

THIS INSTRUMENT PREPARED BY:  
Bruce A. Salk  
Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062

AND AFTER RECORDING MAIL TO:

Bruce A. Salk  
Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062



COOK COUNTY  
RECORDER  
EUGENE "GENE" MOORE  
BRIDGEVIEW OFFICE

## SECOND MODIFICATION AGREEMENT

**THIS SECOND MODIFICATION AGREEMENT** (hereinafter referred to as the "Modification Agreement") made as of this 1<sup>st</sup> day of March, 2002, by and among TR WELLS PARTNERS, L.P., an Illinois limited partnership ("Borrower") and ROSZAK/ADC, L.L.C., an Illinois limited liability company, TR WELLS, INC., an Illinois corporation and THOMAS ROSZAK (all of the foregoing, except Borrower, are hereinafter collectively referred to as the "Guarantors") (Borrower and Guarantors are hereinafter collectively referred to as the "Obligors") and OXFORD BANK & TRUST ("Lender").

## WITNESSETH:

**WHEREAS**, Borrower has executed and delivered to Lender that certain amended and restated mortgage note dated as of October 19, 2001 in the original principal sum of Four Million Eight Hundred Five Thousand and 00/100 (\$4,805,000.00) Dollars (the "Note"), which Note is secured by the following documents, as amended by that certain modification agreement between Obligors and Lender dated as of October 19, 2001, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 0011001117 (the following documents and any and all other instruments executed by any Obligor, as amended, are hereinafter collectively referred to as the "Loan Documents"):

- (i) mortgage and security agreement dated as of June 5, 2000, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 00438193 (the "Mortgage") on property commonly known as 433 North Wells, Chicago, Illinois and legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises");
- (ii) assignment of rents and of lessor's interest in leases dated of even date with the Mortgage made by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 00438194;
- (iii) guaranty dated of even date with the Mortgage made by Guarantors in favor of Lender;

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- (iv) environmental indemnity agreement dated of even date with the Mortgage made by Obligors in favor of Lender;
- (v) construction loan agreement dated of even date with the Mortgage between Borrower and Lender (the "Loan Agreement");
- (vi) security agreement and assignment of contractual agreements affecting real estate dated of even date with the Mortgage made by Borrower in favor of Lender;
- (vii) assignment of sales contracts dated of even date with the Mortgage made by Borrower in favor of Lender; and
- (viii) UCC-1 Financing Statement dated made by Borrower in favor of Lender.

**WHEREAS**, Obligors are desirous of (i) increasing the amount of the Loan by \$350,000.00, and (ii) extending the Maturity Date of the Note from March 1, 2002 to March 1, 2003, and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

**NOW THEREFORE**, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, first and subsisting lien on the Premises and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there is no existing second mortgage or other liens subsequent to the lien of the Mortgage held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions, or either of them, this Modification Agreement, at the sole election of Lender, shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct. All defined terms used herein and not otherwise defined shall have the meaning ascribed to such terms as set forth in the Loan Documents.
2. Concurrent with the execution of this Agreement, Borrower shall execute and deliver to Lender an Amended and Restated Mortgage Note dated as of the date hereof in the principal amount of \$4,615,450.00 (the "Amended Note"). All references in the Loan Documents to the Note shall be deemed to be a reference to the Amended Note. All references in the Loan Documents to the Loan shall be deemed to be a reference to the \$4,615,450.00 loan evidenced by the Amended Note. Each reference in the Loan Documents to the amount "\$4,805,000.00" shall hereafter be deemed to be a reference to \$5,615,450.00.
3. The Mortgage is hereby amended as follows:
  - a. The date "1st day of September, 2001, subject to one six (6) month extension," is deleted from the first "Whereas" paragraph on page 1 and replaced with the date "March 1, 2003".
  - b. The date "June 1, 2001" is deleted from paragraph 41(C) and replaced with the date "February 1, 2003".
4. The Loan Agreement is amended as follows:

- a. The date "June 1, 2001" as it appears in Section 9.1 and Section 12(d) is deleted and replaced with the date "February 1, 2003".
  - b. Exhibit "B" is deleted and replaced with Exhibit "B" attached hereto.
5. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Amended Note, as hereby modified and amended.
6. Except for the modifications stated herein, the Amended Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Amended Note and other Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the loan shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Amended Note and other Loan Documents, to forgive or waive any violation, default or breach under the Amended Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.
7. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender a non-refundable modification fee in the amount of \$11,531.00, plus all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees"). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by Lender, such Additional Fees shall be paid by Obligors within five days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Amended Note).
8. The Premises described in the Mortgage shall remain in all events subject to the lien, charge or encumbrance of the Mortgage, or conveyance of title (if any) effected thereby, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to effect the lien, charge or encumbrance of, or warranty of title in, or conveyance effected by the Mortgage, or the priority thereof over liens, charges, encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Amended Note and/or Mortgage, nor shall anything herein contained or done in pursuance thereof affect or be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.
9. This Modification Agreement shall extend to and be binding upon each of the Obligors and their heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.
10. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Amended Note and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Amended Note and other Loan Documents, as so amended.

11. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois, including all matters of construction, validity and performance.

12. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid Modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

13. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

14. Lender's consent to this Modification Agreement shall be subject to Lender (or Lender's nominee) having received the following in a form and substance acceptable to Lender on or before May 1, 2002 (the "Modification Termination Date"):

(a) An endorsement to Ticor Title Insurance Company Loan Policy No. 000454371 (the "Title Policy") which (i) amends the description of the Mortgage insured under the Title Policy to include this Modification Agreement, (ii) amends the description of the Assignment of Rents to include this Modification Agreement, (iii) extends the effective date of the Title Policy to the date of the recording of this Modification Agreement, (iv) includes no additional exceptions to title other than those that have been approved in writing by Lender, and (v) states that all real estate taxes and assessments applicable to the Premises which are due and payable as of the date of such endorsement have been paid in full; and

(b) Such other documents as Lender may reasonably require.

The Obligors' failure to deliver the aforementioned documents and items to Lender on or before the Modification Termination Date shall, at the option of Lender, result in this Modification Agreement (including all agreements and waivers of Lender contained herein) being null and void.

15. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION,

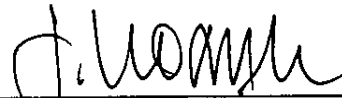
CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

**IN WITNESS WHEREOF**, the undersigned have caused this instrument to be executed as of the date first above written.

TR WELLS PARTNERS, L.P., an Illinois limited partnership

By: TR Wells, Inc., an Illinois corporation, general partner

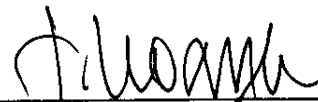
By:



Thomas Roszak, President

ROSZAK/ADC, L.L.C., an Illinois limited liability company

By:



Thomas A. Roszak, Member

THOMAS ROSZAK, individually

TR WELLS, INC., an Illinois corporation

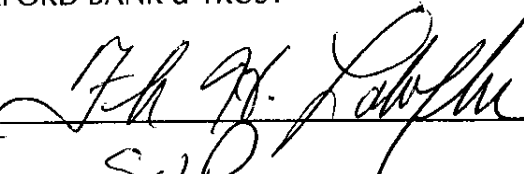
By:



Thomas A. Roszak, President

OXFORD BANK & TRUST

By:



Its:

SUP



STATE OF ILLINOIS       )  
                                       )  
                                       )       SS  
 COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Thomas Roszak, President of TR Wells, Inc., an Illinois corporation, the general partner of TR WELLS, PARTNERS, L.P., an Illinois limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited partnership, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 10<sup>th</sup> day of April, 2002.

[Signature]  
 Notary Public



My Commission Expires: 08-06-04

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 THOMAS A. ROSZAK personally known to me as a Member of ROSZAK/ADC L.L.C., an Illinois limited liability company and 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, sealed and delivered the said instrument as such Member of said limited liability company, pursuant to authority, given by the members of said limited liability company, as his own and 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 10<sup>th</sup> day of April, 2002.

[Signature]  
 Notary Public



My Commission Expires: 08-06-04

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 THOMAS ROSZAK 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 10<sup>th</sup> day of April, 2002.

Janina Kubanek  
 Notary Public

My commission expires: 08-06-04



STATE OF ILLINOIS       )  
                                       ) SS.  
 COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Thomas Roszak, the President of TR WELLS, INC., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 10<sup>th</sup> day of April, 2002.

Janina Kubanek  
 Notary Public

My Commission Expires: 08-06-04

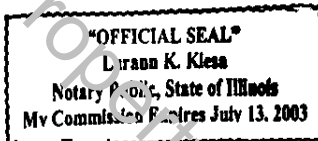




STATE OF ILLINOIS       )  
                                      ) SS.  
COUNTY OF DUPAGE     )

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY Frank H. Lakofka, Sr. Vice Pres. of OXFORD BANK & TRUST, personally known to me to be the same person whose names is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged s/he they signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of April, 2002.



Durann K. Kless  
Notary Public

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

## EXHIBIT "A"

PINS: 17-09-252-006; 17-09-252-007 (affects the units and the common elements)

ADDRESS: Units 101, 202, 301, 401, 501, 502, 601, 602, P-1, P-2, P-3, P-5, P-6, P-7, P-8, P-9, P-10, P-15, P-16, P-17, P-18, P-19, P-20, P-21, P-22, P-23 AND P-24 433 North Wells, Chicago, Illinois

UNIT NUMBERS 101, 202, 301, 401, 501, 502, 601 AND 602 AND UNIT NUMBERS P-1, P-2, P-3, P-5, P-6, P-7, P-8, P-9, P-10, P-15, P-16, P-17, P-18, P-19, P-20, P-21, P-22, P-23 AND P-24 IN THE 433 N. WELLS STREET CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED TRACT OF LAND: THE NORTH 23 AND 11/24THS FEET OF LOT 2 AND ALL OF LOT 3 IN BLOCK 8 IN NEWBERRY'S ADDITION TO CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH SURVEY IS ATTACHED AS EXHIBIT "C" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0011191247; TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN COOK COUNTY, ILLINOIS.

## EXHIBIT "B"

DRAW 20 (Blank)

Sworn Deponent's Statement  
STATE OF ILLINOIS  
COUNTY OF COOK

The affiant, Thomas Roszak, being duly sworn on oath deposes and swears that he is the President of TR Walls, Inc., General Partner of TR Walls Partners, L.P., the owner of the following described premises in Cook County, Illinois, at 433 N. Wells Street, Chicago, Illinois.

1. That he is thoroughly familiar with the facts and circumstances concerning the premises described above.
2. That during the six months last past, the only work done on materials furnished in connection with the above mentioned premises are listed below.
3. That the only documents for the furnishing of labor work or materials relative to the contemplated improvements are listed below.
4. That his statement is a true and complete statement of all such contracts, previous payments, and balances due, if any.

Subcontractor	Description	Original Contract	Adjustments/Extras	Final Adjustments	Revised Contract	Amount Paid	This Payment	Balance
Rozsak/ADC	Construction	\$2,838,382.00	\$1,466,100.74	\$250,000.00	\$4,655,482.74	\$4,187,874.97	\$0.00	\$468,607.77
Rozsak/ADC	Land	\$900,000.00	\$0.00	\$0.00	\$900,000.00	\$900,000.00	\$0.00	\$0.00
Rozsak/ADC	Demolition	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Rozsak/ADC	Architect/Engineer	\$70,500.00	\$18,458.47	\$0.00	\$88,958.47	\$88,958.47	\$0.00	\$0.00
Rozsak/ADC	Legal/Accounting	\$26,500.00	(\$500.00)	\$0.00	\$26,000.00	\$26,000.00	\$0.00	(\$3.00)
Rozsak/ADC	Framing	\$41,750.00	\$22,294.16	\$0.00	\$64,044.16	\$64,044.16	\$0.00	\$0.00
Rozsak/ADC	Ties Insurance	\$10,000.00	(\$5,031.70)	\$0.00	\$4,968.30	\$4,968.30	\$0.00	\$0.00
Rozsak/ADC	Insurance	\$11,700.00	(\$1,500.00)	\$0.00	\$10,200.00	\$10,200.00	\$0.00	(\$3.00)
Rozsak/ADC	Municipal Fees/Taxes	\$58,484.00	\$8,022.58	\$0.00	\$66,506.58	\$66,506.58	\$0.00	\$0.00
Rozsak/ADC	Marketing	\$2,200.00	\$831.78	\$0.00	\$3,031.78	\$3,031.78	\$0.00	\$0.00
Rozsak/ADC	Surveys - Testing	\$8,000.00	\$21,521.50	\$0.00	\$29,521.50	\$29,521.50	\$0.00	\$0.00
Rozsak/ADC	Utilities	\$7,500.00	(\$1,705.06)	\$0.00	\$5,794.94	\$5,794.94	\$0.00	\$0.00
Rozsak/ADC	General Contractor's Fee	\$90,000.00	\$40,000.00	\$0.00	\$130,000.00	\$122,500.00	\$0.00	\$7,500.00
Rozsak/ADC	Salaries	\$147,500.00	\$25,000.00	\$0.00	\$172,500.00	\$167,500.00	\$0.00	\$5,000.00
Rozsak/ADC	Interest Reserve	\$185,782.00	\$158,448.39	\$100,000.00	\$442,230.39	\$321,835.23	\$0.00	\$120,405.16
Rozsak/ADC	Contingency	\$151,287.00	(\$98,847.77)	\$0.00	\$52,439.23	\$0.00	\$0.00	\$52,439.23
<b>Totals</b>		<b>\$4,625,000.00</b>	<b>\$1,555,000.00</b>	<b>\$350,000.00</b>	<b>\$6,530,000.00</b>	<b>\$5,996,840.82</b>	<b>\$0.00</b>	<b>\$533,159.18</b>

## Sources and Uses

Oxford Bank	\$3,400,000.00	\$1,035,000.00	\$350,000.00	\$4,771,840.82	\$0.00	\$383,159.18
Partnership Equity	\$1,225,000.00	\$350,000.00	\$0.00	\$1,225,000.00	\$0.00	\$250,000.00
<b>Totals</b>	<b>\$4,625,000.00</b>	<b>\$1,385,000.00</b>	<b>\$350,000.00</b>	<b>\$6,396,840.82</b>	<b>\$0.00</b>	<b>\$633,159.18</b>

\$0.00 to Rozsak/ADC

Prepared by Thomas Roszak 3/8/02