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**SIXTH
LOAN MODIFICATION
AGREEMENT,
AMENDMENT TO NOTE,
MORTGAGE, AND OTHER
LOAN DOCUMENTS
AND ACKNOWLEDGMENT
OF GUARANTORS**



Doc#: 0407219128
Eugene "Gene" Moore Fee: \$56.50
Cook County Recorder of Deeds
Date: 03/12/2004 01:57 PM Pg: 1 of 17

Loan Numbers: 2456000 & 9456993

This **SIXTH LOAN MODIFICATION AGREEMENT, AMENDMENT TO NOTE, MORTGAGE, AND OTHER LOAN DOCUMENTS AND ACKNOWLEDGMENT OF GUARANTORS** (this "Modification Agreement") is entered into as of the 30th day of January, 2004, by and among **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, an Illinois banking corporation ("Lender") **ETE DEVELOPMENT L.L.C.**, an Illinois limited liability company ("Borrower") and **GERARD M. KENNY** and **PHILIP B. KENNY** (collectively, the "Guarantors").

WITNESSETH:

WHEREAS, Lender and Borrower have entered into a certain Loan Agreement dated July 30, 1998 (the "Loan Agreement"), whereby Lender agreed to lend Borrower the principal amount of up to \$8,300,000 (the "Loan") secured in part by certain real property located at the Southwest corner of North Stetson and East South Water, Chicago, IL, as more fully described on Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, to evidence the Loan Borrower executed and delivered to Lender that certain Mortgage Note dated July 30, 1998, in the principal amount of \$8,300,000 (the "Note");

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

- (1) the Loan Agreement;
- (2) Mortgage by Borrower, recorded August 4, 1998, in the real estate records of Cook County, IL, as Document Number 98683343 (the "Mortgage");
- (3) Assignment of Rents and Lessor's Interest in Leases (the "Assignment of Rents") recorded August 4, 1998, in the real estate records of Cook County, IL, as Document Number 98683344;

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- (4) Environmental Indemnity Agreement (the "Environmental Indemnity") from Borrower and Guarantors; and
- (5) the Continuing Guaranty (the "Guaranty"), from Guarantors.

WHEREAS, Borrower, Lender and Guarantors have entered into multiple loan modification agreements (collectively, the "Loan Modifications"), pursuant to which, among other matters, principal amount of the Loan has been increased to \$15,000,000 and the maturity date of the Loan extended;

[The Loan Agreement, the Note, this Modification Agreement and all Loan Modifications, the Mortgage, the Assignment of Rents, the Environmental Indemnity, the Guaranty and any and all other agreements and documents related to the Loan shall hereinafter be collectively referred to as the "Loan Documents"]

WHEREAS, Borrower has requested that Lender amend the Maturity Date (as defined in the of the Loan to the earlier of demand made by Lender or July 31, 2004;

WHEREAS, Lender is willing to extend the Maturity Date upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the covenant 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 Lender by Borrower, the parties hereto agree as follows:

1. **Amendment of the Loan Documents**. The Loan Documents are hereby amended to provide that the Maturity Date of the Loan shall be the earlier of (i) demand made upon Borrower by Lender, or (ii) July 31, 2004.
2. **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.
3. **Modification/Extension Fee**. Borrower acknowledges that, as partial consideration for Lender extending the Maturity Date of the Loan, Borrower shall pay a fee to Lender in the amount of \$75,000, which fee has been fully earned by Lender and is payable to Lender on the earlier of the Maturity Date or the date on which all amounts due to Lender pursuant to the Loan are paid. Borrower hereby authorizes Lender, at Lender's discretion, to increase the principal balance of the Note to pay this fee and any other costs, expenses or fees in any way related to the Loan.
4. **Collateral Inspection**. Borrower acknowledges that Lender may, in its sole discretion and from time to time, have the collateral inspected and evaluated, either by independent contractors or in-house employees, and that the costs incurred by Lender for such

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inspections shall be paid by Borrower. In the event that Lender uses in-house resources for such inspection/valuation, Borrower acknowledges that the fee owed to Lender shall be \$1,500. Borrower hereby authorizes Lender, at Lender's discretion, to increase the principal balance of the Note to pay this fee and any other costs, expenses or fees payable to Lender.

5. **Loan Balance.** Borrower hereby acknowledges that as of the date hereof, the current principal balance of the Loan is \$14,693,934.44, not including accrued interest and late charges.

6. **Lien Priority.** Borrower acknowledges and agrees that the liens evidenced by the Loan Documents shall in no way be deemed to or have been subordinated, released, modified, terminated, or otherwise affected by this Agreement, it being understood by the parties hereto that the liens of said documents shall continue in full force and effect, and are to have the same validity, priority and effect that they had immediately prior to the execution of this Agreement and the documents and instruments executed and delivered pursuant to this Agreement, and shall survive and not be merged into the execution and delivery of this Agreement or any of the documents and instruments to be executed pursuant to this Agreement, without interruption.

7. **Covenants, Representations and Warranties of Borrower.** Borrower 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 Borrower 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 Borrower contained in the Loan Documents;
- (b) At the date hereof, Borrower 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 Borrower 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 Borrower to pay or perform its obligations under the Loan Documents; or
 - ii) affect the assets pledged as collateral under the Loan Documents;
- (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;

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- (e) There are no other liens, encumbrances or other mortgages on the Property and improvements thereon, except in favor of Lender;
- (f) Neither the Loan Documents nor any other document or written materials delivered or made, and any other communication made, to Lender or any employee or agent of Lender 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) Borrower acknowledges that Lender 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. Borrower hereby acknowledges receipt of the current fee schedule for such services, a copy of which is attached as Exhibit C. Borrower 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 Lender.
- (h) Borrower acknowledges that certain costs and expenses may be advanced by Lender and charged to Borrower, including, without limitation, appraisal fees, overnight delivery fees, messenger fees, credit reports, inspection fees and flood certification fees, such fees may include not only Lender's actual out-of-pocket costs, but additionally a reasonable mark-up. Borrower acknowledges and agrees that the mark-up will be an amount determined by Lender, but which shall be reasonable and/or customary in the banking industry, and will represent compensation for Lender's oversight, review and analysis as well as profit for Lender. Borrower agrees to pay these charges for the services, and authorizes payment directly by increasing the principal balance of the Note, at the discretion of Lender.
- (i) Borrower, and each of them, agrees to provide Lender with its currently dated, certified financial statement on each anniversary date of the Note, as well as upon the request of Lender, all in form and detail satisfactory to Lender. Borrower 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.
- (j) Borrower 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.

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- (k) Borrower acknowledges that Lender's undertakings herein in no way obligates Lender to make any additional or future extensions of credit or changes to terms.

8. **Title Policy Endorsements and Legal Opinion.** Concurrently with the execution of this Modification Agreement, Borrower, at its sole cost and expense, at the request of Lender, shall obtain and deliver to Lender 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 Mortgage as modified by this Modification Agreement; and

9. **No Waiver.** Notwithstanding anything contained in this Modification Agreement to the contrary or any prior act of Lender or any procedure established by Lender with regard to the Loan, Borrower acknowledges and agrees that Lender has not heretofore waived any of its rights or remedies under the Loan Documents nor has Lender waived any of the duties or obligations of Borrower thereunder. No waiver by Lender 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 Lender unless waived in writing.

10. **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 Borrower 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 Borrower 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.
- (g) Lender's consent to the modification of the Loan as set forth in this Modification Agreement in no way obligates Lender to make any further modifications, including, without limitation, any extensions.

11. Reaffirmation of Guaranty. Guarantor hereby reaffirms each and every obligation of Guarantor as such obligations are set forth in the Guaranty. By executing this Agreement, Guarantor acknowledges and accepts all modifications to the Loan as such modifications are set forth in this Agreement and agrees that such modifications in no way limit or modify Guarantor's obligations under the Guaranty except as expressly set forth herein.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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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.

LENDER:

FIRST BANK AND TRUST COMPANY OF ILLINOIS, an Illinois Banking corporation

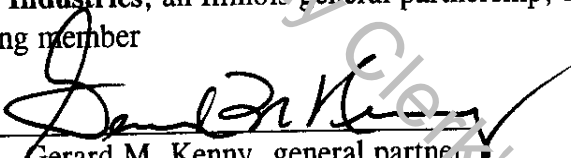
By:  Richard Schuler
Name: _____ President/CEO
Its: _____

BORROWER:

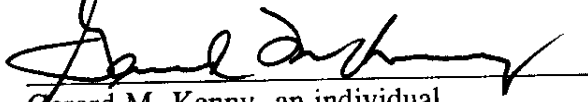
BTE DEVELOPMENT L.L.C., an Illinois limited liability company

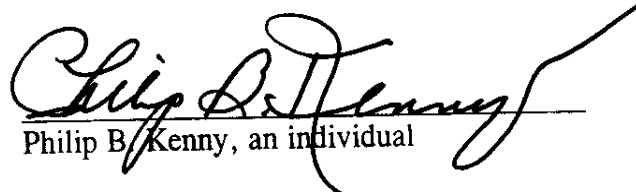
By: **KG-BTE L.L.C.**, an Illinois limited liability company, its managing member

By: **Clinton Industries**, an Illinois general partnership, its managing member

By: 
Gerard M. Kenny, general partner

GUARANTORS:


Gerard M. Kenny, an individual


Philip B. Kenny, an individual

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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 C. Richard Schuler, personally known to me to be the same
person whose name is subscribed to the foregoing instrument and the President/CEO
of LENDER appeared before me this day in person and severally acknowledged that he signed
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 23rd day of Feb., 2004.

Notary Public



My Commission expires: 11-20-07

Anthony Allen Green Sr.

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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

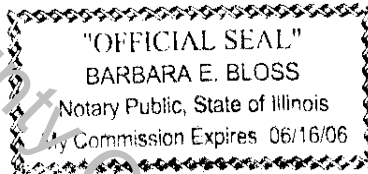
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gerard M. Kenny, the general partner of the managing member of the managing member of BORROWER, personally known to me to be the same person whose name is subscribed to the foregoing instrument, 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 20th day of February, 2004.

Barbara E. Bloss
Notary Public

My Commission expires:

06/16/06



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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

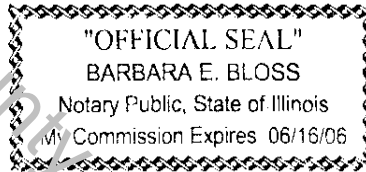
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gerard M. Kenny, an individual, GUARANTOR, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally 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 the Guarantor, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 20th day of February, 2004.

Barbara E. Bloss
Notary Public

My Commission expires:

06/16/06



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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

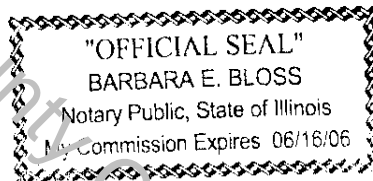
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Philip B. Kenny, an individual, GUARANTOR, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally 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 the Guarantor, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 20th day of February, 2004

Barbara E. Bloss
Notary Public

My Commission expires:

06/16/06



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EXHIBIT A

MORTGAGED PREMISES

PREPARED BY AND MAIL TO:

ANTHONY GREEN
LOAN ADMINISTRATION OFFICER
FIRST BANK AND TRUST COMPANY OF ILLINOIS
300 EAST NORTHWEST HIGHWAY
PALATINE, IL 60067

UNOFFICIAL COPY**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 Amendatory 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 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

EXHIBIT A

LEGAL DESCRIPTION (CONTINUED)

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:

- (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

UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION (CONTINUED)**

Amendment of Boulevard Towers Easements, Reservations, Covenants and Restrictions dated October 16, 1986 recorded October 24, 1986 as Document Number 86496543.

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.

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.

PIN: 17-10-304-020-0000

BOULEVARD TOWERS EAST

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First Bank/Illinois

COMMON COMMERCIAL REAL ESTATE LOAN FEES

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>	\$750.00
<u>FLOOD ZONE CERTIFICATION:</u>	\$40.00
<u>DOCUMENTATION FEE (in-house closings and modifications):</u>	\$1,500.00
<u>PAYOFF LETTER RESEARCH AND PREP.:</u>	\$200.00
<u>RELEASES:</u>	
FULL & PARTIAL:	\$250.00
<u>CONSTRUCTION LOAN DRAW REQUESTS:</u>	
PROJECTS UNDER \$2,000,000 OF VALUE:	\$250.00
PROJECTS \$2,000,000 OF VALUE AND OVER:	\$500.00
<u>OVERNIGHT COURIER:</u>	\$25.00
<u>MESSENGER—CHICAGO AREA:</u>	\$75.00

All other expenses incurred by the Bank will be passed on to the borrower.

9/02

effective 8/1/02—subject to change without notice