North line of Old Glenview Road, as occupied, all in the East 1/2 of the Southwest 1/4 of said Section 32, in Cook County, Illinois.

Common Address: 133 Skokie Boulevard  
Wilmette, Illinois

Permanent Index No.: 05-32-306-034

Prepared by and after  
recording return to:

Wesley N. Becker, Esq.  
Foley & Lardner  
One IBM Plaza  
Chicago, IL 60611  
(312) 755-1900



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