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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



Doc#: 0330346040
Eugene "Gene" Moore Fee: \$38.00
Cook County Recorder of Deeds
Date: 10/30/2003 08:14 AM Pg: 1 of 8

454396
TROR

Property of Cook County Recorder of Deeds

8

FIFTH MODIFICATION AGREEMENT

THIS FIFTH MODIFICATION AGREEMENT (hereinafter referred to as the "Modification Agreement") made as of this 10th day of October, 2003, by and among TR CHICAGO AVENUE PARTNERS, L.P., an Illinois limited partnership ("Borrower"), TR CHICAGO AVENUE, INC., an Illinois corporation, THOMAS ROSZAK (TR Chicago Avenue, Inc. and Thomas Roszak are each sometimes individually referred to as a "Guarantor", and 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 September 4, 2002 in the original principal sum of Eleven Million Seven Hundred Thousand and 00/100 (\$11,700,000.00) Dollars (as amended from time to time, the "Note"), which Note is secured by the following documents, as modified by that certain modification agreement between Obligors and Lender dated as of June 25, 2001 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") as Document No. 0010618320, that certain second modification agreement between Obligors and Lender dated as of September 4, 2002 and recorded in the Recorder's Office as Document No. 0021080820, that certain third modification agreement between Obligors and Lender dated as of January 1, 2003 and recorded in the Recorder's Office as Document No. 0030179106, and that certain fourth modification agreement between Obligors and Lender dated as of June 23, 2003 and recorded in the Recorder's Office as Document No. 0319746060 (the following documents and any and all other instruments executed by any Obligor, as amended and modified from time to time, are hereinafter collectively referred to as the "Loan Documents"):

MOORTLE

- (i) mortgage and security agreement dated as of July 17, 2000, recorded in the Recorder's Office as Document No. 00589860 (the "Mortgage") on property commonly known as 1210-38 Chicago Ave., Evanston, 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 Recorder's Office as Document No. 00589861;
- (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;
- (viii) assignment of development agreement dated of even date with the Mortgage made by Borrower in favor of Lender; and
- (ix) UCC-1 Financing Statement made by Borrower, as debtor, in favor of Lender, as secured party.

WHEREAS, Obligors are desirous of (i) increasing the amount of the aggregate disbursements under the Loan, and (ii) increasing the principal amount of the Note, 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 term as set forth in the Loan Documents.

2. As of October 10, 2003, the total outstanding principal balance of the Note is \$4,242,647.71. Concurrent with the execution of this Modification Agreement, Borrower shall execute and deliver to Lender an amended and restated mortgage note of even date herewith in the principal amount of Five Million Ninety-Nine Thousand Seven Hundred Forty-Seven and 71/100 Dollars (\$5,099,747.71), plus interest at the variable rate set forth therein, payable to the order of Lender (the "Amended Note") on the Maturity Date. All references in the Loan Documents to the "Note" shall mean the Amended Note. All references in the Loan Documents to the "Loan" shall mean that certain \$5,099,747.71 non-revolving construction loan evidenced by the Amended Note.

3. The Mortgage is hereby amended by deleting the first "Whereas" paragraph on page 1 and replacing it with the following:

" **WHEREAS**, the Mortgagor has executed and delivered to the Mortgagee, the Mortgagor's Amended and Restated Mortgage Note dated as of October 10, 2003, payable to the order of Mortgagee, in the principal sum of Five Million Ninety-Nine Thousand Seven

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Hundred Forty-Seven and 71/100 Dollars (\$5,099,747.71) (herein called the "Note") bearing interest at the variable rate specified therein, due in the manner as provided therein and in any event on the 1st day of March, 2004, the terms and provisions of which Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and “

4. The Loan Agreement is hereby modified as follows:

a. The number “\$11,300,000.00” as it appears in paragraph 6.1(b) is deleted and replaced with the number “\$5,099,747.71”.

b. The number “\$30,930,214.00” as it appears in paragraph 6.1(b) is deleted and replaced with the amount “\$31,380,214.00”. Notwithstanding anything to the contrary contained herein or in the Loan Documents, from and after the date hereof, Lender shall have no obligation to disburse more than an additional \$450,000.00 in Loan proceeds, allocated for construction costs associated with the combination and division of certain units, upgrades and changes to plans and unit designs.

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 \$2,250.00, 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.

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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.

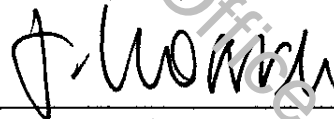
TR CHICAGO AVENUE PARTNERS, L.P., an Illinois limited partnership

By: TR Chicago Avenue, Inc., an Illinois corporation, its general partner

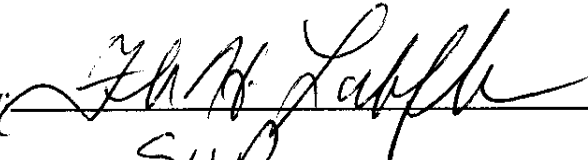
By: 
Thomas Roszak, President


THOMAS ROSZAK, individually

TR CHICAGO AVENUE, INC., an Illinois corporation

By: 
Thomas Roszak, President

OXFORD BANK & TRUST

By: 
Its: SUP

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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 form and substance acceptable to Lender on or before October 31, 2003 (the "Modification Termination Date"):

(a) An endorsement to Tigor Title Insurance Company Loan Policy No. 454396 (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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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 CHICAGO AVENUE, 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 10th day of October, 2003.



Lurann K. Harmon
Notary Public

My Commission Expires: _____

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. Lakofka, of OXFORD BANK & TRUST, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Sr. Vice Pres., 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 10th day of October, 2003.



Lurann K. Harmon
Notary Public

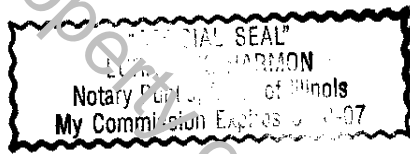
My Commission Expires: _____

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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 Chicago Avenue, Inc., an Illinois corporation, the general partner of TR CHICAGO AVENUE 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 10th day of October, 2003.



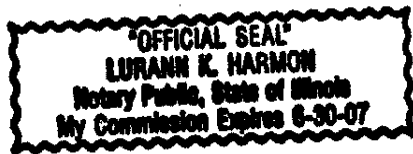
Lurann K. Harmon
Notary Public

My Commission Expires: _____

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 10th day of October, 2003.



Lurann K. Harmon
Notary Public

My commission expires: _____

UNOFFICIAL COPY**EXHIBIT "A"**

PIN NO. 11-19-105-030-0000 and 11-19-105-033-0000

ADDRESS: 1210-38 Chicago Avenue, Evanston, Illinois

PARCEL 1:

LOT 1 IN G.M. LIMITED PARTNERSHIP-CONSOLIDATION IN THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 22, 1996 AS DOCUMENT NO. 96,891,657.

PARCEL 2:

LOTS 1, 2 AND 3 IN F. B. BREWER'S SUBDIVISION OF THE SOUTH 137 FEET (EXCEPT THE RAILROAD) OF THE NORTH 312 FEET OF BLOCK 1 OF SNYDER'S ADDITION TO EVANSTON, A SUBDIVISION OF THE NORTH 2 OF THE NORTHWEST 1/4, EAST OF THE RAILROAD AND WEST OF CHICAGO AVENUE, IN SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS.

EXCEPTING THEREFROM THE FOLLOWING:

THAT PART OF LOTS 1, 2 AND 3 IN F.B. BREWER'S SUBDIVISION OF THE SOUTH 137 FEET (EXCEPT THE RAILROAD) OF THE NORTH 312 FEET OF BLOCK 1 OF SNYDER'S ADDITION TO EVANSTON, A SUBDIVISION OF THE NORTH HALF OF THE NORTHWEST QUARTER, EAST OF THE RAILROAD AND WEST OF CHICAGO AVENUE, IN SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF EVANSTON, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 613.88 FEET ABOVE THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD 29) AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 604.30 FEET ABOVE THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD 29), DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 3 IN BREWER'S SUBDIVISION, AFORESAID, BEING ALSO THE NORTHEAST CORNER OF LOT 1 IN G.M. LIMITED PARTNERSHIP CONSOLIDATION, IN SAID SECTION 19; THENCE NORTH 00° 18' 00" WEST ALONG THE EASTERLY LINE OF SAID LOT 3 A DISTANCE OF 38.25 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 87° 29' 10" WEST, 2.97 FEET; THENCE SOUTH 00° 15' 16" EAST, 22.02 FEET; THENCE SOUTH 87° 29' 10" WEST, 45.16 FEET; THENCE NORTH 02° 30' 50" WEST, 18.83 FEET; THENCE SOUTH 87° 29' 10" WEST, 13.42 FEET; THENCE SOUTH 02° 30' 50" EAST, 18.83 FEET; THENCE SOUTH 87° 29' 10" WEST, 16.08 FEET; THENCE NORTH 02° 30' 50" WEST, 21.00 FEET; THENCE SOUTH 87° 29' 10" WEST, 15.50 FEET; THENCE SOUTH 02° 30' 50" EAST, 21.00 FEET; THENCE SOUTH 87° 29' 10" WEST, 11.67 FEET; THENCE NORTH 02° 30' 50" WEST, 4.33 FEET; THENCE SOUTH 87° 29' 10" WEST, 40.08 FEET; THENCE NORTH 02° 30' 50" WEST, 14.50 FEET; THENCE SOUTH 87° 29' 10" WEST, 9.08 FEET; THENCE SOUTH 02° 30' 50" EAST, 18.83 FEET; THENCE SOUTH 87° 29' 10" WEST, 30.48 FEET; THENCE NORTH 10° 08' 25" WEST, 66.59 FEET; THENCE NORTH 87° 29' 10" EAST, 192.92 FEET; THENCE SOUTH 00° 15' 16" EAST, 22.02 FEET; THENCE NORTH 87° 29' 10" EAST, 2.95 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 3; THENCE SOUTH 00° 18' 00" EAST, ALONG SAID EASTERLY LINE, 22.02 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.