

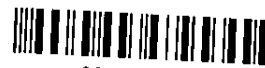
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2002-10-15 09:32:04
Cook County Recorder 46.50

This instrument prepared by
(and return after recording to):

Keith L. Moore, Esq.
Stamos & Trucco
10 North Dearborn St., 5th Floor
Chicago, IL 60602



0021124805

**SIXTH LOAN MODIFICATION
AGREEMENT,
AMENDMENT TO NOTE,
DEED OF TRUST, AND OTHER
LOAN DOCUMENTS**

Loan Number: 2137108

This **SIXTH LOAN MODIFICATION AGREEMENT, AMENDMENT TO NOTE, DEED OF TRUST, AND OTHER LOAN DOCUMENTS** (this "Modification Agreement") is entered into as of the 18th day of September, 2002, by **FREDERICK S. LATSKO** ("Trustor"), with a mailing address of 1430 N. Dearborn St., Chicago, IL. 60610, **EQUITY TITLE COMPANY**, a California corporation ("Trustee"), with a mailing address of 10474 Santa Monica Blvd., Suite 206, Los Angeles, CA, 90025, and **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, an Illinois banking corporation ("Beneficiary"), with a mailing address of 300 East Northwest Highway, Palatine, Illinois 60067.

WITNESSETH:

WHEREAS, Trustor executed and delivered to Beneficiary that certain Promissory Note dated February 24, 1999, in the original principal amount of One Million Six Hundred Thousand and no/100 Dollars (\$1,600,000) (as amended from time to time, the "Note"); and

WHEREAS, payment of the Note is secured by, among other things, the following instruments of even date with the Note:

- (1) Deed of Trust, and Financing Statement by Trustor, dated February 24, 1999, recorded February 26, 1999, in the real estate records of Los Angeles County, as Document Number 990319112 (the "Deed of Trust");
- (2) Environmental Indemnity Agreement (the "Environmental Indemnity") from Trustor, dated February 24, 1999;
- (3) Security Agreement by Trustor, dated February 24, 1999, (the "Security Agreement");

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WHEREAS, the Loan Documents (as defined below) were modified by that certain **FIRST MODIFICATION AGREEMENT** dated as of February 15, 2000, by and among Trustor and Beneficiary (the "First Modification"), whereby, among other things, (i) the principal amount of the Note was increased to Two Million Seven Hundred Fifty Thousand and no/100th Dollars (\$2,750,000), (ii) the interest rate was increased, and (iii) the loan was converted to a construction loan; and

WHEREAS, the Loan Documents were further modified by that certain **SECOND MODIFICATION AGREEMENT** dated as of December 22, 2000, by and among Trustor and Beneficiary (the "Second Modification"), whereby, among other things, (i) the principal amount of the Note was increased to Three Million and no/100th Dollars (\$3,000,000), (ii) the Maturity Date (as defined in the "Note") was extended to the earlier of (a) Beneficiary's demand or (b) June 30, 2001, and (iii) the interest rate was modified; and

WHEREAS, the Loan Documents were further modified by that certain **THIRD MODIFICATION AGREEMENT** dated as of June 30, 2001, by and among Trustor and Beneficiary (the "Third Modification"), whereby, among other things, (i) the principal amount of the Note was increased to Three Million Seven Hundred and Twenty-Five Thousand and no/100th Dollars (3,725,000), (ii) the Maturity Date (as defined in the "Note") was extended to the earlier of (a) Beneficiary's demand or (b) January 15, 2002, and (iii) the interest rate was modified; and

WHEREAS, the Loan Documents were further modified by that certain **FOURTH MODIFICATION AGREEMENT**, dated as of February 8, 2002, by and among Trustor and Beneficiary (the "Fourth Modification") whereby, among other things, (i) the principal amount of the Note was increased to Three Million Nine Hundred Thousand and no/100th Dollars (3,900,000), (ii) the Maturity Date (as defined in the Note) was extended to the earlier of (a) Beneficiary's demand or (b) June 15, 2002, (iii) the interest rate was modified;

WHEREAS, the Loan Documents were further modified by that certain **FIFTH MODIFICATION AGREEMENT**, dated as of June 15, 2002, by and among Trustor and Beneficiary (the "Fourth Modification") whereby, among other things, (i) the principal amount of the Note was increased to Four Million Two Hundred Thousand and no/100th Dollars (\$4,200,000), (ii) the Maturity Date (as defined in the Note) was extended to the earlier of (a) Beneficiary's demand or (b) November 18, 2002, (iii) the interest rate was modified;

WHEREAS, Trustor now desires to further modify the Loan Documents to, among other things, (i) modify the interest rate in the Note, (ii) increase the principal amount from \$4,200,000 to \$4,700,000; and (iii) extend the Maturity Date as hereinafter provided.

WHEREAS, Beneficiary is willing to do so upon the terms and conditions hereinafter set forth.

The Deed of Trust, the Note, the Security Agreement, this and all prior Modification Agreement(s), Assignment of Rents, Environmental Indemnity, and any and all other agreements

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and documents related to the Loan shall hereinafter be collectively referred to as the "Loan Documents".

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, and also in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid to Beneficiary by Trustor, the parties hereto agree as follows:

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1. **Increase in Maximum Principal Amount of Note.** The Note, the Deed of Trust and the other Loan Documents are modified to increase the maximum principal amount of the Note from Four Million Two Hundred Thousand and No/100 Dollars (\$4,200,000.00) to **Four Million Seven Hundred Thousand and No/100 Dollars (\$4,700,000.00).**
2. **Interest Rate.** The definition of the Interest Rate in the Note, the Deed of Trust and the other Loan Documents is hereby deleted in its entirety and replaced by the following: "Provided that there is no Event of Default hereunder, or the existence of a condition which with the passage of time or the giving of notice, if applicable, would constitute an Event of Default under the terms of the Note, the Interest Rate shall be the greater of: a) **eight percent (8.00%) per annum**, and b) the **Prime Rate** (as hereinafter defined) **plus three percent (3%) per annum**. For purposes hereof, "Prime Rate" shall mean the prime rate of interest charged from time to time by Bank of America and identified as Bank of America's prime or equivalent rate, which rate may not necessarily be the best or lowest rate of interest charged or offered by Bank of America. The Interest Rate shall automatically adjust with each change in the Prime Rate, without notice to Maker."
3. **Maturity Date.** The Note, the Deed of Trust and the other Loan Documents are modified to provide that the Maturity Date shall be the earlier of (a) demand made upon Trustor by Beneficiary, or (b) December 2, 2002.
4. **Additional Collateral.** Trustor hereby agrees that, at Beneficiary's option, the indebtedness evidenced by the Note shall also be further secured by: (a) a second mortgage encumbering the retail properties located at, respectively, 40 East Delaware, Chicago, Illinois, and 662-64 West Diversey, Chicago, Illinois (the "Delaware-Diversey Second Mortgage") which Trustor shall cause such related party as owns said properties to execute and deliver to Trustor to further secure the Note and other indebtedness, and (b) a collateral assignment and pledge to Beneficiary of certain loan documents encumbering the residential apartment building located at 1300 Ritchie Court, Chicago, Illinois (the "Ritchie Court Pledge") which Trustor shall cause Astor Street Financial, LLC, an Illinois limited liability company, of which Trustor is the sole member, to execute and deliver to Trustor to further secure the Note and other indebtedness. At any time Beneficiary shall have the right and option to declare that the Delaware-Diversey Second Mortgage and the Ritchie Court Pledge do not secure the Note.
5. **Agreements Continue.** All the terms, provisions, stipulations, powers, and covenants in the Loan Documents shall stand and remain unchanged and in full force and effect and shall be binding upon all parties thereto, except as changed or modified in express terms by this Modification Agreement.

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5. **Modification/Extension Fee.** Trustor acknowledges that, as partial consideration for Beneficiary extending the maturity date of the Loan, Trustor shall pay a fee to Beneficiary in the amount of **\$2,500.00**, which fee has been fully earned by Beneficiary and is payable to Beneficiary as of the date of this Modification Agreement. Trustor hereby authorizes Beneficiary, at Beneficiary's discretion, to increase the principal balance of the Note to pay this fee and any other costs, expenses or fees payable to Lender.

6. **Fee Schedule.** 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.

7. **Loan Balance.** Trustor hereby acknowledges that as of 9-18-02, 2002, the current principal balance of the Loan is \$4,110,750, not including accrued interest and late charges.

8. **Covenants and Warranties of Trustor:** Trustor hereby represents to, covenants with Lender, and acknowledges that:

- (a) At the date hereof, the Loan Documents as amended hereby are in full force and effect, and Trustor is not in default in the payment of any sums, charges or obligations under the Loan Documents or in the payment or performance of any covenants, agreements or conditions of Trustor contained in the Loan Documents;
- (b) At the date hereof, Trustor has no right or claim of set-off, discount, deduction, defense or counterclaim which could be asserted in any action brought to enforce the Loan Documents;
- (c) There are no actions, suits or proceedings (including, without limitation, proceedings before any court, arbitrator or governmental authority or agency) pending or threatened against Borrower (or to the knowledge of Trustor any basis for any such action, suit or proceeding), which if adversely determined, might individually, or in the aggregate, materially adversely:
 - i) impair the ability of Trustor to pay or perform its obligations under the Loan Documents; or
 - ii) affect the assets pledged as collateral under the Loan Documents;

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- (d) There is no presently known fact which affects, or may affect in the future (so far as the undersigned can foresee), materially and adversely the condition (financial or other) of Borrower to pay or perform its obligations under the Loan Documents;
- (e) There are no other liens, encumbrances or other mortgages on the Property and improvements thereon, except in favor of Beneficiary;
- (f) Neither the Loan Documents nor any other document or written materials delivered or made, and any other communication made, to Beneficiary or any employee or agent of Beneficiary contains any untrue statement of a material fact or fails to state a material fact necessary in order to make any statement contained therein not misleading in light of the circumstances in which such statement was made.
- (g) Trustor acknowledges that Beneficiary charges fees for services it provides in connection with administering its loans, including, without limitation, release fees, construction draw fees, inspection fees, and insurance verification fees. These may differ substantially from fees charged by other institutions. Trustor hereby acknowledges receipt of the current fee schedule for such services, a copy of which is attached as Exhibit B. Trustor agrees to pay the fees pursuant to the schedule, and authorizes payment directly by increasing the principal balance of the Note, at the discretion of Beneficiary.
- (h) Trustor acknowledges that certain costs and expenses may be advanced by Beneficiary and charged to Trustor, including, without limitation, appraisal fees, overnight delivery fees, messenger fees, credit reports, inspection fees and flood certification fees, such fees may include not only Beneficiary's actual out-of-pocket costs, but additionally a reasonable mark-up. Trustor acknowledges and agrees that the mark-up will be an amount determined by Beneficiary, but which shall be reasonable and/or customary in the banking industry, and will represent compensation for Beneficiary's oversight, review and analysis as well as profit for Beneficiary. Trustor agrees to pay these charges for the services, and authorizes payment directly by increasing the principal balance of the Note, at the discretion of Beneficiary.
- (i) Trustor, and each of them, agrees to provide Beneficiary with its currently dated, certified financial statement on each anniversary date of the Note, as well as upon the request of Beneficiary, all in form and detail satisfactory to Beneficiary. Trustor acknowledges that its, or any of its, failure to timely deliver such statement shall constitute an event of default pursuant to the terms of the Note and other Loan Documents, which shall cause, without limitation, interest to accrue at the applicable default rate from the date of such failure.

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- (j) Trustor represents and warrants that the liens of the Loan Documents shall secure the Note as hereby amended to the same extent as if the amendments made herein were set forth and described in the Note and Loan Documents.

10. **Title Policy Endorsements.** Concurrently with the execution of this Modification Agreement, Trustor, at its sole cost and expense, shall obtain and deliver to Beneficiary an endorsement to its loan policy of title insurance ("Policy"), extending the effective date of the Policy through the recording of this Modification Agreement, insuring this Modification Agreement in Schedule A of the Policy, and insuring the priority of the Deed of Trust as modified by this Modification Agreement; and

11. **No Waiver.** Notwithstanding anything contained in this Modification Agreement to the contrary or any prior act of Beneficiary or any procedure established by Beneficiary with regard to the Loan, Trustor acknowledges and agrees that Beneficiary has not heretofore waived any of its rights or remedies under the Loan Documents nor has Beneficiary waived any of the duties or obligations of Trustor thereunder. No waiver by Beneficiary of any covenant or condition under the Loan Documents shall be deemed a subsequent waiver of the same or any other covenant or condition. No covenant, term or condition of the Loan Documents shall be deemed waived by Beneficiary unless waived in writing.

12. **Miscellaneous.**

- (a) Time is of the essence with respect to the payment, performance and observance of each and every covenant, agreement, condition, representation, warranty and obligation of Trustor under the Loan Documents.
- (b) This Modification Agreement may be executed by facsimile and/or in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute and be taken as one and the same instrument.
- (c) None of the covenants, terms or conditions of this Modification Agreement shall in any manner be altered, waived, modified, changed or abandoned, except by written instrument, duly signed and delivered by all the parties hereto.
- (d) This Modification Agreement contains the entire agreement between the parties hereto as to the subject matter hereof and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise, of any kind.
- (e) The recitals to this Modification Agreement are hereby incorporated into and made a part of this Modification Agreement, and shall constitute covenants and representations of Trustor and shall be binding upon and enforceable against Borrower.

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- (f) Any defined terms contained in this Modification Agreement not otherwise defined in this Modification Agreement shall have the meaning as set forth in the Loan Documents.

[Signature Pages Follow]

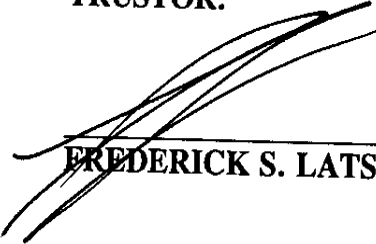
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IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

TRUSTOR:



FREDERICK S. LATSKO

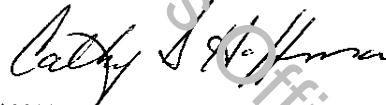
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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that FREDERICK S. LATSKO, the, TRUSTOR 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 he signed and delivered the said instruments as his free and voluntary act, and on behalf of the free and voluntary act of Borrower for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 18 day of September, 2002.

Notary Public



My Commission expires:



7-29-06

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1

Lot 6 of Tract No. 22263, in the City of Beverly Hills, County of Los Angeles, State of California, as per Map recorded in Book 617 Page(s) 77 and 78 of Maps) in the Office of the County Recorder of said County.

Except therefrom all crude oil, petroleum, gas, brea, asphaltum and all kindred substances and other minerals under said land, without right of entry, as granted to 2025 North Argyle Avenue, a corporation, by deed recorded May 12, 1958 as Instrument No. 3981, in Book D97 Page 464, Official Records.

By Deed recorded November 4, 1964 as Instrument No. 3680, any and all surface rights, and all rights lying above 500 feet below and surface measured vertically from the surface thereof, to extract crude oil, petroleum, gas, brea, asphaltum and all kindred substances and other minerals as conveyed to said 2025 North Argyle Avenue, were quitclaimed to the "Property" "Owners of Record."

Common Address: 1154 Summit Drive Beverly Hills, California 90069

P.I.N. No.: 4348-005-014

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EXHIBIT B COMMON COMMERCIAL REAL ESTATE LOAN FEES (NON-CONSUMER)

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This is a partial listing of commonly incurred fees and is not intended to be a complete listing. Trust Fees are not included.

<u>INSURANCE REVIEW</u>	\$500.00
<u>IN-HOUSE DOCUMENT PREPARATION FEE</u>	\$1,500.00
<u>PAY -OFF LETTERS:</u>	\$200.00
<u>RELEASES:</u>	
FULL	\$200.00
PARTIAL	\$350.00
<u>CONSTRUCTION LOAN DRAW REQUESTS:</u> (Processing, Analyzing & Balancing)	
*PROJECTS UNDER \$3,000,000	\$350.00 PER DRAW
*PROJECTS \$3,000,000 AND OVER	\$500.00 PER DRAW
<u>ARCHITECTURAL INSPECTION AND REPORTS:</u>	
SINGLE FAMILY HOMES (Non-Subdivision)	\$400.00 PER DRAW
SINGLE FAMILY HOMES (Sub-Division)	\$400.00 FIRST UNIT, PER DRAW \$300.00 PER ADDITIONAL UNIT(S) PER DRAW
TOWNHOUSES	\$300.00 FIRST UNIT, PER DRAW \$250.00 PER ADDITIONAL UNIT(S), PER DRAW
MULTI-FAMILY (Apartments, Condos, Lofts)	
*PROJECT SIZE:	
Less than \$1,000,000	\$500.00 PER DRAW
\$1,000,000 TO \$2,499,999	\$1,000.00 PER DRAW
\$2,500,000 TO \$4,999,999	\$1,250.00 PER DRAW
\$5,000,000 TO \$9,999,999	\$1,500.00 PER DRAW
\$10,000,000 AND OVER	\$2,000.00 PER DRAW
OFFICE, INDUSTRIAL & RETAIL	
*PROJECT SIZE	
Less than \$5,000,000	\$1,000.00 PER DRAW
\$5,000,000 TO \$9,999,999	\$1,500.00 PER DRAW
\$10,000,000 AND OVER	\$2,000.00 PER DRAW

*Project size is based on appraised value (not cost).

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Effective August 1, 2002. Fees are subject to change without notice.

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