

UNOFFICIAL COPY

96951448

WHEN RECORDED MAIL TO:

Parkway Bank & Trust Company
4800 N. Harlem
Harwood Heights, IL 60656

SEND TAX NOTICES TO:

Parkway Bank & Trust Company,
not individually but a/t/u/n 10929
dated 9/27/94
4800 N. Harlem Avenue
Harwood Heights, IL 60656

DEPT-01 RECORDING \$31.00
T#0012 TRAN 3391 12/17/96 11:45:00
#9055 # CG #-96-951448
COOK COUNTY RECORDER

FOR RECORDER'S USE ONLY

"Mortgage" shall mean "Trust Deed" when applicable

This Subordination Agreement prepared by: Paul Gembara
4800 N. Harlem Avenue
Harwood Heights, Illinois 60656

311

SUBORDINATION AGREEMENT - Trust Deed

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT dated November 26, 1996 is entered into among Emerald Hills Development, Inc. ("Borrower"), John J. Kennelly, as Trustee ("Mortgagee") and Parkway Bank & Trust Company ("Lender").

SUBORDINATED INDEBTEDNESS. Mortgagee has extended the following described financial accommodations (the "Subordinated Indebtedness") to Parkway Bank & Trust Company, u/t/n 10929 dated 9/27/94 ("Mortgagor"):

a Note and Trust Deed in the amount of \$150,000.00 dated November 14, 1994 in favor of John J. Kennelly, as Trustee.

SUBORDINATED MORTGAGE. The Subordinated Indebtedness is secured by a mortgage dated 11-14-1994 from Mortgagor to Mortgagee (the "Subordinated Mortgage") recorded in Cook County, State of Illinois as follows:

Recorded November 23, 1994 as document #94993072 in Cook County

REAL PROPERTY DESCRIPTION. The Subordinated Mortgage covers the following described real property (the "Real Property") located in Cook County, State of Illinois:

SEE ATTACHED LEGAL DESCRIPTION

The Real Property or its address is commonly known as 5 acres vacant land at Route 59 and Schaumburg Road, Streamwood, IL 60107. The Real Property tax identification number is 06-22-100-015-0000 & 06-22-100-016-0000.

REQUESTED FINANCIAL ACCOMMODATIONS. Borrower, who may or may not be the same entity as Mortgagor, and Mortgagee each want Lender to provide financial accommodations to Borrower (the "Superior Indebtedness") in the form of (a) new credit or loan advances, (b) an extension of time to pay or other compromises regarding all or part of Borrower's present indebtedness to Lender, or (c) other benefits to Borrower. Now, therefore, Borrower

BOX 333-CTI

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Attorneys' Fees; Expenses. Mortgagee and Borrower agree to pay upon demand all of Lender's costs and expenses, including attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of the Mortgage.

Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless made in writing and signed by Lender, Borrower, and Mortgagee.

Applicable Law. This Agreement has been delivered to Lender and accepted by Lender in the State of Illinois. If there is a lawsuit, Mortgagee and Borrower agree upon Lender's request to submit to the jurisdiction of the courts of Cook County, State of Illinois. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. No provision contained in this Agreement shall be construed as requiring Lender to grant to Borrower or to Mortgagee any financial assistance or other accommodations or (b) as limiting or precluding Lender from the exercise of Lender's own judgment and discretion about amounts and times of payment or extending accommodations to Borrower.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

DEFAULT BY BORROWER. If Borrower becomes insolvent or bankrupt, this Agreement shall remain in full force and effect. In the event of a corporate reorganization or corporate arrangement of Borrower under the provisions of the Bankruptcy Code, as amended, this Agreement shall remain in full force and effect and the court having jurisdiction over the reorganization or arrangement is hereby authorized to preserve such priority and subordination in approving any such plan of reorganization or arrangement. Any default by Borrower under the terms of the Subordinated Indebtedness also shall be a default under the terms of the Superior Indebtedness to Lender.

LENDER'S RIGHTS. Lender may take or omit any and all actions with respect to Lender's Lien without affecting whatsoever any of Lender's rights under this Agreement. In particular, without limitation, Lender may, without notice of any kind to Mortgagee, (a) make one or more additional secured or unsecured loans to Borrower; (b) repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Superior Indebtedness or any part thereof, including increases and decreases of the rate of interest on the Superior Indebtedness; extensions may be repeated and may be for longer than the original loan term; (c) take such collateral, with or without the substitution of new collateral; (d) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or guarantors on any terms or manner Lender chooses; (e) determine how, when and what application of payments and credits, shall be made on the Superior Indebtedness; (f) apply such security and direct the order or manner of sale thereof, at Lender in its discretion may determine; and (g) assign this Agreement in whole or in part.

MORTGAGEE'S WAIVERS. Mortgagee waives any right to require Lender: (a) to make, extend, renew, or modify any loan to Borrower or to grant any other financial accommodations to Borrower whatsoever; (b) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of any Superior Indebtedness secured by Lender's Lien, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness, or in connection with the creation of new or additional Indebtedness; (c) to resort for payment or to proceed directly or at once against any person, including Borrower; (d) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (e) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (f) to pursue any other remedy within Lender's power; or (g) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever.

MORTGAGEE'S REPRESENTATIONS AND WARRANTIES. Mortgagee represents and warrants to Lender that: (a) no representations or agreements of any kind have been made to Mortgagee which would limit or qualify in any way the terms of this Agreement; (b) this Agreement is executed at Borrower's request and not at the request of Lender; (c) Lender has made no representation to Mortgagee as to the creditworthiness of Borrower; and (d) Mortgagee has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Mortgagee agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Mortgagee's risks under this Agreement, and Mortgagee further agrees that Lender shall have no obligation to disclose to Mortgagee information or material acquired by Lender in the course of its relationship with Borrower.

SUBORDINATION. The Subordinated Mortgage and the Subordinated Indebtedness secured thereby is hereby subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is hereby agreed that Lender's Lien shall be and remain, at all times, prior and superior to the lien of the Subordinated Mortgage. Mortgagee also subordinates to Lender's Lien all other Security Interests in the Real Property held by Mortgagee, whether now existing or hereafter acquired. The words "Security Interest" mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

NOW THEREFORE THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

LENDER'S LIEN. As a condition to the granting of the requested financial accommodations, Lender has required that its mortgage or other lien on the Real Property ("Lender's Lien") be and remain superior to the Subordinated Mortgage. and Now, therefore, Borrower and Mortgagee each represent and acknowledge to Lender that Mortgagee will benefit as a result of these financial accommodations from Lender to Borrower, and Mortgagee acknowledges receipt of valuable consideration for entering into this Agreement.

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11-26-1996
Loan No 15

SUBORDINATION AGREEMENT - MORTGAGE (Continued)

Page 3

of this Agreement. Lender may pay someone else to help enforce this Agreement, and Mortgagee and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Mortgagee and Borrower also shall pay all court costs and such additional fees as may be directed by the court.

Successors. This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement, and the covenants of Borrower and Mortgagee herein in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

Waiver. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Mortgagee, shall constitute a waiver of any of Lender's rights or of any of Mortgagee's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

EACH PARTY TO THIS SUBORDINATION AGREEMENT - MORTGAGE ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS.

BORROWER:

Emerald Hills Development, Inc.

By: Carl G. Bongiovanni
Carl G. Bongiovanni, President/Secretary

MORTGAGEE:

X John J. Kennelly, Jr.
John J. Kennelly, as Trustee

LENDER:

Parkway Bank & Trust Company

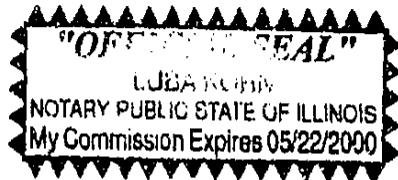
By: Paul Y. Peszynski
Authorized Officer

Parkway Bank & Trust Company, not individually
but a/t/u/t/n 10929 dated 9/27/94

By: Joseph Peszynski
Vice President Trust Officer

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 12th DAY OF Dec 19 96.

Luba Rubin
NOTARY PUBLIC
For the signature of Diane Y. Peszynski



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CORPORATE ACKNOWLEDGMENT

STATE OF Illinois

) ss

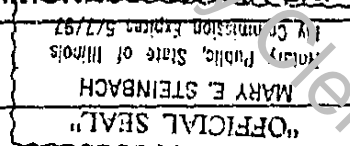
COUNTY OF Cook

On this 15th day of Dec, 1996, before me, the undersigned Notary Public, personally appeared Carl G. Bongiovanni, President/Secretary of Emerald Hills Development, Inc., and known to me to be an authorized agent of the corporation that executed the Subordination Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Agreement and in fact executed the Agreement on behalf of the corporation.

By Carl G. Bongiovanni Residing at Emerald Hills Development

Notary Public in and for the State of Illinois

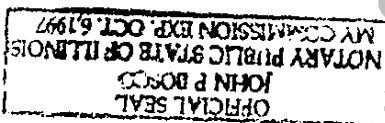
My commission expires



INDIVIDUAL ACKNOWLEDGMENT

STATE OF Illinois

) ss



On this day before me, the undersigned Notary Public, personally appeared John J. Kennedy, as Trustee, to me known to be the individual described in and who executed the Subordination Agreement, and acknowledged that he or she signed the Agreement as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 15th day of Dec, 1996

By John J. Kennedy Residing at 1000 N. Dearborn St.

Notary Public in and for the State of Illinois

My commission expires

10-6-97

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11-26-1996
Loan No 15

SUBORDINATION AGREEMENT - MORTGAGE (Continued)

Page 5

LENDER ACKNOWLEDGMENT

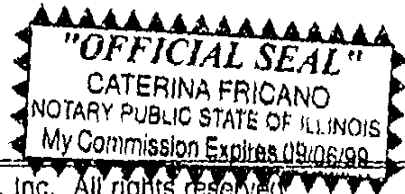
STATE OF Illinois)
) ss
COUNTY OF Cook)

On this 7th day of December 19 96, before me, the undersigned Notary Public, personally appeared PAUL REMBARRA and known to me to be the MORTGAGE LOAN OFFICER authorized agent for the Lender that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the said Lender, duly authorized by the Lender through its board of directors or, otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and that the seal affixed is the corporate seal of said Lender.

By Caterina Fricano Residing at Harwood Heights

Notary Public in and for the State of Illinois

My commission expires 09/06/99



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[IL-G211 EMERAL12.LN R10.OVL]

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LEGAL DESCRIPTION

LOT 158 - PROPOSED EMERLAD HILLS, PHASE 1

THAT PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF A LINE 300 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 22 WITH THE SOUTH LINE OF SCHAUMBURG ROAD AS TAKEN PER CASE NO. 92L50584, BEING A LINE 60 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID SOUTH LINE A DISTANCE OF 327.57 FEET; THENCE LEAVING SAID SOUTH LINE AND RUNNING SOUTH 0 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING; SAID POINT BEING A ANGLE POINT ON THE SOUTH LINE OF SCHAUMBURG ROAD, BEING A LINE 75 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE CONTINUING SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 151.03 FEET; THENCE SOUTH 14 DEGREES 21 MINUTES 53 SECONDS WEST A DISTANCE OF 315.12 FEET; THENCE NORTH 78 DEGREES 36 MINUTES 15 SECONDS WEST A DISTANCE OF 124.57 FEET; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 150.00 FEET, HAVING A CHORD BEARING OF NORTH 53 DEGREES 44 MINUTES 59 SECONDS WEST FOR AN ARC DISTANCE OF 130.14 FEET TO A POINT OF TANGENCY; THENCE NORTH 78 DEGREES 36 MINUTES 16 SECONDS WEST A DISTANCE OF 52.74 FEET TO A POINT ON THE EAST LINE OF STATE ROUTE 59 AS TAKEN PER CASE NO. 92L50619; THENCE THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG SAID EAST LINE OF STATE ROUTE 59: 1)NORTHEASTERLY ALONG A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 7032.00 FEET, HAVING A CHORD BEARING OF NORTH 13 DEGREES 26 MINUTES 35 SECONDS EAST FOR AN ARC DISTANCE OF 362.50 FEET; 2)THENCE SOUTH 75 DEGREES 04 MINUTES 51 SECONDS EAST A DISTANCE OF 10.00 FEET; 3)THENCE NORTHEASTERLY ALONG A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 7022.00 FEET, HAVING A CHORD BEARING OF NORTH 16 DEGREES 08 MINUTES 18 SECONDS EAST FOR AN ARC DISTANCE OF 298.66 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID SOUTH LINE OF SCHAUMBURG ROAD, BEING A LINE 75 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST 1/4 FOR A DISTANCE OF 253.64 FEET TO SAID POINT OF BEGINNING IN COOK COUNTY, ILLINOIS

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