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*This Instrument Was Prepared By
And When Recorded Please Return To:*

NBD BANK
100 East Higgins Road
Elk Grove Village, Illinois 60007

DEPT-01 RECORDING \$55.00
140000 TRAN 8023 06/08/94 11146100
20413 4 C. J. *-94-506958
COOK COUNTY RECORDER

**FIRST EXTENSION AND MODIFICATION AGREEMENT TO
MORTGAGE AND OTHER LOAN DOCUMENTS**

RE: Loan 8581035/0002125

THIS FIRST EXTENSION AND MODIFICATION AGREEMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS ("Agreement") is made and effective as of February 15, 1994 between NBD Bank, as Successor Trustee to NBD Trust Company of Illinois, not personally but as Trustee under Trust Agreements dated February 8, 1990 and known as Trust No's. 2686EG, 2687EG, 2688EG, and 2690EG, (the "Borrower") and NBD Bank, Successor by Merger to NBD Elk Grove Bank, having its principal office at 211 South Wheaton Avenue, Wheaton, IL. 60187, its successors and assigns (the "Bank").

WITNESSETH:

WHEREAS, the Bank has loaned to the Borrower the sum of \$450,000.00 (the "Loan"), as evidenced by a Mortgage Note dated February 6, 1992, made by the Borrower and payable to the Bank (the "Note") which has an outstanding principal balance as of the effective date hereof of \$325,000.00; and

WHEREAS, in addition to the Mortgage Note, the Borrower has executed or caused to be executed and delivered to the Bank certain other documents which provide for, secure repayment of, or otherwise relate to, the Loan, including but not limited to a certain Mortgage and Security Agreement, and a certain Assignment of Rents and of Lessor's Interest in Leases dated February 6, 1992, which Mortgage and Security Agreement and Assignment of Rents and of Lessor's Interest in Leases were duly recorded on February 15, 1992 as document numbers 92100646 and 92100647, respectively, mortgage or instrument in the nature of a mortgage ("Mortgage") constituting a lien upon the property legally described upon Exhibit A together with all improvements thereon ("Premises") (all documents collectively referred to as the "Loan Documents"); and

WHEREAS, for convenience, the signator of the Mortgage or instrument in the nature of a mortgage is referred to as "Mortgagor"; and

WHEREAS, certain obligations in the Loan Documents are guaranteed as hereinafter identified ("Guaranty"); and

MCOR TITLE INSURANCE
BOX 15



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WHEREAS, under the terms of the Loan Documents the Loan is due and payable in full on February 15, 1994 ("Maturity Date"); and

WHEREAS, the Borrower and any Guarantor and the Bank wish to enter into this Agreement in order to amend the terms of the Loan, the Mortgage and other Loan Documents as provided herein and to set forth certain additional agreements as also provided herein;

NOW, THEREFORE, in consideration of the premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The above and foregoing recitals are incorporated into and made a part of this Agreement.
2. **Extension of Existing Maturity Date.** The Existing Maturity Date is hereby extended from February 15, 1994 to February 15, 1995 ("Maturity Date").
3. **Modification of Mortgage.** It is specifically agreed that the Mortgage is hereby amended and modified effective as of the date of its original recording to provide for the addition of the following:

"Nothing herein to the contrary withstanding, this Mortgage has been given, in part, to secure (i) the payment when and as due and payable of the principal sum of and interest on the Note, (ii) the payment of all other indebtedness which this Mortgage secures pursuant to its terms or which is payable under the terms of the Note, (iii) any debt of the mortgagor to the mortgagee and any debt of any guarantor to the mortgagee, (iv) the performance and observance of the covenants and agreements contained in and the payment of all obligations and liabilities of the mortgagor under this Mortgage, the Note and the other Loan Documents, and (v) any extensions, refinancings, renewals, modifications, replacements or amendments of any of the foregoing matters in (i), (ii), (iii) and/or (iv), and the Mortgagor does by these presents grant, transfer, bargain, set over, remise, release, assign, alien, warrant, pledge, sell, convey, and mortgage unto the mortgagee, its successors and assigns forever, the real estate described in Exhibit A attached hereto and made a part hereof together with all improvements thereon ("Premises") and all of the mortgagor's estate, right, title, and interest therein."

4. **Compliance.** The Borrower and the Premises shall at all times until the Loan and all other amounts secured by the Mortgage have been paid in full, and until all of the Mortgage covenants have satisfied in full, all to the Bank's satisfactions, comply and be in compliance with all the laws, Statutes, Ordinances, Orders, rules, and/or Regulations of the United States, the

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State of Illinois, and any political subdivision thereof and any agency, department, commission board, bureau or instrumentality or any other state or quasi-governmental agency or body having jurisdiction over the Borrower or the Premises.

5. **Notice of Default.** The giving of any notice, or the granting of any right to cure any breach of the terms, provisions or obligations under any of the Loan Documents, to the extent expressly permitted under the Loan Documents, if at all, shall not be a condition precedent to the existence of a default; such default shall exist as of the date of such breach or violation of any term, provision or obligation under any of the Loan Documents, regardless if any required notice is given.

6. **Event of Default.** Nothing herein or in any Loan Document to the contrary, any breach or default of any term, condition, representation, warranty or covenant of this Agreement shall constitute and be construed as an event of default under each and every Loan Document; and, the occurrence of any event of default under any other Loan Document shall constitute and be construed as an event of default under this Agreement. It shall constitute an Event of Default under this Agreement if any default occurs under any instrument or document now or hereafter evidencing, securing or otherwise relating to any debt or obligation of the Borrower or any Guarantor to the Bank.

7. **Terms.** Upon the effective date hereof, the terms of the Loan shall be as follows:

a. Commencing on February 15, 1994 and continuing on the 15th day of each month thereafter payments of interest only, calculated on the outstanding principal balance at the rate of one-half percent per annum in excess of the Prime Rate of NBD Bank in effect from time to time, adjusted daily for the remaining term of this loan, computed on the basis of a year consisting of 360 days and charged for the actual number of days elapsed within the period for which interest is being charged with a default rate of the Prime Rate plus four and one-half percent. The term "Prime Rate", as used herein, will mean at any time the Prime Rate of the Bank as announced from time to time by the Bank at its main office. It is expressly agreed that the use of the term "Prime Rate" is not intended to nor does it imply that said rate of interest is a preferred rate of interest or one which is offered by the Bank to its most credit worthy customers. Final payment of all outstanding principal and accrued interest, if not sooner paid, will be due and payable on February 15, 1995. THIS IS A BALLOON NOTE AND ON THE MATURITY DATE A SUBSTANTIAL PORTION OF THE PRINCIPAL AMOUNT OF THIS NOTE WILL REMAIN UNPAID.

b. **Other:**

i. **No Prepayment Premium.** The Borrower may at any time prepay the principal obligation under this Loan, in whole or in part, without premium or penalty provided that the Loan continues to

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float with Prime and the Mortgage covenants are not in default. Any and all prepayments shall be applied to installments of principal in their inverse order of maturity.

- ii. **Late Charges.** The Bank may impose for any month in which the monthly payment is received more than fifteen (15) days after its due date, a late charge of five percent (5%) of the amount of the monthly payment due.
- iii. **Bank's Right of Setoff.** The Bank may, at any time hereafter, without notice, appropriate and apply toward the payment of the principal obligation under this Loan, whether due or not, any moneys, credits or other property belonging, individually or collectively, to the Borrower and Guarantor, as hereinafter defined, in the possession or under the control of the Bank, as well as any indebtedness (whether then due or not then due) of the Bank to the Borrower/Guarantor however created or arising, including, but without limitation to, any and all balances, credits, deposits, accounts, or moneys of the Borrower/Guarantor, and the Bank is hereby given a first or prior lien upon such moneys, credits, indebtedness and other property; and the Bank may exercise none or any one or more of the foregoing options.
- iv. **Loan Expenses.** The Borrower hereby requests and authorizes the Bank to make advances for payment and reimbursement of all charges, costs and expenses incurred by the Bank in connection with this Agreement, including but not limited to (i) any points, loan fees, service charges or other fees due to the Bank in connection with this Agreement; (ii) all title examination, survey, environmental audit expense, escrow, filing, search, recording, registration and release of documents fees and charges; all documentary stamp and other taxes and charges imposed by law on the issuance or recording of any of this Agreement; all appraisal fees; all title, casualty, liability, payment, performance or other insurance or bond premiums; and all fees and disbursements of all professionals, including legal counsel engaged by the Bank in connection with this Agreement.
- v. **No Interest Payable on Reserve or Escrow Accounts.** No interest shall be paid by the Bank for the benefit of the Borrower, Mortgagor or any Guarantor upon any funds deposited with and held by the Bank for real estate taxes and assessments, insurance, or for any other Reserve or Escrow Accounts which the Bank shall require.

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8. **Current Representations And Warranties.** To induce the Bank to enter into this Agreement, the Borrower, Mortgagor and/or Guarantor hereby represents and warrants to the Bank as follows:

- a. **Financial Statements.** The most recent financial statements provided to the Bank fairly present the financial condition at the date thereof and the results of operations of the Premises for the period(s) covered thereby.
- b. **No Default.** No default or event of default under the Note or the Loan Documents has occurred and is continuing, and no event has occurred and is continuing that, with the giving of notice or passage of time or both, would constitute such a default or event of default.
- c. **Continued Accuracy.** Each and every representation and warranty made by the Borrower, Mortgagor and/or Guarantor in favor of the Bank in connection with the Loan remains accurate in all respects, subject only to changes expressly permitted by the Bank.

9. **Reaffirmation.** To the extent any term(s) or condition(s) in the Note or any of the Loan Documents shall contradict or be in conflict with the amended terms of the Loan as set forth herein, such terms and conditions are hereby deemed modified and amended accordingly, upon the effective date hereof, to reflect the terms of the Loan as so amended herein. All terms of the Note and the Loan Documents, as amended hereby, shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable obligations of the Borrower to the Bank. Upon the effective date hereof, the Borrower herein restates, ratifies and reaffirms each and every term and condition set forth in the Note and the Loan Documents as amended herein.

10. **Certification.** To further induce the Bank to enter into this Agreement the Borrower/Beneficiary is delivering to the Bank contemporaneously herewith a certificate of the Borrower/Beneficiaries as to the resolutions of the Borrower/Beneficiaries approving this Agreement and the incumbency and signatures of the Borrower/Beneficiary signing this Agreement.

11. **Absence Of Claim.** To further induce the Bank to enter into this Agreement, the Borrower hereby acknowledges and agrees that, as of the date hereof, there exists no right of offset, defense, counterclaim or objection in favor of the Borrower as against the Bank with respect to the Borrower's obligations to the Bank.

12. **Waivers.** To the extent permitted by applicable law, the Borrower, Mortgagor and any Guarantor shall not and will not apply for or avail themselves of any appraisal, valuation, redemption, stay, extension, or exemption laws or any so called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the Mortgage, but hereby waives the benefit of such laws. The Borrower, Mortgagor and any Guarantor, for themselves and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien

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hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. The Borrower, Mortgagor and any Guarantor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of the Borrower, Mortgagor and any Guarantor, the trust estate, if any, and all persons beneficially interested therein, if any, and each and every person acquiring any interest in or title to the Premises described herein subsequent to the date of this Agreement, and on behalf of all other persons to the extent permitted by law. THE BORROWER, MORTGAGOR AND ANY GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THE MORTGAGE, THE NOTE, ANY OTHER OF THE LOAN DOCUMENTS OR THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

13. **Environmental And Financial Covenants.** To further induce the Bank to enter into this Agreement, in addition to the covenants and agreements of the Borrower set forth in the Note and the other Loan Documents, the Borrower and any Guarantor agree with the Bank as follows:

Hazardous Material Regulations Compliance.

- a. **Representations and Warranties.** The Borrower and any Guarantor represent to the Bank that:

Neither the Borrower nor any Guarantor has used Hazardous Materials (as defined below), on, from or affecting any property given as security to the Bank for repayment of the Loan (hereinafter the "Premises") in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and, to the best of the Borrower's and any Guarantor's knowledge, no prior owner of the Premises or any existing or prior tenant, or occupant has used Hazardous Materials on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials;

Neither the Borrower nor any Guarantor has ever received any notice of any violations (and is not aware of any existing violations) of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials at the Premises and, to the best of the Borrower's and any Guarantor's knowledge, there have been no actions commenced or threatened by any party for noncompliance which affects the Premises.

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The Borrower and any Guarantor shall keep or cause the Premises to be kept free of Hazardous Materials except to the extent that such Hazardous Materials are stored and/or used in compliance with all applicable federal, state and local laws and regulations; and, without limiting the foregoing, neither the Borrower nor any Guarantor shall cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall the Borrower or any Guarantor cause or permit, as a result of any intentional or unintentional act or omission on the part of Borrower or any tenant, subtenant or occupant, a release, spill, leak or emission of Hazardous Materials onto the Premises or onto any contiguous property;

The Borrower and any Guarantor shall conduct and complete all investigations, including a comprehensive environmental audit, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Premises as required by all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the satisfaction of the Bank, and in accordance with the orders and directives of all federal, state and local governmental authorities. If either the Borrower or any Guarantor fails to conduct an environmental audit required by the Bank, then the Bank may at its option and at the expense of the Borrower, conduct such audit.

- b. **Indemnification.** Subject to the limitations set forth below, the Borrower and any Guarantor shall defend, indemnify and hold harmless the Bank, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, attorneys and consultant's fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to (i) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Premises; (iii) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials with respect to the Premises, and/or (iv) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Bank, which are based upon or in any way related to such Hazardous Materials used in the Premises. The indemnity obligations under this paragraph are specifically limited as follows:

Neither the Borrower nor any Guarantor shall have any indemnity obligation with respect to Hazardous Materials that are first introduced to the Premises or any part of the Premises subsequent to the date that the Borrower's interest in and possession of the Premises or any part of the Premises shall have fully terminated by foreclosure of any Mortgage given to the Bank or acceptance by the Bank of a deed in lieu of foreclosure;

Neither the Borrower nor any guarantor shall have any indemnity obligation with respect to any Hazardous Materials introduced to the Premises or any part of the Premises by the Bank, its successors or assigns.

The Borrower and any Guarantor agree that in the event any Mortgage given to the Bank is foreclosed or the Borrower tenders a deed in lieu of foreclosure, the Borrower and any Guarantor shall deliver the Premises to the Bank free of any and all Hazardous Materials which are then required to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises.

- c. **Definitions.** For purposes of this Agreement the term "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et. seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et. seq.) and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule or regulation.
- d. **Additional Obligation.** The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Borrower and any Guarantor may have to the Bank under this Agreement, the Loan Documents, or by law, and shall survive: (i) the repayment of all sums due for the debt; (ii) the satisfaction of all of the other obligations of the Borrower and any Guarantor in any Mortgage and under any Loan Document; (iii) the discharge of any Mortgage given to the Bank; and (iv) the foreclosure of any Mortgage or acceptance of a deed in lieu of foreclosure. Notwithstanding anything to the contrary contained in this Agreement, it is the intention of the Borrower, any Guarantor and the Bank that the indemnity provisions of this paragraph shall only apply to an action commenced against any owner or operator of the Premises in which any interest of the Bank is threatened or any claim is made against the Bank for the payment of money.

14. **Maintenance Of Books And Records.**

a. **Maintenance Of Records.** The Borrower, Mortgagor and/or Guarantor shall keep and maintain or cause to be kept and maintained full and correct books and records showing in detail all aspects of the Premises and within ten (10) days after demand therefore to permit the Bank, during normal business hours, to examine and photocopy such books and records and all supporting vouchers and data, at any time and from time to time, on request at the Borrower's, Mortgagor's or Guarantor's offices, or at such other location as may be mutually agreed upon.

b. **Furnish Records.** The Borrower, Mortgagor and any Guarantor shall within ninety (90) days after the end of each fiscal or, where applicable, calendar year, furnish to the Bank year end financial statements relating to the Premises for such fiscal (or calendar) year, in reasonable detail, and in any event including such itemized statements of receipts and disbursements as shall enable the Bank to determine whether a breach or other default of this Agreement or the Loan Documents then exists. Such financial statements shall be prepared at the Borrower's expense and be prepared in accordance with generally accepted accounting principles and shall include a statement as to whether or not the Borrower, Mortgagor and any Guarantor has knowledge of any event or circumstance which constitutes or with the passage of time will constitute an event of default hereunder or under any other document executed in connection with or in any way related to this Loan. The Borrower, Mortgagor and any Guarantor shall provide the Bank with all other income tax and financial information in the manner required under the other Loan Documents.

c. **Affidavit Of Leases.** The Borrower shall furnish, together with the foregoing financial statements and at any time upon the Bank's request, a then current and accurate Affidavit of Lease(s) upon Mortgaged Premises and Estoppel Certificate from each tenant to the Bank, in a form and with content as then required by the Bank which documents shall show and evidence all information and additional documents reasonably requested by the Bank.

d. **Reimbursement Of Expenses.** In the event the Borrower, Mortgagor and any Guarantor fails to comply with any of the above requirements and the Bank shall pay expenses in connection with obtaining of any of said required documents, including payment of attorney's fees, all such monies paid shall be deemed and construed as additional indebtedness due by the Borrower to the Bank and secured by the Mortgage, and shall become due and payable by the Borrower to the Bank upon payment or disbursement by the Bank, without notice and with interest thereon at the interest rate required under the Note to be paid in the event of a default by Borrower.

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15. **Additional Documentation.** Borrower, Mortgagor and any Guarantor shall execute and deliver to Bank, or cause to be executed and delivered to Bank from time to time, immediately upon Bank's request, all documents, including changes to any of the existing documents, required by Bank as Bank reasonably deems necessary to protect its security in any existing collateral security for the indebtedness described above.

16. **Understanding Of Consequences.** Each party acknowledges that they have read this Agreement, that they fully understand its terms, provisions, and consequences; and, that the entry into this Agreement is voluntary, free from duress, fraud or undue influence of any kind.

17. **Effective Date.** This Agreement shall be and become effective and binding pursuant to its terms after execution as of the date first above written. It is understood and agreed that said date shall be the effective date even though that date may be a date other or different than the actual date of execution.

18. **Illinois Law To Govern.** This Agreement and each transaction contemplated hereunder shall be deemed to be made under and shall be construed and interpreted in accordance with the laws of the State of Illinois.

19. **Construction.** It is agreed that it is both the intent and the desire of the parties that wherever possible each provision of this Agreement shall be given a judicial construction and interpretation so as to be effective and valid under Illinois law, but if any provision of this Agreement shall be construed or prohibited by or determined invalid under the laws of the State of Illinois, such provision shall be ineffective to the extent of such prohibition or invalidity only, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

20. **Attorney's Fees.** Borrower shall pay Bank's attorneys' fees and costs in connection with the administration and enforcement of this Agreement, any additional documentation required by Bank and any and all of the Loan Documents. Without limiting the generality of the foregoing, if the Bank employs counsel for advice or other representation with respect to any matter concerning the Borrower, Guarantor, this Agreement, the Premises or any aspect of the Loan Documents or to protect, collect, lease, sell, take possession of, or liquidate any of the Premises, or to attempt to enforce or protect any rights of the Bank or obligations of Borrower or any other person, firm or corporation which may be obligated to Bank by virtue of this Agreement or under any of the Loan Documents, then all of the attorneys' fees arising from such services, and any expenses, costs and charges relating thereto, shall constitute an additional indebtedness owing by Borrower to Bank payable on demand and evidenced and secured by the Loan Documents.

21. **Partial Invalidity.** Any one or more phrases, sentences, sections or provisions of this Agreement which subsequently shall be deemed, construed or interpreted by a court of competent jurisdiction to be unenforceable, invalid or contrary to law, or the inclusion of which would effect the validity or legal enforceability of this Agreement, shall be of no force or effect;

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and, in such event each of the remaining provisions of this Agreement shall subsist and remain and be fully effective according to the tenor of this Agreement as though any such unenforceable, invalid or unlawful provision or provisions had never been included in this Agreement.

22. **Modification.** Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated orally, unless such is deemed unenforceable, invalid or contrary to law as provided above. Rather, any provision of this Agreement may be amended, waived, discharged or terminated only by a written instrument duly executed and acknowledged by each and every of the parties to this Agreement and by no other means.

23. **Binding Effect.** The terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of each respective party and their respective legal representatives, successors and assigns.

24. **Cumulative Rights.** Each right, power, and remedy herein conferred upon any party is cumulative and in addition to every other right, power, or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by either party, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power, or remedy; and no delay or omission of either party in the exercise of any right, power, or remedy accruing hereunder or arising otherwise shall impair any such right, power, or remedy, or be construed to be a waiver of any default, or acquiescence therein.

25. **Non-Waiver.** The failure to insist upon strict performance of any of the terms, covenants, obligations or conditions hereof shall not be deemed a waiver of any rights or remedies that any party may have and shall not be deemed a waiver of any subsequent breach or default in any such terms, covenants or conditions.

26. **Notices.** All notices which any party may be required or may desire to give in connection with this Agreement shall be in writing, and shall be either personally delivered, sent by overnight express delivery by a nationally recognized delivery service, freight pre-paid, or sent by United States registered or certified mail, postage pre-paid, and addressed as follows:

- (a) If to the Bank at the address first set forth above to the attention of the Real Estate Loan Department.
- (b) If to the Borrower at the address set forth below.
- (c) If to the Guarantor at the address set forth below.

27. **Duplicate Originals.** This Agreement may be executed simultaneously or otherwise in one or more identical counterparts, each of which shall be deemed and construed as an original, and all of which shall be construed together to constitute one and the same document.

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It is specifically agreed and acknowledged by each party that in the event of an actual or alleged variation or discrepancy between two or more executed duplicate originals, the executed duplicate original in the possession of the Bank shall control.

28 Paragraph Headings. Each party acknowledges that this Agreement consists of multiple sections each of which is preceded by a heading and understands that the characterizations of such sections are for convenience and general descriptive purposes only, are not definitive in nature, and shall not be construed to limit, enlarge or affect the scope or intent of this Agreement or the meaning of any provision hereof. The parties further acknowledge each to the other that no party is relying upon any characterization or implication from any such section heading in the execution of this Agreement.

29 Authority. If the Borrower is a corporation, the Borrower represents, covenants and warrants that it is in good standing under the laws of the State of Illinois (or if a foreign corporation, is in good standing under the laws of the state in which it is incorporated and is also registered, licensed and in good standing as a foreign corporation authorized to transact business in the State of Illinois), and has full authority, by duly enacted resolution(s), to enter into and perform this Agreement. If the Borrower is a partnership or joint venture, the Borrower has duly obtained all necessary approvals and has full power and authority to enter into and perform this Agreement. If the Borrower is a land trust, the Borrower is acting pursuant to a duly executed power of direction and has full authority to enter into and perform this Agreement.

THE TRUSTEE'S DUTY IS LIMITED TO THAT WHICH IS EXPRESSLY STATED IN THIS INSTRUMENT AND MADE A PART HEREOF

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RIDER ATTACHED TO AND MADE A PART OF
FIRST EXTENSION AND MODIFICATION
AGREEMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS
DATED February 15, 1994 UNDER TRUST NO. 2686-EG, 2687-EG, 2688-EG, 2690-EG

This instrument is executed by NED Bank, Successor Trustee to NED Trust Company of Illinois, not personally but as Trustee under Trust No. See Above, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All of the terms, provisions, stipulations, covenants and conditions to be performed by NED Bank, are undertaken by it solely as Trustee as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against NED Bank, by reason of anything contained in said instrument, or in any previously executed document, whether or not executed by said NED Bank, either individually or as Trustee as aforesaid, relating to the subject matter of the attached agreement, all such personal liability, if any, being expressly waived by every person now or hereafter claiming any right of security hereunder. No duty shall rest upon NED Bank, personally or as said Trustee to request the rents, issues, and profits arising from the property in said trust estate, or the proceeds arising from the sale of other disposition thereof; but so far as said Trustee and its successors and said NED Bank, personally are concerned, the legal holder or holders of this instrument and the owner or owners of any indebtedness accruing hereunder shall look solely to the mortgaged real estate for the payment thereof, by enforcement of the lien heretofore created in the manner provided therefor and as provided in said note or by action to enforce the personal liability of the guarantor, if any.

It is expressly understood and agreed by every person, firm or corporation claiming any interest in this document that NED Bank, shall have no liability, contingent or otherwise arising out of, or in any way related to, (i) the presence, disposal, release or threatened release of any hazardous materials on, over, under, from, or affecting the property or the soil, water, vegetation, buildings, personal property, persons or animals thereof; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (iii) any lawsuit brought or threatened, settlement reached or government order relating to such hazardous materials, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the Trustee, which are based upon or in any way related to such hazardous materials including without limitation, attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses.

In the event of any conflict between the provisions of the exculpatory Rider and the provisions of the document to which it is attached, the provisions of this Rider shall govern.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

BORROWER:

NBD Bank, as Successor Trustee to NBD Trust Company of Illinois not personally but as Trustee under Trust Agreement dated February 8, 1990 and known as Trust Number's 2686EG, 2687EG, 2688EG and 2690EG

By: Annette N. Brusca
An Authorized Trust Officer

ATTEST:

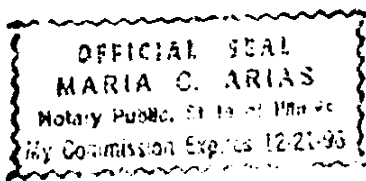
By: Lawrence J. Kolman
An Authorized Trust Officer Vice President

NOTICE ADDRESS FOR BORROWER:

STATE OF)
) SS
COUNTY OF)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Annette N. Brusca personally known to me to be NBD Bank, Successor Trustee the Trust Officer of NBD Trust Company of Illinois and Lawrence J. Kolman personally known to me to be the Vice President of said corporation, 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 severally acknowledged that in such capacity, they signed and delivered the said instrument and caused the corporate seal to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND and notarial seal on May 31, 1994



NOTARY PUBLIC
My Commission Expires: 12-21-96

- 13 - Maria C. Arias

94506958

UNOFFICIAL COPY

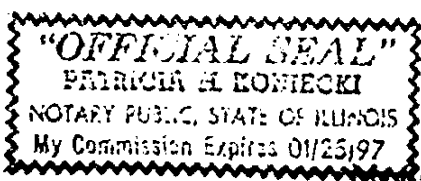
NBD BANK:

By: S. Michael McCracken
 Title: COMMERCIAL LOAN OFFICER
 Attest: Jack R. Brown
 Title: Commercial Loan Officer

STATE OF IL)
) SS
 COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that S. Michael McCracken personally known to me to be the Commercial Loan Officer of NBD Bank and Jack R. Brown personally known to me to be the Commercial Loan Officer of said corporation, 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 severally acknowledged that in such capacity, they signed and delivered the said instrument and caused the corporate seal to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND and notarial seal on March 31, 1994



Patricia H. Konecki
 NOTARY PUBLIC

My Commission Expires:

94506958

UNOFFICIAL COPY

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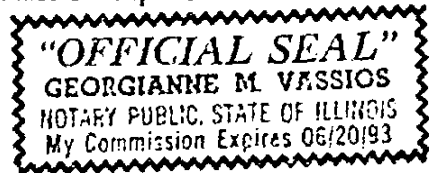
STATE OF IL)
COUNTY OF Cook) SS

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that **Lawrence Pagni** 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, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND and notarial seal on May 28, 1994

Georgianne M. Vassios
NOTARY PUBLIC

My Commission Expires:



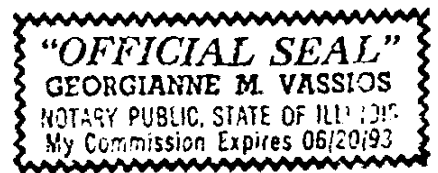
STATE OF IL)
COUNTY OF Cook) SS

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that John Bris personally known to me to be the PRESIDENT of Pagbrisa Development and Construction Company, Inc. and Lawrence Pagni personally known to me to be the VICE PRESIDENT of said corporation, 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 severally acknowledged that in such capacity, they signed and delivered the said instrument and caused the corporate seal to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND and notarial seal on May 28, 1994

Georgianne M. Vassios
NOTARY PUBLIC

My Commission Expires:



94506958

UNOFFICIAL COPY

1 0 0 1 9 0 8

EXHIBIT A LEGAL DESCRIPTION OF MORTGAGED PREMISES

LOTS 3, 4, 5, AND 7, IN EAGLE POINTE OF BARRINGTON HILLS SUBDIVISION, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF SECTION 19, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 13, 1990 AS DOCUMENT 90111784, IN THE VILLAGE OF BARRINGTON HILLS, BARRINGTON TOWNSHIP, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: LOT 3: 31W869 EAGLE POINTE DRIVE
LOT 4: 31W861 EAGLE POINTE DRIVE
LOT 5: 31W819 EAGLE POINTE DRIVE
LOT 7: 31W714 EAGLE POINTE DRIVE

P.I.N.: 01-19-101-001
{Covers Entire Subdivision}

Property of Cook County Clerk's Office

94506958

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Property of Cook County Clerk's Office

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