

480344

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



Doc#: 0425108002
Eugene "Gene" Moore Fee: \$44.00
Cook County Recorder of Deeds
Date: 09/07/2004 08:33 AM Pg: 1 of 11

AND AFTER RECORDING MAIL TO:
Oxford Bank & Trust
1100 West Lake Street
Addison, Illinois 60101
Attn: Frank Lakofka
7546631-3

Property of Cook County Clerk's Office

SECOND MODIFICATION AGREEMENT

THIS SECOND MODIFICATION AGREEMENT (hereinafter referred to as the "Modification Agreement") made as of this 18th day of August, 2004, by and among OXFORD BANK & TRUST, not personally, but as Trustee under Trust Agreement dated July 15, 2002, and known as Trust No. 974 ("Trustee"), TR MAPLE PARTNERS, LLC, a Delaware limited liability company ("TR Maple"), TR DEVELOPMENT WORKSHOP, INC., an Illinois corporation ("TR Development"), THOMAS ROSZAK ("Roszak") (each of the foregoing, except Trustee, are each a "Guarantor" and are collectively, the "Guarantors") (Trustee and Guarantors are hereinafter collectively referred to as the "Obligors" and singularly as an "Obligor") and OXFORD BANK & TRUST ("Lender").

WITNESSETH:

WHEREAS, Trustee has executed and delivered to Lender that certain mortgage note dated July 24, 2002 in the original principal sum of Six Million Six Hundred Fifty Thousand and 00/100 Dollars (\$6,150,000.00) (as previously amended, or as amended or replaced from time to time, the "Note"), which Note is secured by the following documents, as modified by that certain modification agreement dated July 31, 2003 by and among Obligors, Sam and Lila Lederman Trust dated January 12, 1980 (the "Junior Lender") and Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") as Document No. 0326006194 (the following documents and any and all other instrument executed by any Obligor in connection with the Note, as modified from time to time, are hereinafter collectively referred to as the "Loan Documents"):

- (i) mortgage and security agreement dated as of July 24, 2002, recorded in the Recorder's Office, as Document No. 0020864859 (as modified, the "Mortgage") on property commonly known as 1572 Maple Avenue, Evanston, Illinois and legally described on Exhibit "A" attached hereto and made a part hereof (as modified, the "Premises");

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- (ii) assignment of rents and of lessor's interest in leases dated of even date with the Note made by Trustee and TR Maple in favor of Lender, recorded in the Recorder's Office as Document No. 0020864860 (as modified, the "Assignment of Rents");
- (iii) collateral assignment of beneficial interest and security agreement dated of even date with the Note made by TR Maple in favor of Lender (as modified, the "Collateral ABI");
- (iv) guaranty dated of even date with the Note made by Guarantors in favor of Lender (as modified, the "Guaranty");
- (v) environmental indemnity agreement dated of even date with the Note made by Guarantors in favor of Lender;
- (vi) construction loan agreement dated of even date with the Note among Trustee, TR Maple and Lender (as modified, the "Loan Agreement");
- (vii) security agreement and assignment of contractual agreements affecting real estate dated of even date with the Note made by Trustee and TR Maple in favor of Lender;
- (viii) assignment of sales contracts dated of even date with the Note made by Trustee and TR Maple in favor of Lender;
- (ix) assignment of special limited partners interest in distributions (security agreement) dated of even date with the Note made by Roszak in favor of Lender; and
- (x) subordination agreement dated of even date with the Note among the Junior Lender, TR Maple and Lender.

WHEREAS, Obligors are desirous of increasing the principal amount of the Note from \$6,150,000.00 to \$7,650,000.00, and Lender is willing to consent to such increase 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, except for the junior collateral assignment of beneficial interest in favor of Junior Lender (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:**

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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 August 18, 2004, the total outstanding principal balance of the Note is \$5,906,700.00. Concurrent with the execution of this Modification Agreement, the Trustee shall execute and deliver to Lender an amended and restated mortgage note of even date herewith in the principal amount of Seven Million Six Hundred Fifty Thousand and 00/100 Dollars (\$7,650,000.00), payable to the order of Lender (the "Amended Note"). Each reference in the Loan Documents to the term "Note" shall hereafter be deemed to be a reference to the Amended Note.

3. The first "Whereas" paragraph on page 1 of the Mortgage is hereby amended in its entirety to read as follows:

"WHEREAS, the Mortgagor has executed and delivered to the Mortgagee, the Mortgagor's Amended and Restated Mortgage Note dated August 18, 2004, payable to the order of Mortgagee, in the principal sum of Seven Million Six Hundred Fifty Thousand and 00/100 Dollars (\$7,650,000.00) (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 February, 2005, 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 first "Whereas" paragraph on page 1 of the Assignment of Rents is hereby amended in its entirety to read as follows:

"WHEREAS, Trustee has executed an amended and restated mortgage note (hereinafter referred to as "Note") dated August 18, 2004, payable to the order of OXFORD BANK & TRUST (hereinafter referred to as "Assignee") in the principal amount of Seven Million Six Hundred Fifty Thousand and 00/100 (\$7,650,000.00) Dollars; and"

5. The first and second "Whereas" paragraphs on page 1 of the Guaranty are hereby modified in their entirety to read as follows:

"WHEREAS, pursuant to the terms of that certain Construction Loan Agreement dated of even date herewith (as amended from time to time, the "Loan Agreement") between OXFORD BANK & TRUST, as Trustee under Trust Agreement dated July 15, 2002, and known as Trust No. 974 ("Trustee") and TR Maple ("Beneficiary") (Trustee and Beneficiary are, collectively, "Borrower") and Lender, Lender has agreed to make a construction loan to Borrower in the maximum principal amount of \$7,650,000.00 (the "Loan"); and

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WHEREAS, the Loan is evidenced by a certain amended and restated mortgage note dated August 18, 2004 in the maximum principal amount of \$7,650,000.00 (the "Note"); and"

6. The Loan Agreement is hereby modified as follows:

a. The first sentence of section 3 is hereby amended in its entirety to read as follows:

"Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender an amount not to exceed Seven Million Six Hundred Fifty Thousand and 00/100 (\$7,650,000.00) Dollars at any one time for the purposes and upon the terms and subject to the conditions contained in this Agreement (as amended from time to time, the "Loan")."

b. Section 5.1 is hereby amended in its entirety to read as follows:

"An amended and restated mortgage note (as amended or replaced from time to time, the "Note") executed by the Trust dated as of August 18, 2004, payable to the order of Lender, in the principal amount of \$7,650,000.00."

c. Section 6.1(b) is hereby amended in its entirety to read as follows:

"(b) Notwithstanding anything contained herein to the contrary, Lender shall not be required to make additional disbursements of Loan Proceeds with respect to any disbursement of the Loan, after the date, if any, on which the outstanding principal amount of the Loan, together with the disbursement of the Loan requested by Borrower would exceed \$7,650,000.00. Notwithstanding anything contained herein to the contrary, Lender shall not be required to make disbursements under Loan totaling in the aggregate more than \$8,350,000.00 (exclusive of any draws under the Letter of Credit)."

7. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Amended Note and this Modification Agreement. Each reference in the Loan Documents to the term "Note" shall be deemed to be a reference to the Amended Note. Each reference in the Loan Documents to the term "Loan" shall hereafter mean that certain \$7,650,000.00 amended and restated acquisition and construction loan made by Lender to Trustee and evidenced by the Amended Note.

8. 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 now evidenced by the Amended Note shall

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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.

9. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender a non-refundable modification fee in the amount of \$7,500.00, 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).

10. 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.

11. This Modification Agreement shall extend to and be binding upon each of the Obligors and their respective heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

12. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Amended Note, the Guaranty 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, the Guaranty and other Loan Documents, as so amended.

13. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois (exclusive of choice of law principals), including all matters of construction, validity and performance.

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14. 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.

15. 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.

16. This Modification Agreement is executed by Oxford Bank & Trust, not personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in said Trustee, and it is expressly understood and agreed that nothing in this Modification Agreement shall be construed as creating any personal liability on said Trustee.

17. 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 September 30, 2004 (the "Modification Termination Date"):

(a) An endorsement to Ticor Title Insurance Company Loan Policy No. 486344 (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, (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 (vi) increases the amount of insurance to \$7,650,000.00;

(b) Certified copy of land trust agreement showing Lender's Collateral ABI as lodged;
and

(c) 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.

18. 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

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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.

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

OXFORD BANK & TRUST, not personally, but solely as Trustee as aforesaid

By: Ernest S. Nomicchi

Its: V.P. & Trust officer

Attest: [Signature]
Its: SUP

TR MAPLE PARTNERS, LLC, a Delaware limited liability company

By: TR Development Workshop, Inc., an Illinois corporation, its sole manager

By: [Signature]
Thomas A. Roszak, President

THOMAS ROSZAK, individually

TR DEVELOPMENT WORKSHOP, INC., an Illinois corporation

By: [Signature]
Thomas A. Roszak, President

OXFORD BANK & TRUST

By: [Signature]

Its: SUP

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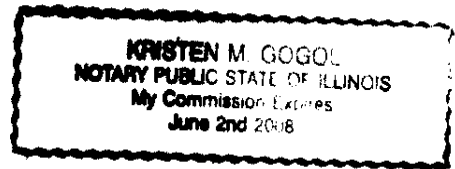
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that 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 26 day of August, 2004.

Kristen M. Gogol
Notary Public

My commission expires: June 02, 2008



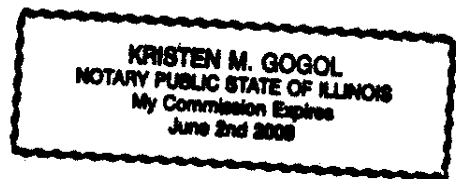
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Thomas A. Roszak, the President of TR DEVELOPMENT WORKSHOP, 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 26 day of August, 2004.

Kristen M. Gogol
Notary Public

My Commission Expires: June 02, 2008



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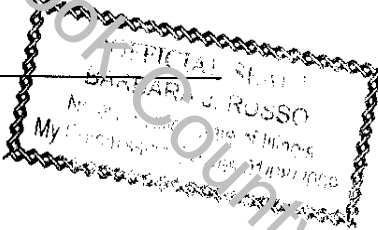
STATE OF ILLINOIS)
)
 COUNTY OF DUPAGE) SS

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Frene S Nowicki, of OXFORD BANK & TRUST, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____ 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 27th day of August, 2004.

Barbara J Russo
 Notary Public

My Commission Expires: _____



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EXHIBIT "A"

PIN: 11-18-309-012

ADDRESS: 1572 Maple Avenue, Evanston, Illinois

THE SOUTH 80 FEET OF LOTS 1 AND 2 IN BLOCK 62 IN EVANSTON IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 11-18-309-010 and 11-18-309-011

ADDRESS: 1580 Maple Avenue, Evanston, Illinois

Access Easement: The property and space consisting of (A) the surface of the south five (5) feet of the below described parcel (the "1580 Property") and (B) the air space located above the surface of, and lying within the boundaries projected vertically of, the south five (5) feet of the 1580 Property.

1580 Property: THE NORTH 135 FEET OF LOT 1 IN BLOCK 62 IN EVANSTON IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 11-18-309-009

ADDRESS: 1008 Davis Street, Evanston, Illinois

Access Easement: The property and space consisting of (A) the surface of the south five (5) feet of the below described parcel (the "1008 Property") and (B) the air space located above the surface of, and lying within the boundaries projected vertically of, the south five (5) feet of the 1008 Property.

1008 Property: THE NORTH 135 FEET OF LOT 2 IN BLOCK 62 IN EVANSTON IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.