

ORIGINAL UNOFFICIAL COPY

#17542656-8

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:
Oxford Bank & Trust
1100 West Lake Street
Addison, Illinois 60101
Attn: Frank Lakofka



Eugene "Gene" Moore Fee: \$38.00
Cook County Recorder of Deeds
Date: 07/11/2003 12:57 PM Pg: 1 of 8

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (hereinafter referred to as the "Modification Agreement") made as of this 1st day of April, 2003, by and among K III, INC., an Illinois corporation ("Borrower"), CARY B. KERBEL ("Guarantor") (Borrower and Guarantor are hereinafter collectively referred to as the "Obligors") and OXFORD BANK & TRUST ("Lender").

WITNESSETH:

WHEREAS, Borrower has executed and delivered to Lender that certain mortgage note dated as of March 20, 2001 in the original principal sum of Three Million Fifty-Five Thousand and 00/100 (\$3,055,000.00) Dollars (the "Note"), which Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor are hereinafter collectively referred to as the "Loan Documents"):

- (i) mortgage and security agreement of even date therewith, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0010237627 (the "Mortgage") on property commonly known as 5501 North Broadway, Chicago, Illinois 5501 North Broadway, Chicago, Illinois (the "Premises") and legally described on Exhibit "A" attached hereto and made a part hereof;
- (ii) assignment of rents and of lessor's interest in leases dated of even date with the Note made by Borrower in favor of Lender encumbering the Premises, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0010237628 (the "Assignment of Rents");
- (iii) construction loan agreement dated of even date with the Note between Borrower and Lender (the "Loan Agreement");
- (iv) guaranty dated of even date with the Note made by Guarantor in favor of Lender;

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- (v) environmental indemnity agreement dated as of even date with the Note made by Obligors in favor of Lender;
- (vi) security agreement and assignment of contractual agreements affecting real estate dated of even date with the Note made by Borrower in favor of Lender; and
- (vii) assignment of sales contracts dated of even date with the Note made by Borrower in favor of Lender.

WHEREAS, Borrower properly exercised its option to extend the Maturity Date of the Note from October 1, 2002 to April 1, 2003.

WHEREAS, Obligors are desirous of extending the maturity date of the Note from April 1, 2003 to October 1, 2003, and Lender is willing to consent to such extension 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 term as set forth in the Loan Documents.
2. The Note is hereby modified as follows:
 - (a) The date "October 15, 2002" as it appears in the seventh line of the first paragraph on page one is deleted and replaced with the date "October 1, 2003".
 - (b) The date "September 1, 2002" as it appears in the third line of numbered paragraph one (1) on page one is deleted and replaced with the date "September 1, 2003".
 - (c) Numbered paragraph two (2) on page one, entitled "Extension of Maturity Date", is deleted in its entirety.
3. The Mortgage is hereby modified as follows:
 - (a) The date "1st day of October, 2002, subject to one six (6) month extension" as it appears in the fifth line of the first "Whereas" paragraph on page one is deleted and replaced with the date "October 1, 2003".
 - (b) The date "September 1, 2002" as it appears in paragraph 41(c) is deleted and replaced with the date "October 1, 2003".

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4. The Loan Agreement is hereby modified as follows:

(a) The date "September 1, 2002, subject to one six (6) month extension" as it appears in paragraph 8.1 is deleted and replaced with the date "October 1, 2003".

(b) The date "April 1, 2002" as it appears in paragraph 12(e) is deleted and replaced with the date "October 1, 2003".

5. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Note, as hereby modified and amended. All references in the Loan Documents to the "Maturity Date" of the Note shall hereafter mean "October 15, 2003".

6. Except for the modifications stated herein, the Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the 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 Note and other Loan Documents, to forgive or waive any violation, default or breach under the 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 \$2,600.00, 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 such 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 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 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 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

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the enforcement by Lender of their respective obligations and liabilities under the 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 31, 2003 (the "Modification Termination Date"):

(a) An endorsement to Attorney's Title Guaranty Fund, Inc. Loan Policy No. 9003741 (File No. TM 14724 (6662)) (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.

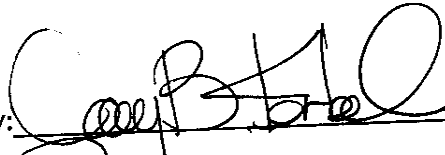
15. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF 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.

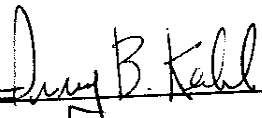
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TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY 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.

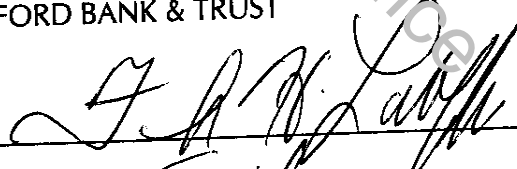
K III, INC., an Illinois corporation

By: 
Its: PRESIDENT

Attest: 
Its: SECRETARY


CARY B. KERBEL, individually

OXFORD BANK & TRUST

By: 
Its: SECRETARY

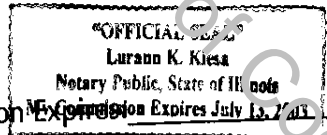
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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Cary B. Kerbel and Irving B. Kerbel, the President and Secretary, respectively, of K III, INC., an Illinois corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person and acknowledged that they signed, sealed and delivered the said instrument as their 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 1st day of April, 2003.

Churann Kries
Notary Public



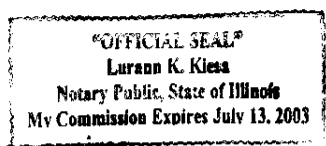
My Commission Expires: _____

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 CARY B. KERBEL 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 1st day of April, 2003.

Churann Kries
Notary Public



My commission expires: _____

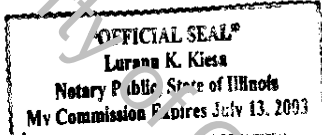
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STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Frank H. Lakoffs, of OXFORD BANK & TRUST, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such SVP, 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 bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of April, 2003.

Shirann K. Kiesa
Notary Public



My Commission Expires: _____

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EXHIBIT "A"

9

PIN: 14-08-200-013

ADDRESS: 5501 North Broadway, Chicago, Illinois

LOT 15 IN BLOCK 3 IN JOHN LEWIS COCHRAN'S SUBDIVISION OF THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office