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2002-12-23 12:37:40  
Cook County Recorder 44 00

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:



Holland & Knight, LLC  
500 W. Madison Street  
40<sup>th</sup> Floor  
Chicago, Illinois 60661  
Attn: Francis L. Keldermans, Esq.



*This space reserved for Recorder's use only*

**FIRST MODIFICATION OF MORTGAGE AND LOAN DOCUMENTS**

**THIS MODIFICATION OF MORTGAGE AND LOAN DOCUMENTS** (this "Agreement") is made as of the 17<sup>th</sup> day of December, 2002, by and among **Global Real Estate Investors, L.L.C.**, an Illinois limited liability company ("Global") and **North Star Trust Company**, not individually, but as **Trustee under Trust Agreement dated December 2, 1999 and known as Trust Number 99-2200** ("Trustee") (Global and the Trustee are jointly referred to hereinafter as "Borrower"), **Romel Esmail and Bassam Haj Yousif** ("Guarantors"), and **CIB Bank**, an Illinois banking corporation and its successors and assigns ("Lender").

**RECITALS:**

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of FORTY FOUR MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$44,800,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of June 25, 2001 between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Mortgage Note dated of even date with the Loan Agreement in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated of even date with the Loan Agreement from Trustee to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on June 27, 2001, as Document No. 0010567085 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Guaranty executed by Romel Esmail and that certain Guaranty executed by Bassam Haj Yousif both dated of even date with the Loan Agreement (collectively, the "Guaranty"), (iii) that certain Environmental Indemnity Agreement from Borrower and Guarantors to Lender dated of even date with the Loan Agreement (the "Indemnity Agreement"); and (iv) certain other loan documents dated of even date with the Loan Agreement and executed in conjunction with the

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TICOR TITLE INSURANCE

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Note and the Loan Agreement (the Note, the Mortgage, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. Borrower desires to amend the Loan Documents in order to increase the principal amount of the Loan from FORTY FOUR MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$44,800,000.00) to FORTY EIGHT MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$48,300,000.00) (the "Increase").

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Increase of Principal Amount of Loan.** Subject to Borrower's compliance with all of the terms and conditions of this Agreement, including, but not limited to, the condition precedent that Borrower tender to Lender the perfected Additional Collateral (as hereinafter defined), Lender agrees to advance the additional principal amount of \$3,500,000.00 as additional Loan proceeds (the "Additional Proceeds"). The principal amount of the Loan shall increase from FORTY FOUR MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$44,800,000.00) to FORTY EIGHT MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$48,300,000.00). The Additional Proceeds shall only be disbursed for Project costs, fees, and expenses that are expressly approved by Lender in its sole discretion. Borrower shall execute and deliver to Lender its Amended and Restated Mortgage Note dated of even date with this Agreement in the principal amount of FORTY EIGHT MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$48,300,000.00) (the "Amended Note").

2. **Modification of Mortgage.** The definition of "Note" contained in the Mortgage is hereby amended to refer to the Amended Note and from the date hereof the Mortgage shall secure the sum of FORTY EIGHT MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$48,300,000.00) plus all other Indebtedness referenced in the Mortgage.

3. **Additional Collateral.** As one of the conditions precedent to Lender's obligation to disburse the Additional Proceeds, Borrower shall obtain and deliver to Lender a fully executed second mortgage made by North Star Trust Company, not individually, but as Trustee under Trust Agreement dated August 4, 2000 and known as Trust Number 00-2800 and North Star Trust Company, not individually, but as Trustee under Trust Agreement dated July 17, 2000 and known as Trust Number 00-2790 ("Second Mortgage") with respect to the real property commonly known as 59 East Van Buren Street, Chicago, Illinois and legally described as follows:

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## PARCEL 1:

LOTS 1, 2, 3 AND 8 AND THE NORTH 6.8 FEET OF LOT 9 AND A STRIP OF LAND LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF LOTS 1 TO 7 INCLUSIVE, AND NORTH OF AND ADJOINING THE NORTH LINE OF SAID LOT 8, ALL IN ASSESSOR'S DIVISION OF LOTS 1, 2, 3, 4, 5 AND 8 IN BLOCK 9 IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

LOTS 4, 5, 6 AND 7 IN ASSESSOR'S DIVISION OF LOTS 1, 2, 3, 4, 5 AND 8 IN BLOCK 9 IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Prior to the disbursement of all or any portion of the Additional Proceeds: (a) the Second Mortgage shall be duly recorded in the Office of the Cook County Recorder of Deeds and validly perfected and (b) Lender shall be provided with evidence reasonably satisfactory to Lender that there are no adverse title exceptions with respect to the Additional Collateral.

4. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this

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Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

5. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Ticor Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 468330 (the "Title Policy"), as of the date this Agreement is recorded, reflecting: (a) the advance by Lender of the Additional Proceeds, (b) increasing the insured amount under the Title Policy to \$48,300,000.00, (c) the recording of this Agreement and (d) insuring the first priority of the lien of the Mortgage as amended this Agreement subject only to the exceptions set forth in the Title Policy as of original Escrow Closing Date and any other encumbrances expressly agreed to in writing by Lender.

6. **Reaffirmation of Guaranty.** Each Guarantor ratifies and affirms his respective Guaranty and agrees that his Guaranty is in full force and effect following the execution and delivery of this Agreement. The respective representations and warranties of each Guarantor in his Guaranty are, as of the date hereof, true and correct and each Guarantor does not know of any default thereunder. Each Guaranty continues to be the valid and binding obligation of the Guarantor that executed such Guaranty, enforceable in accordance with its terms and each Guarantor acknowledges, covenants, and warrants that he has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, in law or equity.

7. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

8. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

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(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

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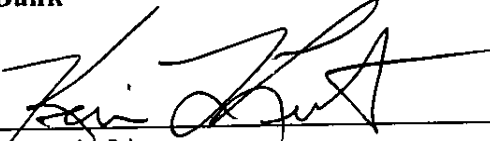
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IN WITNESS WHEREOF, the parties hereto have executed this Modification of Mortgage and Loan Documents dated as of the day and year first above written.

**LENDER:**

**CIB Bank**

By:   
Kevin Lietz  
Senior Vice President

**GLOBAL:**

**Global Real Estate Investors, LLC**  
an Illinois limited liability company

By: \_\_\_\_\_  
Romel Esmail, Member

By: \_\_\_\_\_  
Bassam Haj Yousif, Member

**TRUSTEE:**

North Star Trust Company as Trustee under  
Trust Agreement Number 99-2200

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GUARANTOR:**

\_\_\_\_\_  
Romel Esmail

\_\_\_\_\_  
Bassam Haj Yousif

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**LENDER:**

**CIB Bank**

By: \_\_\_\_\_  
Kevin Lietz  
Senior Vice President

**GLOBAL:**

**Global Real Estate Investors, LLC**

an Illinois limited liability company

By: \_\_\_\_\_  
Romel Esmail, Member

By: \_\_\_\_\_  
Bassam Haj Yousif, Member

**TRUSTEE:**

North Star Trust Company as Trustee under  
Trust Agreement Number 99-2200

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Vice President

**GUARANTOR:**

By: \_\_\_\_\_  
Romel Esmail

By: \_\_\_\_\_  
Bassam Haj Yousif

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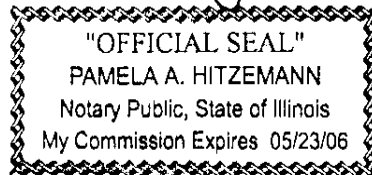
STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF Cook )

I the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Bassam Haj Yousif** 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 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 17 day of December, 2002.

Pamela A. Hitzemann  
Notary Public

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



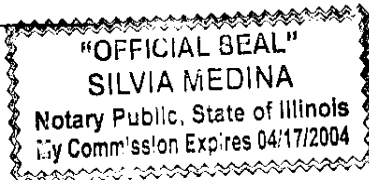
STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF Cook )

I Silvia Medina, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that J. C. LITTON, Vice President of **North Star Trust Company**, as **Trustee** aforesaid, 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 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 17th day of December, 2002.

Silvia Medina  
Notary Public

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



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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 6 AND 7 IN BLOCK 15 ON FORT DEARBORN ADDITION TO CHICAGO THE WHOLE SOUTHWEST FRACTIONAL ¼ OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NO: 17-10-312-008-0000

COMMONLY KNOWN AS: 6 N. Michigan Avenue  
Chicago, Illinois

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