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Robert E. Gordon
Mayer, Brown & Platt
190 S. LaSalle Street
Chicago, Illinois 60603

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1999-12-27 15:22:55
Cook County Recorder 41.00



MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "Memorandum of Lease") dated as of December 22, 1999, between FIRST CHICAGO LEASING CORPORATION, a Delaware corporation, having its principal office at 1 Bank One Plaza, Chicago, Illinois 60670-0502, Attention: President, as the Lessor and as Mortgagee (the "Lessor") and WHITTMAN-HART, INC., a Delaware corporation, having a principal office at 311 South Wacker Drive, Chicago, Illinois 60618-6618, as the Lessee and as mortgagor (the "Lessee"),

WITNESSETH:

WHEREAS, the Lessor is the ground lessee of the land described on Exhibit A attached hereto (the "Land") and will be the record owner of fee simple title to the Building which hereafter may be constructed on the Land (the "Subject Improvements" and, together with the Land, the "Property"); and

WHEREAS, the Lessor wishes to lease the Property to the Lessee and the Lessee wishes to lease the Property from the Lessor pursuant to that certain Lease dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Lease"), between the Lessee and the Lessor;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to enter into this Memorandum of Lease, as follows:

SECTION 1. Certain Terms. Capitalized terms used but not otherwise defined in this Memorandum of Lease have the meanings specified in Appendix A to the Lease. The term "Obligations" shall mean all obligations (monetary or otherwise) of the Lessee arising under or in connection with any of the Operative Documents.

SECTION 2. Property. Attached hereto as Exhibit A is the legal description of the Land. Effective upon the execution and delivery of this Memorandum of Lease by the Lessor and the Lessee, the Property shall be subject to the terms and provisions of the Lease. Subject to the terms and conditions of the Lease, the Lessor hereby leases its interest in the Property to the

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Lessee for the Lease Term (as defined below) of this Memorandum of Lease, and the Lessee hereby agrees, expressly for the direct benefit of the Lessor, to lease the Property from the Lessor for the Term.

SECTION 3. Lease Term. The term of this Memorandum of Lease (the "Term") shall begin on the date hereof and shall end on December 21, 2004 with respect to the Property, unless the Term with respect to the Property is renewed or earlier terminated in accordance with the provisions of the Lease or the other Operative Documents, but in no event later than December 21, 2039. For and in consideration of good and valuable consideration paid by the Lessee to the Lessor as described in the Lease, the Lessor hereby grants to the Lessee the right to purchase the Property or to market and sell the Property during the Term of this Memorandum of Lease on the terms set forth in the Lease.

SECTION 4. Interest Conveyed to Lessee. (a) Lessor and Lessee intend that this Lease be treated, for accounting purposes, as an operating lease. It is the intent of Lessee and Lessor that, for federal, state and local tax purposes (A) Lessee owns the Property and will be entitled to all tax benefits ordinarily available to an owner of property similar to the Property, (B) this Lease will be treated as a financing arrangement, and (C) Lessor will be treated as a lender making loans to Lessee. Lessor shall not take any actions inconsistent with, or otherwise interfere with, the tax position described in the foregoing sentence, except as required by law or by any Governmental Authority. It is the intention of the parties hereto that if an Event of Default occurs, Lessor will be entitled to exercise his remedies set forth in Article XIII and Section 14.2 and that for bankruptcy law purposes the transaction represented by this Lease will be treated as a financing transaction, and accordingly, (i) that this Lease be treated as a mortgage and security agreement, encumbering the Property, and that Lessee, as grantor, hereby grants to Lessor, as mortgagee and secured party, or any successor thereto, a first and paramount Lien on the Property, (ii) that Lessor shall have, as a result of such determination, all of the rights, powers and remedies of a mortgagee available under Applicable Law to take possession of and sell (whether by foreclosure or otherwise) the Property, (iii) that the effective date of such mortgage shall be the effective date of this Lease, (iv) that the recording of the memorandum of this Lease shall be deemed to be the recording of such a mortgage, and (v) that the obligations secured by such mortgage shall include the Lessor's Invested Amount, including all future advances made by Lessor to Lessee and all Basic Rent and Supplemental Rent hereunder and all other obligations of and amounts due from Lessee hereunder and under the Operative Documents; the maximum of Lessor's Invested Amount, exclusive of interest, that may be outstanding is \$50,000,000.00.

(b) Specifically, without limiting the generality of clause (a), the Lessor and the Lessee intend and agree that with respect to the nature of the transactions evidenced by the Lease in the context of the exercise of remedies under the Operative Documents, including, without limitation, in the case of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America or any State or Commonwealth thereof affecting the Lessee, the Lessor or Lease Participant or any enforcement or collection actions, the transactions evidenced by the Lease are loans to the Lessee made by the Lessor and the Lease Participant through the Lessor, in each case as unrelated third party lenders, secured by the Property. Accordingly, and

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notwithstanding anything contained herein or in the Lease or any other Operative Document to the contrary, the Lessee does hereby acknowledge and agree that the Liens described in, and the provisions of, Section 5 shall be deemed to secure all Lessor's Invested Amount advanced by the Lessor and the Lease Participant for the construction of Building constituting part of the Property, in the maximum principal amount of Fifty Million Dollars (\$50,000,000), maturing on December 21, 2004, together with interest thereon, and all other amounts payable by the Lessee under the Operative Documents in connection therewith, effective on the date hereof.

(c) Specifically, but without limiting the generality of clause (a), the Lessor and the Lessee further intend and agree that, for the purpose of securing the Lessee's obligations for the repayment of the above-described amounts to the Lessor, (i) the Lease and this Memorandum of Lease constitute a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code and a real property mortgage; (ii) the conveyance provided for hereby and in Article XI of the Lease is a grant by the Lessee to the Lessor of a mortgage lien and security interest in all of the Lessee's right, title and interest in and to the Property and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property (it being understood that the Lessee does hereby acknowledge and agree that the Liens described in, and provisions of, Section 5 shall be deemed to secure all Lessor's Invested Amount advanced by the Lessor and Lease Participant for the construction of Building constituting part of the Property (not to exceed \$50,000,000), together with interest thereon, and all other amounts payable under the Operative Documents in connection therewith); (iii) the possession by the Lessor or any of its agents of notes and such other items of property as constitute instruments, money, negotiable documents or chattel paper shall be deemed to be possession by the secured party for purposes of perfecting the security interest pursuant to Section 9-305 of the Uniform Commercial Code; and (iv) to the extent required by the applicable Uniform Commercial Code, notifications to Persons holding such property, and acknowledgments, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of the Lessee shall be deemed to have been given for the purpose of perfecting such security interest under Applicable Law. The Lessor and the Lessee shall, to the extent consistent with the Lease and the other Operative Documents, take such actions and execute, deliver, file and record such other documents, financing statements, mortgages and deeds of trust as may be necessary to ensure that, if the Lease and this Memorandum of Lease were deemed to create security interests in the Improvements in accordance with this Section, such security interests would be perfected security interests of first priority under Applicable Law and will be maintained as such throughout the Lease Term, all at the expense of the Lessee.

SECTION 5. Foreclosure and Other Remedies.

(a) Pursuant to Section 4 hereinabove Lessor and Lessee agree that Lessee hereby grants a Lien against the Property subject hereto, as security for the Lessor's Invested Amount and all Basic and Supplemental Rent hereunder and all other amounts which may from time to time be owed by Lessee to Lessor under the Operative Documents and that upon the occurrence of a Event of Default, Lessor may proceed by a suit or suits in equity or at law, whether for a foreclosure hereunder, for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Property, or for the enforcement of

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any other appropriate legal or equitable remedy, and at any foreclosure sale Lessor may become the purchaser; and in such case for the purpose of making settlement for or payment of the purchase price, shall be entitled to use its claims for the amounts due and owing to it under the Operative Documents in order that they may be credited as paid on the purchase price.

(b) Without in any way limiting or restricting any of Lessor's rights, remedies, powers and authorities under this instrument, and in addition to all of such rights, remedies, powers, and authorities, the Lessor shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (herein, as amended and as it may hereafter be amended from time to time, called the "Act"). Without limiting the generality of the foregoing, all expenses incurred by Lessor to the extent reimbursable under Sections 15-1510, 15-1512, or any other provision of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this instrument, shall be added to the indebtedness secured by this instrument and by the judgment of foreclosure.

(c) The Lessee, on behalf of itself and all Persons now or hereafter interested in the Property, voluntarily and knowingly hereby: acknowledges that the transaction of which this instrument is a part is a transaction which does not include either agricultural real estate (as defined in the Act), or residential real estate (as defined in the Act); waives to the fullest extent permitted by applicable law any and all rights to reinstatement or redemption and any and all other rights under all present and future appraisement, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all indebtedness secured by this instrument, and the Lessee agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this instrument. Without limiting the generality of the preceding sentence, the Lessee, on its own behalf and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this instrument, hereby irrevocably waives any and all rights of reinstatement or redemption from sale under any order, judgment or decree of foreclosure of this instrument or under any power contained herein or under any sale pursuant to any statute, order, judgment or decree of foreclosure of any court.

(d) The Lessor shall be entitled to enforce payment and performance of the Obligations and to exercise all rights and powers under this instrument or under any of the other Operative Documents or other agreements or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, security agreement, pledge, lien, assignment or otherwise. The remedies provided herein are in addition to and not in limitation of the remedies set forth in the other Operative Documents. Neither the acceptance of this instrument nor its enforcement, shall prejudice or in any manner affect the Lessor's right to realize upon or enforce any other security now or hereafter held by the Lessor, it being agreed that the Lessor shall be entitled to enforce this instrument and any other security now or hereafter held by the Lessor in such order and manner as the Lessor may determine in its absolute discretion. No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive of any other remedy herein or in the other Operative Documents or by

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law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or thereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given hereunder or by any of the other Operative Documents to the Lessor or to which it may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Lessor. In no event shall the Lessor, in the exercise of the remedies provided in this instrument (including, without limitation, the appointment of a receiver and the entry of such receiver on the Property), be deemed a "mortgagee in possession," and the Lessor shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

(e) If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement. The expenses of the Lessor incurred in connection with actions undertaken as provided in this Section, together with interest thereon at a rate per annum equal to the Overdue Rate, from the date of payment by the Lessor to the date reimbursed by the Lessee, shall be payable by the Lessee to the Lessor on demand.

(f) The Lessor's sole duty with respect to the custody, safekeeping and physical preservation of any Property in its possession, under Section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as the Lessor deals with similar property for its own account. Neither the Lessor, the Lease Participant nor any of their respective directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon any of the Property or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Property upon the request of Lessee or any other Person or to take any other action whatsoever with regard to the Property or any part thereof.

(g) All powers, authorizations and agencies contained in this instrument are coupled with an interest and are irrevocable until this instrument is terminated and the lien created hereby is released.

(h) Pursuant to Section 9-402 of the Uniform Commercial Code, the Lessee authorizes the Lessor to file financing statements with respect to the Property without the signature of the Lessee in such form and in such filing offices as the Lessor reasonably determines appropriate to perfect the security interests of the Lessor under this instrument. A carbon, photographic or other reproduction of this instrument shall be sufficient as a financing statement for filing in any jurisdiction.

(i) It is the intention of the parties hereto that this instrument shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of the State in which the Property is located. If an Event of Default shall occur, then in addition to having any other right or remedy available at law or in equity, the Lessor shall have the option of either (i) proceeding under the Uniform Commercial Code and exercising such rights and remedies as may be provided to a secured party by the Code with respect to all or any portion of the Property which is personal property (including, without limitation, taking possession of and selling such property) or (ii) treating such property as real property and proceeding with respect to both the real and personal property constituting the Property in accordance with the Lessor's rights,

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powers and remedies with respect to the real property (in which event the default provisions of the Uniform Commercial Code shall not apply). If the Lessor shall elect to proceed under the Uniform Commercial Code, then five days' notice of sale of the personal property shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Lessor shall include, but not be limited to, attorneys' fees and legal expenses. At the Lessor's request, the Lessee shall assemble the personal property and make it available to the Lessor at a place designated by the Lessor which is reasonably convenient to both parties.

(j) The Lessee and the Lessor agree, to the extent permitted by law, that this instrument upon recording or registration in the real estate records of the proper office shall constitute a financing statement filed as a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Uniform Commercial Code, with their respective addresses as set forth in the preamble to this Lease.

SECTION 6. Ratification. The terms and provisions of the Lease are hereby ratified and confirmed and remain in full force and effect. In the event of any conflict between the terms of the Lease and the terms of this Memorandum of Lease, the terms of the Lease shall control.

SECTION 7. GOVERNING LAW. THIS LEASE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY, PERFORMANCE, THE CREATION OF THE LEASEHOLD ESTATE HEREUNDER AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT TO SUCH ESTATE.

SECTION 8. Counterpart Execution. This Memorandum of Lease may be executed in any number of counterparts and by each of the parties hereto in separate counterparts, all such counterparts together constituting but one and the same instrument.

SECTION 9. Future Advances. THIS MEMORANDUM OF LEASE SECURES FUTURE ADVANCES AND IS A REVOLVING CREDIT MORTGAGE. THIS MEMORANDUM OF LEASE IS ALSO A CONSTRUCTION MORTGAGE AND SECURES AN OBLIGATION FOR A CONSTRUCTION OF IMPROVEMENTS ON THE LAND AND CONSTITUTES A CONSTRUCTION MORTGAGE WITH THE MEANING OF SECTION 9-313(1) OF THE UNIFORM COMMERCIAL CODE. In the event a court of competent jurisdiction rules that this instrument constitutes a mortgage or other secured financing as is the intent of the parties pursuant to Section 4 hereof, then this instrument will be deemed given to secure not only existing financing, but also future advances of up to Fifty Million Dollars (\$50,000,000) made pursuant to or as provided in the Lease, for the matters described in Section 4, whether such advances are obligatory or to be made at the option of the Lessor, or otherwise, to the same extent as if such future advances were made on the date of execution of this instrument, although there may be no advance made at the time of execution hereof, and although there may be no financing outstanding at the time any advance is made. To the fullest extent permitted by law, the lien of this instrument shall be valid as to all such amounts,

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including all future advances, from the time this instrument is recorded. Nothing contained herein shall be deemed an obligation to make future advances to the Lessee.

SECTION 10. Limitation on Recourse. The Lessee hereby agrees that the Lessor shall have no personal liability whatsoever to Lessee or its successors and assigns under this Memorandum of Lease or any of the other Operative Documents or arising in any way from the transactions contemplated hereby or thereby, all liability being limited to the Lessor's interest in the Property; *provided, however*, that the Lessor shall be liable in its individual capacity (a) for its own willful misconduct or gross negligence, or (b) for liabilities that result from the incorrectness of any representation or warranty expressly made by it in its individual capacity in Section 4.2 of the Master Agreement or from the failure of the Lessor to perform its covenants and agreements set forth in Section 2.1 of the Master Agreement.

SECTION 11. Memorandum of Lease. This Memorandum of Lease shall constitute a memorandum, for recording and notice to the public, of the Lease, which Lease is hereby incorporated herein by this reference and made a part of this instrument as fully and completely as if the same were set forth herein.

SECTION 12. No Merger. In no event shall the leasehold interests, estates or rights of Lessee hereunder, or of the holder of any indebtedness secured by a security interest in this Lease, merge with any interests, estates or rights of Lessor in or to the Property, it being understood that such leasehold interests, estates and rights of Lessee hereunder, and of the holder of any indebtedness secured by a security interest in this Lease, shall be deemed to be separate and distinct from Lessor's interests, estates and rights in or to the Property, notwithstanding that any such interests, estates or rights shall at any time or times be held by or vested in the same person, corporation or other entity.

SECTION 13. Original Memorandum of Lease. The single executed original of this Memorandum of Lease marked "THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART" on the signature page thereof and containing the receipt thereof of Lessor, on or following the signature page thereof shall be the Original Executed Counterpart of this Memorandum of Lease (the "Original Executed Counterpart"). To the extent that this Memorandum of Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Memorandum of Lease may be created through the transfer or possession of any counterpart other than the Original Executed Counterpart.

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Memorandum of Lease as of the date first above written.

LESSOR:

Lessee

~~FIRST CHICAGO LEASING CORPORATION~~

Whittman-Hart, Inc.

By: _____

Name: _____

Title: _____

Ed Szafer

President

LESSEE:

WHITTMAN-HART, INC.

By: _____

Name: _____

Title: _____

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Memorandum of Lease as of the date first above written.

LESSOR:

FIRST CHICAGO LEASING CORPORATION

By: Mary Kay Lorenz
Name: Mary Kay Lorenz
Title: First Vice President

LESSEE:

WHITTMAN-HART, INC.

By: _____
Name: _____
Title: _____

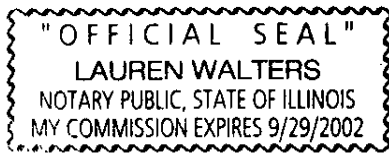
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Lauren Walters a notary public in and for said County, in the State aforesaid, do hereby certify that Edward Szofar personally known to me to be the _____ President of WHITTMAN-HART, INC.; a Delaware corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such _____ President he/she signed and delivered the said instrument and caused the corporation seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation as his/her free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 22 day of December, 1999.



Lauren Walters
Notary Public

Commission expires: 9-29-02

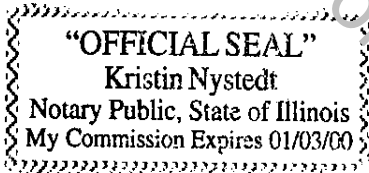
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, KRISTIN NYSTEDT a notary public in and for said County, in the State aforesaid, do hereby certify that MARY KAY LORENZ personally known to me to be the FIRST VICE President of FIRST CHICAGO LEASING CORPORATION, a Delaware corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such FIRST VICE President, ~~he~~ she signed and delivered the said instrument and caused the corporation seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation as ~~his~~ her free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 22ND day of December, 1999.



Kristin Nystedt
Notary Public

Commission expires: 01/03/2000