

# UNOFFICIAL COPY

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## THIRD MODIFICATION AGREEMENT

THIS THIRD MODIFICATION AGREEMENT (the "Agreement") is made as of the 30th day of September, 1992 by and between BOULEVARD BANK NATIONAL ASSOCIATION, a national banking association, formerly known as National Boulevard Bank of Chicago ("Lender"), PARKWAY BANK AND TRUST COMPANY, not personally but as Trustee under Trust Agreement dated December 27, 1982 and known as Trust No. 6336 ("Borrower"), BREUER ELECTRIC MFG. CO., an Illinois corporation ("Beneficiary"), ADAM A. BREUER ("Breuer") and LINDA BREUER-MURRAY ("Murray") (Breuer and Murray are sometimes collectively referred to as "Guarantor").

### RECITALS:

A. Borrower is the record owner of certain real estate located in Cook County, Illinois and legally described on Exhibit A attached hereto (the "Property"). Beneficiary is the sole beneficiary of Borrower. Breuer has the sole power of direction under Borrower and is the Chairman of the Board of Directors of Beneficiary.

B. Pursuant to a loan transaction under which Lender has advanced certain funds to Borrower (the "Loan"), Lender is the holder of a certain Mortgage Note (dated March 25, 1985 (the "Note") in the original principal amount of One Million Three Hundred Fifty Thousand and 00/100 Dollars (\$1,350,000.00) made by Borrower and Beneficiary payable to the order of Lender. The date for the payment of the principal balance due under the Note was September 1, 1991 (the "Maturity Date").

C. The Note is guaranteed pursuant to the terms of an Amended and Restated Guaranty dated as of August 1, 1991 (the "Guaranty") executed by Guarantor in favor of Lender. The Note is secured by, among other things, (i) a Mortgage and Security Agreement dated March 25, 1985 (the "Mortgage") made by Borrower in favor of Lender, encumbering the Property and recorded with the Cook County, Illinois Recorder of Deeds on May 13, 1985 as Document No. 85016598, and (ii) an Irrevocable Right to Approve Trust Documents dated March 25, 1985 (the "Irrevocable Right") made by Beneficiary in favor of Lender.

D. The Note and Mortgage were modified pursuant to (i) a Modification Agreement dated January 23, 1986 by and between Lender and Borrower and consented to by Beneficiary and Breuer, which, among other things, extended the Maturity Date to January 1, 1992; and (ii) a Second Modification Agreement dated as of August 1, 1991 by and among Lender, Borrower, Beneficiary and Breuer and recorded with the Cook County, Illinois Recorder of Deeds of September 4, 1991 as Document No. 91454378, which, among other things, increased the principal amount of the Note to One Million Seven Hundred

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Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$1,747,500.00) and extended the Maturity Date to July 31, 1996;

E. Borrower, Beneficiary, Guarantor and Lender have agreed to further modify the Note and Mortgage as provided below.

For and in consideration of the premises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree that the Note and Mortgage are modified as follows:

1. Financial Covenants. Beneficiary represents, warrants and covenants to Lender that until the Note has been paid in full, it shall (i) at all times hereafter maintain a ratio of "Indebtedness" (as defined below) to "Tangible Net Worth" (as defined below) of not more than 1:4; (ii) at all times hereafter limit its capital expenditures during any calendar year to not more than Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) unless otherwise agreed to in writing by Lender; and (iii) commencing with the first quarter of calendar year 1993 and continuing in each consecutive quarter thereafter, achieve earnings after taxes (as determined in accordance with generally accepted accounting principles applied on a basis consistent with prior periods) of not less than zero. For purposes of this paragraph: (a) "Indebtedness" shall mean all of Beneficiary's liabilities, obligations and indebtedness to any person, entity or agency of any and every kind and nature, whether primary, secondary, direct, indirect, absolute, contingent, fixed or otherwise, heretofore, now or hereafter owing, due or payable, however evidenced, created, incurred, acquired or owing and however arising, whether under written or oral agreement, by operation of law or otherwise. Without in any way limiting the generality of the foregoing, Indebtedness specifically includes all obligations or liabilities of any person, entity or agency which are secured by any lien, claim, encumbrance or security interest upon property owned by Beneficiary even though Beneficiary has not assumed or become liable for the payment thereof, all obligations or liabilities created or arising under any lease of real or personal property, conditional sale or other title retention agreement with respect to property used or acquired by Beneficiary, even though the rights and remedies of the lessor, seller or lender thereunder are limited to repossession of such property, all unfunded pension fund obligations and liabilities, and all deferred taxes; and (b) "Tangible Net Worth" shall mean, as of any particular date, the difference between Beneficiary's consolidated total assets as they would normally be shown on the balance sheet of Beneficiary, but excluding therefrom all values attributable to goodwill, patents, copyrights, trademarks, licenses, other general intangibles (other than intangible pension assets) and accounts due from affiliated entities of Borrower, and Beneficiary's consolidated total liabilities and deferred charges as they would usually be shown on

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such balance sheet, including as liabilities all guarantees of the indebtedness of affiliated entities of Borrower.

2. Real Estate Taxes/Datedown Title Endorsement. On or before the date of this Agreement, Guarantor and/or Beneficiary shall cause (i) all real estate taxes attributable to the Property which are currently due and payable or delinquent, and any penalties and interest, to be redeemed and/or paid in full; and (ii) Chicago Title Insurance Company to issue to Lender an endorsement to its Loan Policy No. 6993854 (the "Policy") (a) extending the effective date of the Policy through the date of the recording of this Agreement, (b) insuring the first priority lien of the Mortgage, subject only to the Schedule B exceptions listed on the Policy, (c) raising no additional Schedule B exceptions unless approved by Lender, and (d) reflecting that all real estate taxes due and owing with respect to the Property have been fully paid.

3. Full Force and Effect - Loan Documents. All references in the Note, the Mortgage, the Guaranty and the Irrevocable Right to the Note and the Mortgage shall mean the Note and the Mortgage as modified by this Agreement. Except as expressly modified by this Agreement, the Note, the Mortgage, the Guaranty, the Irrevocable Right and all other documents in connection with the Loan shall remain unmodified and in full force and effect in accordance with their terms.

4. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Illinois.

5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

6. Exculpation. This Agreement is executed by Parkway Bank and Trust Company, not personally but as Trustee under Trust No. 6336, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and is payable only out of the Property given to secure payment of the Note. The original and each successive holder of this Agreement agree that no personal liability shall be asserted or be enforceable against Borrower or any person interested beneficially or otherwise in the Property, or in the property or funds at any time subject to the trust agreement, because of or with respect to this Agreement or the making, issue or transfer of this Agreement, all such liability, if any, being expressly waived by each taker and holder of this Agreement, but nothing shall modify or discharge the personal liability expressly assumed by Guarantor and Linda Breuer-Murray, and each original and successive holder of this Agreement accepts the same upon the express condition that no duty shall rest upon Borrower, either personally or as trustee, to sequester the rents,

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issues and profits arising from the Property, or the proceeds arising from the sale or other disposition of the Property, but that in the event of a default under this Agreement, the sole remedy of the holder shall be to foreclose the lien of the Mortgage in accordance with the terms and provisions of the Mortgage, or to enforce the personal liability of Guarantor and/or Linda Breuer-Murray, or both.

LENDER:

BOULEVARD BANK NATIONAL ASSOCIATION, a national banking association

By: [Signature]  
Its: [Signature]

BORROWER:

PARKWAY BANK AND TRUST COMPANY, not personally but as Trustee under Trust Agreement dated December 27, 1982 and known as Trust No. 6336

ATTEST:

By: [Signature]  
Its: Assistant Trust Officer

By: [Signature]  
Its: Asst. Vice President Trust Officer

GUARANTOR:

[Signature]  
Adam A. Breuer

[Signature]  
Linda Breuer-Murray

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BENEFICIARY:

BREUER ELECTRIC MFG. CO.,  
an Illinois corporation

ATTEST:

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

By: Linda Breuer-Murray  
Its: President

## RATIFICATION

The undersigned, as guarantors of the Note described in the foregoing Agreement, hereby acknowledge and agree that except as amended by the foregoing Agreement, the Guaranty, as defined in the foregoing Agreement, remains unchanged and in full force and effect in accordance with its terms and is hereby ratified and confirmed.

Adam A. Breuer  
Adam A. Breuer, Guarantor

Linda Breuer-Murray  
Linda Breuer-Murray, Guarantor

This Instrument was prepared by  
and after recording mail to:

Mark S. Litner, Esq.  
MUCH SHELIST FREED DENENBERG & AMENT, P.C.  
200 North LaSalle Street  
Suite 2100  
Chicago, Illinois 60601  
(312) 346-3100

RECORDED IN ILLINOIS  
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STATE OF ILLINOIS    )  
                          ) SS  
COUNTY OF C O O K    )

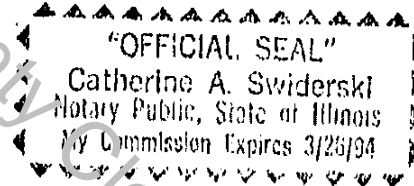
I, CATHERINE A. SWIDERSKI, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Kent Hardy, personally known to me to be the V.P. of BOULEVARD BANK NATIONAL ASSOCIATION, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such V.P. said bank he signed and delivered this instrument as his own free and voluntary act, and as the free and voluntary act and deed of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 7th day of ~~October~~, 1992.  
DECEMBER

Catherine A. Swiderski  
Notary Public

My Commission Expires:

\_\_\_\_\_, 19 \_\_\_\_



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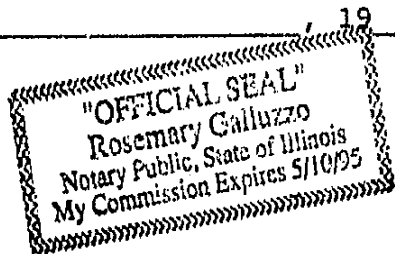
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

I, Rosemary Galluzzo, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that James J. [unclear] and Joanna [unclear], personally known to me to be the ASSISTANT T.O. and ASSIST T.O., respectively, of PARKWAY BANK AND TRUST COMPANY, not personally but as Trustee under Trust No. 6336, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such ASSISTANT T.O. and ASSIST T.O. of said bank they signed and delivered this instrument as their own free and voluntary acts, and as the free and voluntary acts and deeds of said bank, in its capacity as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23rd day of ~~October~~, 1992.  
November

Rosemary Galluzzo  
Notary Public

My Commission Expires:



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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

I, Judith A. Cantacessi, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that ADAM A. BREUER, 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 this instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of ~~October~~, 1992.  
NOVEMBER

Judith A. Cantacessi  
Notary Public

My Commission Expires:

June 30, 1994



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

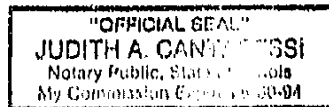
I, Judith A. Cantacessi, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that LINDA BREUER-MURRAY, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered this instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of ~~October~~, 1992.  
NOVEMBER

Judith A. Cantacessi  
Notary Public

My Commission Expires:

June 30, 1994



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STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF C O O K    )

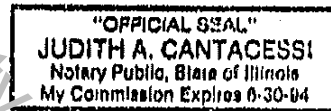
I, Judith A. Cantacessi, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Adam A. Breuer and Linda Breuer Murray, personally known to me to be the Chairman of the Board and President, respectively, of BREUER ELECTRIC MFG. CO., and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Adam A. Breuer and Linda Breuer Murray of said corporation they signed and delivered this instrument as their own free and voluntary acts, and as the free and voluntary acts and deeds of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of ~~October~~, 1992.  
NOVEMBER

Judith A. Cantacessi  
Notary Public

My Commission Expires:

June 30, 1994



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## EXHIBIT A

### Legal Description

#### PARCEL 1:

LOTS 6, 7 AND THE NORTH 1/2 OF LOT 8 IN KLEFSTAD'S INDUSTRIAL ADDITION TO HARWOOD HEIGHTS, A SUBDIVISION IN THE NORTH EAST 1/4 OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

LOTS 13 AND 14 IN BLOCK 1 AND THAT PART OF LOTS 15 TO 18 IN SAID BLOCK 1 LYING NORTH OF A LINE DRAWN FROM A POINT IN THE EAST LINE OF SAID LOT 15 WHICH IS 47.80 FEET SOUTH OF THE NORTH EAST CORNER OF SAID LOT 15 TO A POINT IN THE WEST LINE OF SAID LOT 18, WHICH IS 42.60 FEET SOUTH OF THE NORTH WEST CORNER OF SAID LOT 18, TOGETHER WITH THE EAST AND WEST VACATED 20 FOOT PUBLIC ALLEY IN SAID BLOCK 1 LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF SAID LOT 14 AND THE SOUTH LINE OF SAID LOT 14, EXTENDED EAST TO THE EAST LINE OF SAID BLOCK 1 AND LYING NORTH OF AND ADJOINING THE NORTH LINE OF SAID LOTS 15 TO 18 AND THAT PART OF THE VACATED NORTH AND SOUTH PUBLIC ALLEY IN SAID BLOCK 1, LYING EAST OF AND ADJOINING THE EAST LINE OF LOTS 13 AND 14 AFORESAID, ALL IN LAWRENCE LAWN'S ADDITION BEING A SUBDIVISION OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE EAST 1/2 OF THE WEST 1/2 OF THE WEST 1/2 OF THE NORTH EAST 1/4 AND OF THE NORTH 1/2 OF THE WEST 10 ACRES OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTH EAST 1/4 OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Tax Nos.: 12-13-202-013; 12-13-202-014; 12-13-202-019;  
12-13-203-023; 12-13-203-024; 12-13-203-025

Common Address: 7401 West Lawrence Avenue  
Harwood Heights, Illinois

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