

After recording return to:

First Bank of Illinois

Attn: Loan Dept.

300 E. Northwest Hwy.
Palatine, IL 60067

SECOND MODIFICATION AGREEMENT

00595970

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2000-08-04 12:39:16
Cook County Recorder 53.00



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THIS SECOND MODIFICATION AGREEMENT (this "Second Modification") is entered into as of July 31st 2000 by and among BTE Development, L.L.C., an Illinois limited liability company ("Borrower"), Gerard M. Kenny ("Gerard"), Philip B. Kenny ("Philip") (Gerard and Philip are hereinafter collectively known as the "Guarantors") and FIRST BANK AND TRUST COMPANY OF ILLINOIS ("Lender").

RECITALS:

A. On July 30, 1998, Borrower borrowed from Lender the sum of \$8,300,000 (the "Loan").

B. The Loan was evidenced by a Mortgage Note of even date therewith made by Borrower to Lender in the principal amount of \$8,300,000 (the "Note"). The Note was evidenced and secured, among other things, by the following described documents (said security documents and any other document or instrument securing the Note are hereinafter collectively referred to as the "Loan Documents"):

1. Mortgage by Borrower in favor of Lender, dated July 30, 1998 (the "Mortgage") and recorded August 4, 1998 in the Office of the Cook County Recorder as Document No. 98683343.
2. Assignment of Rents and Lessor's Interest in Leases by Borrower in favor of Lender, dated July 30, 1998 and recorded August 4, 1998 in the Office of the Cook County Recorder as Document No. 98683344 (the "Assignment of Rents")
3. Loan Agreement made by Borrower and Lender dated July 30, 1998 (the "Loan Agreement").
4. Assignment of Construction Contracts, Permits and Plans and Security Agreement, dated July 30, 1998, (the "Security Agreement"), granting Lender a first priority security interest in the Collateral (as defined in the Security Agreement).
4. Continuing Guarantee from Guarantors to Lender dated July 30, 1998 (the "Guarantee").
5. Environmental Indemnity Agreement from Borrower and Guarantors to Lender dated July 30, 1998 (the "Indemnity").

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BOX 333-CTI

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C. Borrower, Guarantors and Lender modified the Loan pursuant to that certain Modification Agreement (the "First Modification"), dated as of August 31, 1999 and recorded September 3, 1999 in the Office of the Cook County Recorder as Document No. 99845602.

D. The current outstanding principal balance under the Note is \$8,300,000.00.

E. Borrower and Guarantors wish, and Lender is willing, to further modify the terms of the Loan Documents, subject to the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into and made a part of this Second Modification Agreement.
2. Capitalized Terms. Capitalized terms contained in this Second Modification Agreement shall retain the meaning given under the Note or the Loan Documents (as defined in the Note).
3. Maturity Date. Notwithstanding anything contained in the Note or the Loan Documents, the Maturity Date of the Note shall be the earlier of December 31, 2000 (the "Maturity Date") or one-hundred and eighty (180) days after Lender's demand; provided, however, Borrower shall have the option (the "Option") to extend the Maturity Date until the earlier of June 30, 2001 or one-hundred and eighty (180) days after Lender's demand, provided all of the following conditions precedent are satisfied: (i) Lender receives written notice of Borrower's exercise of the Option thirty (30) days before the then current Maturity Date, (ii) an Event of Default does not exist under the Note or any of the Loan Documents on the date Borrower exercises the Option or on the then current Maturity Date, and (iii) Borrower pays to Lender an additional fee of \$210,000.
4. Loan Fee. Upon the execution of this Second Modification Agreement, Borrower shall herewith pay Lender a fee of \$330,000 and such fee has been fully earned and shall not be refundable regardless of whether any funds are disbursed hereunder, unless such failure to disburse is due solely to Lender's default under this Second Modification Agreement or any Loan Document.
5. Principal Balance. The outstanding principal balance of the Note shall be \$10,500,000, and all references in the Loan Documents to \$8,300,000 shall be deleted and replaced with \$10,500,000.
6. Loan Rate. The Loan Rate shall be the Prime Rate (as defined in the Mortgage Note) plus two percent (2%) provided however that the Loan Rate in no event be lower than eleven and one-half percent (11.5%)

7. Interest Reserve Account. Lender shall withhold from the Loan a sum of \$1,000,000, which shall be designated in an account (the "**Interest Reserve Account**") with the Lender in the name of Lender, and interest accruing for the benefit of Lender. For the purposes of the Loan, any amounts deposited by Lender into the Interest Reserve Account shall be deemed a disbursement of the Loan and shall accrue interest at the rate set forth in the Note. If there is no Event of Default then occurring, Lender shall make disbursements from the Interest Reserve Account for the payment of interest due under the Loan. In the event of any uncured default by Borrower under the Loan, Borrower authorizes Lender to withdraw and apply any of the funds in the Interest Reserve Account to cure such default after delivering five (5) days written notice to Borrower, which Borrower agrees to be commercially reasonable notice thereof. Borrower grants Lender a security interest in the Interest Reserve Account.

8. Consent of Guarantor. Guarantor expressly consents to the terms, provisions and conditions of this Second Modification Agreement and acknowledges and ratifies all other terms of the Guarantee and Indemnity.

9. Conditions Precedent. Borrower and Guarantor acknowledge and agree that this Second Modification Agreement shall be of no force or effect unless and until:

(a) This Second Modification Agreement has been executed by Borrower and Guarantor and delivered to and accepted and executed by Lender and recorded with the Cook County Recorder of Deeds.

(b) Lawyers Title Insurance Company shall have delivered to Lender an endorsement, dated no earlier than the recording date of this Second Modification Agreement, to its Policy No. 98-09598 dated July 30, 1998, which endorsement shall (i) insure the validity and first priority of each of the recorded Loan Documents as securing the Note, as the same are amended by this Second Modification Agreement; (ii) disclose no Schedule B-1 exceptions other than those set forth in said Policy or as approved in writing by Lender's counsel; (iii) insure that Borrower is owner in fee simple of title to the Property; (iv) increase the amount of coverage to the current outstanding principal balance of the Note; and (v) provide for a pending disbursement endorsement.

10. Documents to Remain in Effect; Confirmation of Obligations. The Note and the Loan Documents shall remain in full force and effect as originally executed and delivered by the parties, except as expressly modified and amended herein. The Loan Documents shall include this Second Modification Agreement, and all references in the Note and the Loan Documents to such documents shall be deemed to refer to the Note and Loan Documents as modified herein. Borrower and Guarantors hereby confirm and reaffirm all of their obligations under the Note and the Loan Documents, as modified and amended herein, and confirm and reaffirm that the Loan Documents secure the Note. To induce Lender to enter into this Second Modification Agreement, Borrower and Guarantors hereby represent, acknowledge and agree that they do not now have or hold any defense to the performance of any of their respective obligations under the Note or the Loan Documents, nor do Borrower or Guarantors have any claim against Lender which might be set off or credited against any payments due under any of the Note or Loan Documents. Borrower and Guarantors further represent, acknowledge and agree that, as of the

date hereof, they do not have any actual or potential actions, claims, suits or defenses arising from any letters of intent, correspondence or other communications (oral or written) between Borrower, Guarantors, and Lender.

11. Certifications, Representations and Warranties. In order to induce Lender to enter into this Second Modification Agreement, Borrower and Guarantors hereby certify, represent and warrant to Lender that all certifications, representations and warranties contained in the Note and the Loan Documents and in all certificates heretofore delivered to Lender are true and correct as of the date hereof, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Second Modification Agreement.

12. Additional Certificates, Representations and Warranties. In addition to the certifications, representations and warranties set forth in the Note and the Loan Documents, Borrower and Guarantor hereby certify, represent and warrant to Lender that:

(a) Borrower and Guarantor have all necessary power to carry on their present businesses, and have full right, power and authority to enter into and execute and deliver this Second Modification Agreement and to otherwise perform and consummate the transactions contemplated hereby.

(b) Guarantor is under no legal disability and has full right, power and authority to enter into and execute and deliver this Second Modification Agreement and to otherwise perform and consummate the transactions contemplated hereby.

(c) This Second Modification Agreement has been duly authorized, executed and delivered by Borrower and Guarantor and constitute valid and legally binding obligations enforceable against each such party in accordance with their terms. The execution and delivery of this Second Modification Agreement and compliance with the provisions hereof and thereof under the circumstances contemplated herein and therein do not and will not conflict with or constitute a breach or violation of or default under the agreement creating Borrower or any agreement or other instrument to which Borrower, Guarantor, or both, is a party, or by which any one of them is bound, or to which any of their properties are subject, or any existing law, administrative regulation, court order or consent decree to which any one of them is subject.

(d) There is no litigation or administrative proceeding pending or threatened to restrain or enjoin the transactions contemplated by this Second Modification Agreement or questioning the validity hereof, or in any way contesting the existence or powers of Borrower or Guarantor, or in which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Second Modification Agreement.

13. Not a Novation. Borrower, Guarantors, and Lender expressly state, declare and acknowledge that this Second Modification Agreement is intended only to modify Borrower's and Guarantors' continuing obligations under the Note and the Loan Documents in the manner set forth herein and is not intended as a novation.

14. Fees. Borrower acknowledges that the Lender charges fees for services it provides in connection with administering its loans including but not limited to, release fees, construction draw fees and inspection fees. These may or may not differ substantially from fees charged by other institutions. Borrower hereby acknowledges receipt of the Lender's current Commercial Real Estate Loan Fee Schedule for the various services described above, a copy of which is attached hereto and made a part hereof as "Exhibit B." Borrower agrees to pay the Lender's fees pursuant to said Schedule and authorizes the Lender to charge said fees directly to the loan balance at the discretion of the Lender. Borrower hereby acknowledges and agrees that certain costs and expenses advanced by the Lender and charged to Borrower (including, but not limited to, appraisal fees, attorney's fees, title fees and environmental inspection report fees) may include not only the Lender's actual out-of-pocket costs but additionally a "mark-up" by the Lender. Borrower acknowledges and agrees that said "mark-up" will be an amount determined by the Lender, in its sole discretion, which may, but does not need to be, deemed reasonable and/or customary to others, and will represent compensation for the Lender's oversight, review and analysis as well as a profit for the Lender for providing these services. Borrower agrees to pay the Lender's charges for such services rendered by it or others and authorizes the Lender to charge said fees directly to the loan balance at the discretion of the Lender.

15. Entire Agreement. This Second Modification Agreement sets forth all of the covenants, provisions, agreements, conditions and understandings of the parties relating to the subject matter of this Second Modification Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. The parties hereto hereby agree that the terms of this Second Modification Agreement supersede all of the terms, conditions and obligations of Lender set forth in all prior commitment letters, correspondence or other commitments (oral or written) between Borrower, Guarantors and Lender relating to this Second Modification Agreement.

16. Additional Documents. Borrower and Guarantors agree to execute and deliver such other and further documents requested by Lender or its counsel to achieve the objectives of this Second Modification Agreement, provided such other and further documents do not obligate Borrower to provide additional collateral for or materially increase Borrower's or Guarantors' obligations related to the Loan.

17. Successors. This Second Modification Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

18. Severability. In the event any provision of this Second Modification Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

19. Amendments, Changes and Modifications. This Second Modification Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

20. Construction.

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a. The words "hereof", "herein", and "hereunder", and other words of a similar import refer to this Second Modification Agreement as a whole and not to the individual sections in which such terms are used.

b. The headings of this Second Modification Agreement are for convenience only and shall not define or limit the provisions hereof.

c. Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

d. Any capitalized terms not defined herein shall retain the meaning as set forth in the Loan Documents.

21. Execution of Counterparts. This Second Modification Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

22. Governing Law. This Second Modification Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

23. Effective Date. The effective date of this Second Modification Agreement shall be as of the date hereof.

{signatures contained on the following page}

Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties have executed this Second Modification Agreement as of the date first above written.

LENDER:

FIRST BANK AND TRUST COMPANY OF
ILLINOIS

By: 

Its: President/CEO

BORROWER:

BTE Development, L.L.C., an Illinois limited
liability company

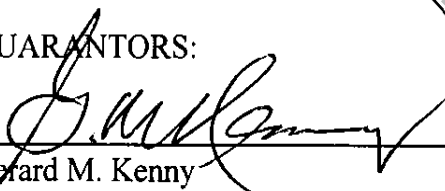
By: KG-BTE L.L.C., an Illinois limited liability
company, its Managing Member

By: Clinton Industries, an Illinois general
partnership, its Managing Member

By: 

Gerard M. Kenny, Managing Partner

GUARANTORS:


Gerard M. Kenny

Philip B. Kenny

IN WITNESS WHEREOF, the parties have executed this Second Modification Agreement as of the date first above written.

LENDER:

FIRST BANK AND TRUST COMPANY OF ILLINOIS

By: _____
Its: _____

BORROWER:

BTE Development, L.L.C., an Illinois limited liability company

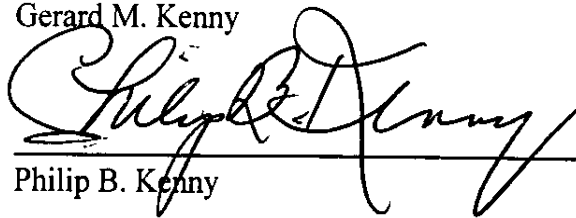
By: K/G-BTE L.L.C., an Illinois limited liability company, its Managing Member

By: Clinton Industries, an Illinois general partnership, its Managing Member

By: _____
Gerard M. Kenny, Managing Partner

GUARANTORS:

Gerard M. Kenny



Philip B. Kenny

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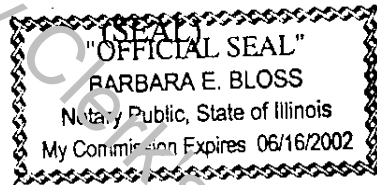
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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Gerard M. Kenny, the Managing Partner of Clinton Industries, an Illinois general partnership, Managing Member of KG-BTE L.L.C., an Illinois limited liability company, Managing Member of BTE Development, L.L.C., an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Partner, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 28th day of July, 2000.

Barbara E. Bloss
NOTARY PUBLIC



My Commission expires:

06/16/2002

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STATE OF ILLINOIS) 00595970
) SS.
COUNTY OF Cook)

I, Charlene J. Madura, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Michael C. Winter, the President of FIRST BANK AND TRUST COMPANY OF ILLINOIS, who is 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 acknowledged that he signed and delivered the said instrument as his 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 31st day of July, 2000.

Charlene J. Madura
Notary Public

My Commission Expires:

5-28-00



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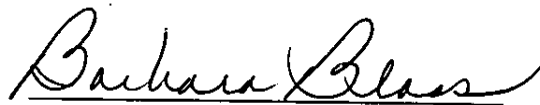
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STATE OF ILLINOIS)
) SS.
COUNTY OF Lake)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Philip B. Kenny, who is 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 acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

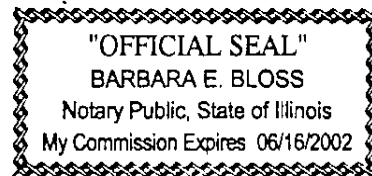
GIVEN under my hand and notarial seal this 28th day of July, 2000.



Notary Public

My Commission Expires:

06/16/2002



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This instrument was prepared by and, after recording, return to:
First Bank and Trust Company of Illinois
Charlene Madura
300 East Northwest Highway
Palatine, Illinois

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EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

That part of the lands lying East of and adjoining Fort Dearborn Addition to Chicago, being the whole of the Southwest Fractional Quarter of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, bounded and described as follows:

Beginning at the point of intersection of a line 241.00 feet, measured perpendicularly, East from and parallel with the East line of N. Beaubien Court, 50.00 feet wide, vacated by Ordinance passed by the City Council of The City of Chicago on the 5th day of July, 1972 and recorded in the Recorder's Office of Cook County, Illinois on the 8th day of December, 1972 as Document Number 22152086, with the South line of E. South Water Street, 92.00 feet wide, as said E. South Water Street was dedicated by instrument recorded in said Recorder's Office on the 3rd day of May, 1972 as Document Number 21889519, and running thence East along said South line of E. South Water Street a distance of 136.50 feet to an intersection with the West line of N. Stetson Avenue, 74.00 feet wide, as said street is defined in the Amending Lake Front Ordinance passed by the City Council of The City of Chicago on the 17th day of September, 1969, and as said N. Stetson Avenue was dedicated by instrument recorded in said Recorder's Office on the 26th day of March, 1984 as Document Number 27018355; thence South along said West line of N. Stetson Avenue (said West line being a line 377.50 feet, measured perpendicularly, East from and parallel with said East line of vacated N. Beaubien Court) a distance of 297.673 feet to the Northeast corner of Parcel "K" in "Plat of Mid-America", a resubdivision of the Prudential and Illinois Central Subdivision (which resubdivision was recorded in said Recorder's Office on the 20th day of November, 1957 in Book 504 of Plats at Pages 1 to 11, both inclusive, as Document Number 17069914); thence West along the North line of said Parcel "K" a distance of 136.50 feet to an intersection with said line 241.00 feet, measured perpendicularly, East from and parallel with said East line of vacated N. Beaubien Court; and thence North along said parallel line a distance of 297.673 feet to the point of beginning, in Cook County, Illinois.

PARCEL 2:

The property and space lying above and extending upward from the inclined planes establishing the upper limits of the land, property and space dedicated for E. South Water Street, 92.00 feet wide, by instrument recorded in the Recorder's

(Continued)

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EXHIBIT A

LEGAL DESCRIPTION CONTINUED

Office of Cook County, Illinois on the 3rd day of May, 1972 as Document Number 21889519, and lying within the boundaries, projected vertically upward from surface of the Earth of that part of the lands lying East of and adjoining Fort Dearborn Addition to Chicago being the whole of the Southwest Fractional Quarter of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, bounded and described as follows:

Beginning at the point of intersection of the South line of said E. South Water Street, 92.00 feet wide, with a line 241.00 feet, measured perpendicularly, East from and parallel with the East line of that part of N. Beaubien Court, 50.00 feet wide, vacated by Ordinance passed by the City Council of The City of Chicago on the 5th day of July, 1972 and recorded in said Recorder's Office on the 8th day of December, 1972 as Document Number 22152086; and running thence North along said parallel line, and along a Northward extension thereof, a distance of 25.34 feet to an intersection with a line 20.66 feet, measured perpendicularly, South from and parallel with the center line of said E. South Water Street, 92.00 feet wide; thence East along said parallel line a distance of 136.50 feet to an intersection with a Southward extension of the West line of N. Stetson Avenue, 74.00 feet wide, as said N. Stetson Avenue was dedicated by said instrument recorded in said Recorder's Office on the 3rd day of May, 1972 as Document Number 21889519; thence South along said Southward extension of said West line of N. Stetson Avenue a distance of 25.34 feet to an intersection with said South line of E. South Water Street; and thence West along said South line of E. South Water Street, a distance of 136.50 feet to the point of beginning, in Cook County, Illinois.

PARCEL 3:

Perpetual right and easement for the benefit of Parcels 1 and 2 to place, maintain and repair (and to replace if destroyed) the structure, foundations and supports at the approximate locations within dedicated East South Water Street as shown and described on Sheet 2 of Plat of Dedication dated April 14, 1972 made by Illinois Central Railroad Company, recorded May 3, 1972 as Document Number 21889519, as:

(Continued)

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EXHIBIT A LEGAL DESCRIPTION CONTINUED

- (1) Reserved in Plat of Dedication recorded as Document Number 21889519; and
- (2) Conveyed by Deed dated October 7, 1976 and recorded October 7, 1976 as Document Number 23665777, made by Illinois Central Gulf Railroad Company, a Corporation of Delaware, to American National Bank and Trust Company of Chicago, a national banking association, as Trustee under Trust No. 75802; and
- (3) Conveyed by Deed dated October 6, 1977 and recorded October 11, 1977 as Document Number 24141633, made by Illinois Central Gulf Railroad Company to American National Bank and Trust Company of Chicago, as Trustee under Trust No. 75802, in Cook County, Illinois.

PARCEL 4:

Easements as created by Boulevard Towers Easements, Reservations, Covenants and Restrictions by and among American National Bank and Trust Company of Chicago, as Trustee under Trust No. 46448, American National Bank and Trust Company of Chicago, as Trustee under Trust No. 55461, and American National Bank and Trust Company of Chicago, as Trustee under Trust No. 75802, dated June 13, 1983 and recorded June 29, 1983 as Document Number 26665607 for parking, pedestrian areas, domestic water supply, sprinkler and fire protection, support, ground water drainage system, and energy management system and as amended by Amendment of Boulevard Towers Easements, Reservations, Covenants and Restrictions dated October 16, 1986 recorded October 24, 1986 as Document Number 36496543.

PARCEL 5:

Slab support easement for the benefit of Parcels 1 and 2 created by Slab Support Easement dated November 15, 1979 and recorded December 5, 1979 as Document Number 25268635, made by Metropolitan Two Illinois Center in favor of American National Bank and Trust Company of Chicago, as Trustee under Trust No. 75802, to utilize certain structures or property described therein to support structures on Parcels 1 and 2.

(Continued)

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EXHIBIT A
LEGAL DESCRIPTION CONTINUED

PARCEL 6:

Reciprocal easements for the use of the concourse level of "Two Illinois Center" as created by Reciprocal Easement Agreement by and between Metropolitan Two Illinois Center and American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated June 11, 1971 known as Trust No. 75802, and American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated September 1, 1979 known as Trust No. 46448, dated February 2, 1982 and recorded February 3, 1982 as Document Number 26133433, in Cook County, Illinois.

PROPERTY ADDRESS: NWC of N. Stetson Avenue and E. Lake Street
Boulevard Towers East - Illinois Center
Chicago, Illinois

PERMANENT INDEX #: 17-10-304-020