

# UNOFFICIAL COPY

JHW9830A-643  
01/09/90

## FIRST AMENDMENT TO LEASE

DEPT-01 RECORDING 121.00  
T02222 TRAN 2917 01/29/90 10:00:00  
#5035 # E \*- 90-044821  
COOK COUNTY RECORDER

THIS FIRST AMENDMENT TO LEASE ("Amendment") is made as of the 15th day of January, 1990, by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under a Trust Agreement dated June 16, 1986 and known as Trust No. 67628 ("Lessor"), and DONALD OGILVIE ("Ogilvie") and DOROTHY JOYCE SIMPSON ("Simpson"). Ogilvie and Simpson are collectively called the "Lessee".

A. Ogilvie entered into that certain Lease dated July 13, 1988 (the "Lease") with Lessor, a Memorandum of which Lease was recorded with the Cook County, Illinois Recorder of Deeds (the "Recorder") on October 12, 1989 as Document No. 89482732.

B. The Lease demised to Ogilvie the real estate legally described in Exhibit A attached hereto (the "Premises") subject to the terms, covenants and conditions contained in the Lease.

C. Ogilvie assigned a twenty-eight percent (28%) leasehold interest (the "Interest") under the Lease pursuant to an Assignment and Acceptance of Leasehold Interest dated November 29, 1989 to Chicago Title and Trust Company as Trustee under Trust Agreement No. 5-70638 ("Trust"). Trust assigned the Interest to Simpson pursuant to an Assignment and Acceptance of Leasehold Interest between Trust and Simpson dated December 22, 1989.

D. The Lessee now desires and the Lessor has agreed to amend the Lease as hereinafter set forth, but not otherwise.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, Lessee and Lessor hereby amend the Lease by adding thereto and incorporating in the Lease the following:

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THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING MAIL TO:

Janet H. Wirmingham  
JENNER & BLOCK  
One IEM Plaza  
Chicago, IL 60611

PERMANENT INDEX NO.

16-27-100-014-0000

STREET ADDRESS:

2335 South Cicero Avenue  
Cicero, Illinois 60650

BOOK 15  
PAGES 100 (18952)

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TWR 255842

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1. If the Lessee breaches any term, covenant or condition of this Lease which can be cured by the holder of a recorded first mortgage on the leasehold estate (the "Leasehold Mortgage"), Lessor will not terminate this Lease or invoke its right to take possession of the Premises and Leasehold Improvements, and the Lessor agrees to accept a cure of default from the Leasehold Mortgagee if the Leasehold Mortgagee cures the default within thirty (30) days after written notice of such default is given by the Lessor to the Leasehold Mortgagee, or if such default reasonably cannot be cured within such thirty (30) day period, the Leasehold Mortgagee commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. However, if such default cannot be cured by the payment of money and requires that the Leasehold Mortgagee be in possession of the Premises, such cure period shall not begin to run until the Leasehold Mortgagee has obtained the right to possession of the Premises, provided that within such thirty (30) day period Leasehold Mortgagee shall commence a foreclosure action and shall thereafter diligently proceed in good faith with such foreclosure.

2. If the Lessee's default under this Lease is or includes an Incurable Default (as hereinafter defined) the Lessor will not terminate this Lease or invoke its right to take possession of the Premises and Leasehold Improvements if (a) the Leasehold Mortgagee complies with the provisions of Section 1 of this Amendment, to the extent applicable; and (b) within thirty (30) days after written notice of such Incurable Default is given by the Lessor to the Leasehold Mortgagee, the Leasehold Mortgagee commences a foreclosure action and diligently proceeds in good faith with such foreclosure. As used herein, the term "Incurable Default" shall mean (i) any default relative to the financial condition of the Lessee, or (ii) any default of the Lessee which is not in any event susceptible of cure.

3. Notwithstanding the foregoing, the Lessor may invoke any or all of its remedies under this Lease, including the remedy of termination, (a) if the Leasehold Mortgagee fails to cure all defaults of the Lessee under this Lease other than Incurable Defaults after the expiration of the time for the Leasehold Mortgagee to cure such defaults as provided herein, or (b) if the Leasehold Mortgagee fails to continue to proceed with its foreclosure in good faith with due diligence. If, by reason of the occurrence of the Lessee's bankruptcy or insolvency or by reason of any other judicial order, the Leasehold Mortgagee shall be stayed from commencing foreclosure proceedings or, after commencing, prevented from continuing, such foreclosure, then the Leasehold Mortgagee shall be deemed to be diligently proceeding in good faith with its foreclosure if the Leasehold Mortgagee commences or resumes (as the case may be) its

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foreclosure within ten (10) business days after the date of the lifting or other ending of such stay; provided, however, that at all times when the Leasehold Mortgage is stayed from commencing or continuing its foreclosure proceedings, the Leasehold Mortgage shall fully perform all obligations of the Lessee under this Lease (except the curing of Incurable Defaults). Notwithstanding the foregoing, once any default is cured, the Leasehold Mortgage shall not be required to continue to obtain possession, or to remain in possession as the Leasehold Mortgage of the leasehold estate or, to prosecute foreclosure proceedings. Nothing herein shall preclude the Lessor from exercising any of its rights or remedies with respect to any other default by the Lessee during any period of forbearance, but in such event the Leasehold Mortgage shall have all of the rights and protections hereinabove provided for.

4. Until the Leasehold Mortgage shall be released, if this Lease is terminated for any reason other than a default by the Lessee which is not cured within the respective applicable cure period by the Lessee or the Leasehold Mortgage as the case may be, or if this Lease is rejected by the Lessee or any other party pursuant to a decree in any bankruptcy, reorganization, arrangement, insolvency or other similar proceeding, the Leasehold Mortgage or the nominee of the Leasehold Mortgage designated by the Leasehold Mortgage in written notice to the Lessor shall have the right to enter into a new lease with the Lessor, provided, however, that prior to the making of any such new lease the Leasehold Mortgage shall have cured all defaults on the part of the Lessee under this Lease except for Incurable Defaults. Said right shall be exercisable by written notice to the Lessor within thirty (30) days after such termination or rejection. Said new lease shall be for the remainder of the term of this Lease (and shall contain the same options to extend the Lease as remain unexpired at the time such new lease is executed) and shall otherwise contain the same terms and conditions as set forth herein except for requirements which are no longer applicable or have already been performed. Said new lease, and this covenant, shall be superior to all rights, liens and interests intervening between the date of the Leasehold Mortgage and the granting of said new lease, and shall be free of any and all rights of the Lessee. The provisions of the immediately preceding sentence shall be self-executing.

5. Notwithstanding anything to the contrary contained in this Lease, until the indebtedness secured by the Leasehold Mortgage is paid in full, all casualty insurance proceeds with respect to the Leasehold Improvements due or to become due at the time of any forfeiture of this Lease, except as otherwise provided in this Section 5, shall be paid to the Leasehold Mortgage and at the Leasehold

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Mortgagee's election applied to the outstanding indebtedness secured by the Leasehold Mortgage and any overplus (less costs of collection) shall be paid over to the Lessee; provided, however, that the Lessee and Leasehold Mortgagee shall first apply such portion of the insurance proceeds as may reasonably be necessary to demolish and remove the damaged Leasehold Improvements and to return the Premises to a safe and sightly condition.

6. Any and all liens, claims, demands or rights, including but not limited to the right to the levy or distraint for unpaid rent, which the Lessor now has or hereafter acquires on or in any of the personal property upon which the Leasehold Mortgagee obtains a lien or security interest shall be subordinate and inferior to the liens or security interests of the Leasehold Mortgagee and, as to the Leasehold Mortgagee, the Lessor hereby specifically waives all rights of levy, distraint or execution with respect to such personal property.

7. The personal property of the Lessee now or hereafter pledged to the Leasehold Mortgagee or in which the Leasehold Mortgagee has or is granted a security interest shall, at all times, be considered to be personal property, so long as any monies are owing the Leasehold Mortgagee by the Lessee. The Leasehold Mortgagee may at all times, upon five (5) days' prior written notice to the Lessor, enter upon the Premises and remove the same; provided, however, that the Leasehold Mortgagee will reimburse the Lessor for the reasonable costs of repair for any damage done to the Premises as a result of said removal. The Lessor will notify any purchaser of the Premises and any subsequent mortgagee or other encumbrance holder of the existence of this waiver, which waiver shall be binding upon the successors, transferees or assignees of the Lessor and shall inure to the benefit of the successors and assigns of the Leasehold Mortgagee.

8. The Lessor will, upon default under this Lease by the Lessee, allow the Leasehold Mortgagee or its agent a reasonable time in which to remove any of Lessee's personal property; provided, however, that in no event shall the Leasehold Mortgagee have the right to leave such property on the Premises for a period in excess of thirty (30) days after the termination date of this Lease, and provided further that the Leasehold Mortgagee will reimburse the Lessor for the reasonable costs of repair for any damage done to the Premises as a result of such removal, upon receipt by the Leasehold Mortgagee of an itemized description of such damage and such reasonable costs of repair. The Leasehold Mortgagee shall defend, indemnify and hold the Lessor harmless from all claims, demands, losses and causes of action, whether for property damage, bodily injury or

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death, arising out of such removal by the Leasehold Mortgagee, its employees, contractors or agents, except to the extent any such claim, demand, loss or cause of action is attributable to the negligent or wrongful act or omission of the Lessor, its employees, contractors or agents.

9. Except upon acquiring ownership of the legal and equitable title to the leasehold estate and to the Leasehold Improvements thereon, and then only for the respective period of actual ownership, neither the Leasehold Mortgagee nor the successors and assigns of the Leasehold Mortgagee shall be deemed to assume any liability or obligations under this Lease, or any extension or renewal thereof, solely by virtue of the Leasehold Mortgage. During any period in which the Leasehold Mortgagee is the owner of equitable title to the leasehold estate and the Leasehold Improvements thereon, the Leasehold Mortgagee shall not be obligated to conduct any business on the Premises and such failure shall not constitute a default under the Lease.

10. Anything to the contrary contained in Section 21 of the Lease notwithstanding, in the event that the leasehold estate or any part thereof or any Leasehold Improvements shall be taken by the exercise of eminent domain or conveyed in lieu thereof during the period that the Leasehold Mortgage shall remain a lien against the Premises and Leasehold Improvements, the Leasehold Mortgagee shall have the right to participate in the condemnation proceedings and the amount of any portion of the compensation awarded for such taking attributable to the value of the Lessee's interest in the Leasehold Improvements or any of Lessee's personal property so taken shall be paid to the Leasehold Mortgagee and, at the election of the Leasehold Mortgagee, used to reduce the indebtedness secured by the Leasehold Mortgage.

11. For so long as First American Bank is a Leasehold Mortgagee, all notices required hereunder to be given to the Leasehold Mortgagee shall be sent in the manner provided in this Lease for the giving of notices to the following address which may be changed from time to time by written direction to the Lessor and Lessee, given in the manner provided for in Section 5 of the Lease:

First American Bank  
4949 Old Orchard Road  
Skokie, Illinois 60077  
Attention: Mary W. Hopkins  
Senior Vice President

The Lessee shall give notice to Lessor of the name and address of any succeeding Leasehold Mortgagee in the manner provided in Section 5 of the Lease.

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12. The Lessor and the Lessee confirm to each other that the primary term of the Lease (being a period of fifteen (15) years) commenced on January 1, 1989.

13. The parties agree that upon the full execution and delivery of this Amendment, either party hereto may record this Amendment in the Recorder's Office.

14. Except as herein specifically amended, the Lease shall continue in full force and effect.

15. This First Amendment to Lease is executed by American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid, in the exercise of power and authority conferred upon and vested in it as such Trustee and under the express direction of the beneficiaries of a certain Trust Agreement dated June 16, 1986, and known as Trust No. 67628 at said Bank. It is expressly understood and agreed that nothing in this First Amendment to Lease contained shall be construed as creating any liability whatsoever against said Trustee personally or said beneficiaries, and in particular, without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, to keep, preserve or sequester any property of said Trust, and that all personal liability of said Trustee (and said beneficiaries, to the extent permitted by law), of every sort, if any, is hereby expressly waived by Tenant, and by every person now or hereafter claiming any right or security hereunder; and that so far as the parties hereto are concerned the owner of the indebtedness or liability accruing hereunder shall look solely to the Trust Estate from time to time subject to the provisions of said Trust Agreement for the payment thereof. It is further understood and agreed that the said Trustee has no agents or employees and merely holds naked title to the property herein described and has no control over the management thereof or the income therefrom and has no knowledge respecting rentals, leases or other factual matter with respect to said premises,

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except as represented to it by the beneficiary or beneficiaries of said Trust.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee as aforesaid

By: [Signature]  
Title: [Title]

[Signature]  
Donald Ogilvie

[Signature]  
Dorothy Joyce Simpson

Property of Cook County Clerk's Office

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01/09/90

STATE OF ILLINOIS )  
                          ) SS.  
COUNTY OF COOK   )

I, Paula Bodwin, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DONALD OGILVIE, personally known to me to be the same person whose name is subscribed to the foregoing, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26<sup>th</sup> day of January, 1990.

Paula Bodwin  
Notary Public

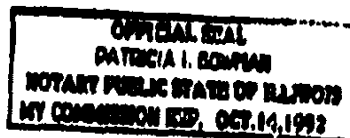
\* \* \* \* \*

STATE OF ILLINOIS )  
                          ) SS.  
COUNTY OF COOK   )

I, PATRICIA T. BOWMAN, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DOROTHY JOYCE SIMPSON, personally known to me to be the same person whose name is subscribed to the foregoing, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25<sup>th</sup> day of JANUARY, 1990.

Patricia T. Bowman  
Notary Public



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STATE OF ILLINOIS )  
                                  ) SS.  
COUNTY OF COOK    )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ Vice President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, and \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as their free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth and the said \_\_\_\_\_ Secretary did also then and there acknowledge that (s)he, as custodian of the corporate seal of said Bank, did affix the said corporate seal of said Bank to said instrument as his/her own free and voluntary act, and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 1990.

*[Signature]*  
\_\_\_\_\_  
Notary Public

COOK County Clerk's Office

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THAT PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:  
 COMMENCING AT THE POINT OF INTERSECTION OF THE EAST LINE OF SOUTH CIGERO AVENUE (BEING A LINE 33.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4) AND THE SOUTH LINE OF CERMAR ROAD (BEING A LINE 79.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST 1/4); THENCE SOUTH 0 DEGREES 02 MINUTES 01 SECONDS EAST, ALONG SAID EAST LINE OF SOUTH CIGERO AVENUE, 1376.30 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE CONTINUING SOUTH 0 DEGREES 02 MINUTES 01 SECONDS EAST, ALONG SAID EAST LINE, A DISTANCE OF 171.30 FEET; THENCE SOUTH 49 DEGREES 02 MINUTES 01 SECONDS EAST, 20.20 FEET; THENCE NORTH 89 DEGREES 57 MINUTES 59 SECONDS EAST, ALONG A LINE DRAWN PERPENDICULAR TO THE EAST LINE OF CIGERO AVENUE, 130.00 FEET; THENCE NORTH 40 DEGREES 57 MINUTES 59 SECONDS EAST 39.36 FEET; THENCE NORTH 0 DEGREES 02 MINUTES 01 SECONDS WEST 166.30 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 59 SECONDS WEST 179.00 FEET TO THE HEREBINAbove DESCRIBED POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AREA = 33,250 SQ. FT. OR 0.7803 ACRES

Cook County Clerk's Office

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