

# UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Builders Bank  
77 W. Wacker Dr., Ste. 3100  
Chicago, IL 60601  
Attn: Nancy Sherman



Doc#: 0423110127  
Eugene "Gene" Moore Fee: \$48.00  
Cook County Recorder of Deeds  
Date: 08/18/2004 03:00 PM Pg: 1 of 13

*This space reserved for Recorder's use only*

## MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 19<sup>th</sup> day of July, 2004, by and among PNL HOMAN SQUARE, LLC, a Delaware limited liability company ("Borrower"), PNL ASSET MANAGEMENT, L.P., a Delaware limited partnership, DAVID M. PORTER and JOHN C. GILBERT (collectively "Guarantor") and BUILDERS BANK, an Illinois banking corporation, its successors and assigns ("Lender").

## RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the original principal amount of THREE MILLION NINE HUNDRED THOUSAND DOLLARS (\$3,900,000.00) as evidenced by a Promissory Note dated January 14, 2002, in the principal amount of the Loan made payable by Borrower to the order of Lender, and reduced to TWO MILLION THREE HUNDRED TWENTY-NINE THOUSAND ONE HUNDRED SIXTY-EIGHT AND 77/100 DOLLARS (\$2,329,168.77) as evidenced by the Amended and Restated Mortgage Note dated as of July 17, 2003 made payable by Borrower to the order of Lender (as amended, the "Note").

B. The Note is secured by, among other things, (i) that certain Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated January 17, 2002 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on January 22, 2002, as Document No. 0020085771 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"); (ii) that certain Environmental Indemnity Agreement dated January 17, 2002 from Borrower and PNL Asset Management, L.P. ("PNL") to Lender (the "Environmental Indemnity Agreement"); (iii) that certain Security Agreement dated as of January 17, 2002 between Borrower and Lender (the "Security Agreement"); (iv) that certain Indemnity Agreement dated as of January 17, 2002 from Borrower to Lender (the "Indemnity Agreement"); (v) the Amendment to Security Documents dated of July 17, 2003 from PNL to Lender recorded with the Recorder's Office on August 18, 2003 as Document No. 0323003007 (the "Amendment to Security Documents") and (vi) certain other loan documents

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(the Note, the Mortgage, the Environmental Indemnity Agreement, the Security Agreement, the Indemnity Agreement, the Indemnity Agreement, the Amendment to Security Documents, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty of Payment and Performance dated as of January 17, 2002, as amended by the Consent, Reaffirmation and Modification of Guaranty dated as of July 17, 2003 from Guarantor to Lender (as amended, the "Guaranty").

D. As of July 13, 2004, the outstanding principal balance is ONE MILLION EIGHT HUNDRED TWENTY-NINE THOUSAND ONE HUNDRED SIXTY-EIGHT AND 77/100 DOLLARS (\$1,829,168.77)

E. Borrower desires to amend the Loan Documents in order to extend the Maturity Date (defined below).

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date.** The Maturity Date of the Note is extended to January 14, 2005. Any reference in the Note or any other Loan Document to the Maturity Date shall mean January 14, 2005.

2. **Conditions Precedent.** The following are conditions precedent to the effectiveness of this Agreement:

(a) Borrower shall pay to Lender, on the date hereof, an extension fee of Three Thousand Seven Hundred Fifty and 00/100 Dollars (\$3,750.00), which fee has been fully earned and is non-refundable;

(b) Borrower shall pay to Lender on the date hereof, a principal reduction payment in the amount of Three Hundred Twenty-Nine Thousand One Hundred Sixty-Eight and 77/100 Dollars (\$329,168.77).

3. **Monthly Principal Payments.** On August 5, 2004, and on the 5<sup>th</sup> day of each month thereafter, Borrower shall pay to Lender the amount of Ten Thousand and 00/100 Dollars (\$10,000.00), which payments shall be applied to reduce the principal balance of the Loan, until all amounts due and owing under the Loan Documents are paid in full.

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4. **Interest Payments.** Borrower and Lender hereby acknowledge that there is no interest reserve for the Loan, and that Borrower shall continue to pay interest on the principal balance of the Loan, as set forth in the Note and other Loan Documents, out of pocket.

5. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

6. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

7. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

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## 8. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

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(h) Time is of the essence of each of Borrower's obligations under this Agreement.

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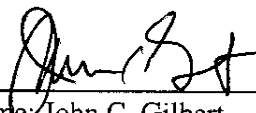
IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

**BORROWER:**

**PNL HOMAN SQUARE, LLC**, a  
Delaware limited liability company

By: PNL Partners 2001, a Delaware limited  
partnership, its sole member

By: PNL Holdings Company, L.L.C.,  
a Delaware limited liability  
company, its general partner

By:   
Name: John C. Gilbert  
Title: Manager

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**GUARANTOR:**

**PNL ASSET MANAGEMENT, L.P.**, a  
Delaware limited liability company

By: PNL Holding Company, L.L.C., a  
Delaware limited liability company,  
its general partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_

  
\_\_\_\_\_  
**DAVID M. PORTER**

\_\_\_\_\_  
**JOHN C. GILBERT**

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**GUARANTOR:**

**PNL ASSET MANAGEMENT, L.P., a**  
Delaware limited liability company

By: PNL Holding Company, L.L.C., a  
Delaware limited liability company,  
its general partner

By: 

Its: Manager

**DAVID M. PORTER**

  
**JOHN C. GILBERT**



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LENDER:

**BUILDERS BANK**, an Illinois banking  
corporation

By: COB.A

Name: CHARLES B. HALL

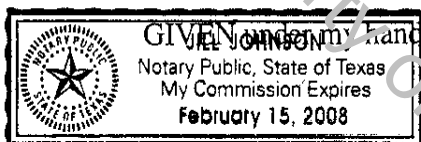
Title: PRESIDENT

Property of Cook County Clerk's Office

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STATE OF Texas  
COUNTY OF Dallas ) SS

I Jill Johnson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John C. Gilbert, personally known to me to be the Manager of PNL Holdings Company, L.L.C., a Delaware limited liability company, the general partner of PNL Partners 2001, L.P., a Delaware limited partnership, the sole member of PNL Homan Square, LLC, a Delaware limited liability company, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered said instrument as his free and voluntary act as aforesaid in his capacity as Manager of such limited liability company, for the uses and purposes therein set forth.



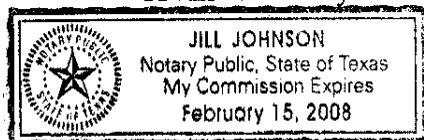
GIVEN under my hand and Notarial Seal this 23<sup>rd</sup> day of July, 2004.

Jill Johnson  
Notary Public

My Commission Expires: 2-15-2008

STATE OF Texas  
COUNTY OF Dallas ) SS

I Jill Johnson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John C. Gilbert, personally known to me to be the Manager of PNL Holdings Company, L.L.C. a Delaware limited liability company, the general partner of PNL ASSET MANAGEMENT, L.P., a Delaware limited partnership, and 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 free and voluntary act as aforesaid in his capacity as Manager of such limited liability company for the uses and purposes therein set forth.



GIVEN under my hand and Notarial Seal this 23<sup>rd</sup> day of July, 2004.

Jill Johnson  
Notary Public

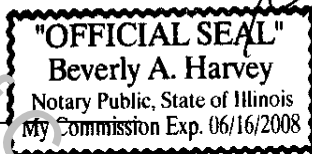
My Commission Expires: 2-15-2008

## UNOFFICIAL COPY

STATE OF Illinois  
COUNTY OF Cook ) SS

I Beverly A. Harvey, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DAVID M. PORTER, is 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 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 2nd day of August, 2004.



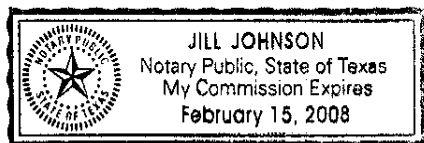
Beverly A. Harvey  
Notary Public

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

STATE OF Texas  
COUNTY OF Dallas ) SS

I Jill Johnson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN C. GILBERT, is 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 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 23rd day of July, 2004.



Jill Johnson  
Notary Public

My Commission Expires: 2-15-2008

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STATE OF \_\_\_\_\_ )  
 ) SS  
 COUNTY OF \_\_\_\_\_ )

I \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DAVID M. PORTER, is 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 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 \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
 Notary Public

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

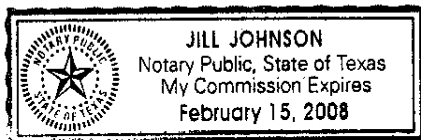
STATE OF Texas )  
 ) SS  
 COUNTY OF Dallas )

I Jill Johnson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN C. GELPERT, is 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 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 30<sup>th</sup> day of July, 2004.

Jill Johnson  
 Notary Public

My Commission Expires: 2-15-2008



**UNOFFICIAL COPY****EXHIBIT A****THE PROPERTY**

THAT PART OF LOTS 8, 9, 10, 11 AND 12 IN BLOCK 1 IN HENRY E. VANCE'S RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 21, 1904, A DOCUMENT 3635041, IN THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNIG AT THE NORTHWEST CORNER OF SIAD BLOCK 1, ALSO BEING THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF SOUTH HOMAN AVENUE AND THE SOUTH RIGHT OF WAY LINE OF WEST ARTHINGTON STREET; THENCE SOUTH 89 DEGREES, 14 MINUTES 04 SECONDS EAST ALONG THE NORTH LINE OF SAID BLOCK 1, ALSO BEING SAID SOUTH RIGHT OF WAY LINE OF WEST ARTHINGTON STREET, A DISTANCE OF 489.02 FEET; THENCE SOUTH 00 DEGREES 40 MINUTES 38 SECONDS WEST, A DISTANCE OF 179.02 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 36 SECONDS WEST, A DISTANCE OF 125.37 FEET; THENCE NORTH 00 DEGREES 19 MINUTES AND 24 SECONDS EAST A DISTANCE OF 14.32 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 36 SECONDS WEST A DISTANCE OF 50.54 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 24 SECONDS WEST A DISTANCE OF 18.34 FEET; THENCE NORTH 89 DEGREES 13 MINUTES 59 SECONDS WEST A DISTANCE OF 140.09 FEET; THENCE NORTH 00 DEGREES 46 MINUTES 01 SECONDS EAST, A DISTANCE OF 9.13 FEET; THENCE NORTH 89 DEGREES 13 MINUTES 59 SECONDS WEST A DISTANCE OF 101.98 FEET TO A POINT ON THE WEST LINE OF SAID BLOCK 1, ALSO BEING SAID EAST RIGHT OF WAY LINE OF SOUTH HOMAN AVENUE, THENCE NORTH 00 DEGREES 19 MINUTES 24 SECONDS EAST ALONG SAID WEST LINE OF BLOCK 1, ALSO BEING SAID EAST RIGHT OF WAY LINE OF SOUTH HOMAN AVENUE, A DISTANCE OF 195.21 FEET TO SAID POINT OF BEGINNING; IN COOK COUNTY ILLINOIS.

PIN# 16-14-417-006

Address - 3333 W. Arthington  
Chicago, IL