

96243959

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

MAIL TO  
01 7/14/96

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

DEPT-01 RECORDING 553.50  
T40010 TRAM 4532 04/01/96 11:58:00  
67851 + C. J. # - 96 - 243989  
COOK COUNTY RECORDER



THIRD EXTENSION AND MODIFICATION AGREEMENT

5350  
M

RE: Loan #8581935/0002125

THIS THIRD EXTENSION AND MODIFICATION AGREEMENT (this "Agreement") is entered into and is effective as of February 15, 1996 among the following parties:

NBD Bank Successor Trustee to NBD Trust Company of Illinois, not personally, but solely as Trustee under Trust Agreements dated February 8, 1990 and known as Trust No's. 2686EG, 2637EG, and 2690EG (the "Trust").

Pagbrisa Development & Construction Company, an Illinois Corporation (the "Beneficiary"), John Bria, and Lawrence Pagni, (collectively referred to as the "Guarantors")

(the Trust and the Beneficiary are hereinafter sometimes jointly referred to as the "Borrower" and Borrower and the Guarantors are sometimes hereinafter collectively referred to as the "Obligors"), and NBD Bank, an Illinois banking corporation, successor by merger to NBD Elk Grove Bank (the "Bank"), having its principal office at 211 S. Wheaton Avenue, Wheaton, Illinois 60187

RECITALS:

LAND TITLE GROUP, INC. XL-804853-08 1 of 1

A. Bank has previously loaned to Borrower the original principal sum of Four Hundred Fifty Thousand Dollars (\$450,000.00) (the "Loan"). The Loan is evidenced by a certain Mortgage Note (the "Original Note") dated February 6, 1992, made by the Trust to the order of Bank in the original principal amount of \$450,000.00. The Original Note has been amended by a certain First Extension and Modification Agreement (the "First Amendment") dated as of February 15, 1994, among Borrower and Bank and acknowledged by the Guarantors and recorded in the Office of the Cook County, Illinois Recorder as Document No. 94506958; and a certain Second Extension and Modification Agreement (the "Second Amendment") dated as of February 15, 1995, among Borrower and Bank and acknowledged by the Guarantors and recorded in the Office of the Cook County, Illinois Recorder as Document No. 95172557. The First Amendment, and the Second Amendment are hereinafter collectively referred to as the "Amendments." The Original Note, as amended by the Amendments, is hereinafter referred to as the "Note."

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B The Note is secured, *inter alia*, by the following (collectively, with the Note, the "Loan Documents"):

(i) Mortgage and Security Agreement (the "Original Mortgage") dated February 6, 1992 made by the Trust in favor of Bank and recorded in the Office of the Cook County, Illinois Recorder as Document No. 92100646, and encumbering the real estate legally described on Exhibit A attached hereto, together with all improvements now or hereafter located thereon (collectively, the "Property"); as amended by the Amendments (the Original Mortgage, as amended by the Amendments, is hereinafter referred to as the "Mortgage");

(ii) Assignment of Rents and of Lessor's Interest in Leases dated February 6, 1992, made by the Trust in favor of Bank and recorded in the Office of the Cook County, Illinois Recorder as Document No. 92100647; as amended by the Amendments;

(iii) Facsimile Assignment of Beneficial Interest for Collateral Security dated February 6, 1992, made by Beneficiary in favor of Bank and recorded in the Office of the Cook County, Illinois Recorder as Document No. 92077683; as amended by the Amendments; and

(iv) a certain Corporate Guaranty and a certain Individual Guaranty (collectively the "Guaranty") dated February 6, 1992, made by the Guarantors, jointly and severally in favor of Bank as amended by the Amendments;

C. Obligor's have requested that Bank extend the maturity date of the Loan from February 15, 1996 to February 15, 1997. Bank has agreed to so extend the maturity date of the Loan subject to each Obligor's agreeing to the terms, provisions and conditions contained in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing Recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**I. INCORPORATION OF THE RECITALS.** The Recitals set forth above are hereby incorporated herein by reference and made a part hereof.

**II. NOTE.**

1. As of the date hereof, the parties hereto acknowledge and agree that the outstanding principal amount of the Note is \$220,068.71.

2. The maturity date of the Note is hereby extended from February 15, 1996 to February 15, 1997.

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3. Effective as of the date hereof, the interest rate and payment provisions of the Note and the Amendments, are deleted and the following substituted in lieu thereof:

(a) Interest shall accrue on the outstanding principal balance of this Note at an annual rate (the "Loan Rate") equal to one-half percent (.50%) plus the prime rate of interest as publicly announced by Bank to be in effect from time to time at Bank (the "Prime Rate"). The Loan Rate shall (i) be computed on the basis of a year consisting of 360 days, (ii) be charged for the actual number of days elapsed within the period for which interest is being charged, and (iii) change on the same day as any change in the Prime Rate, Bank not being required to give notice of any such change. The Prime Rate is a general base reference rate of interest established from time to time at Bank. 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 Bank to its most credit-worthy customers.

(b) Commencing on May 15, 1996, and continuing on the fifteenth (15th) day of each August, November, and February thereafter, Borrower shall pay to Bank all accrued and unpaid interest on the outstanding principal balance of this Note. The Bank will require a minimum principal payment of \$75,000.00 by December 31, 1996. The outstanding principal balance of this Note, together with all accrued and unpaid interest thereon and all other amounts due and owing to Bank under this Note and the other Loan Documents, if not sooner paid or declared to be due and payable in accordance with the terms and provisions hereof, shall be due and payable in full on February 15, 1997.

(c) THIS IS AN INTEREST-ONLY NOTE AND ON THE MATURITY DATE (February 15, 1997) THE ENTIRE PRINCIPAL OUTSTANDING ON THIS NOTE WILL REMAIN UNPAID AND WILL BE DUE AND PAYABLE IN FULL ON THE MATURITY DATE."

(d) After maturity, or the earlier acceleration of the indebtedness evidenced by this Note, or if said indebtedness has not been accelerated, during any period in which an Event of Default (as hereinafter described and defined) exists under this Note or any of the other Loan Documents (as hereinafter defined), the outstanding principal balance of this Note shall accrue interest at an annual rate equal to four percent (4.00%), plus the Loan Rate.

(e) In the event any payment of interest or principal due hereunder or any escrow fund payment or deposit for taxes or insurance due under the Mortgage specified below is not made within fifteen (15) days after the date when any such payment is due in accordance with the terms hereof or thereof, then, in addition to the payment of the amount so due, Borrower shall pay to Bank a "late charge" of five cents (5¢) for each whole dollar so overdue to defray part of the cost of collection and handling such late payment. Such late charge shall be in

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addition to and not in lieu of fees and charges of any agents or attorneys which Bank is entitled to employ upon the occurrence of a default hereunder. Borrower agrees that the damages to be sustained by the holder hereof for the detriment caused by any late payment is extremely difficult and impractical to ascertain, and that the amount of five cents (5¢) for each one dollar due is a reasonable estimate of such damages, does not constitute interest, and is not a penalty

(f) This Note may be prepaid in full or in part, without premium or penalty. All payments and prepayments on account of the indebtedness evidenced by this Note shall be applied first to interest then accrued on the unpaid principal balance of this Note and the remainder to such principal balance in the inverse order of maturity of installments thereof. No prepayment shall reduce the amount or postpone the due date of any payment due hereunder.

4. The following is added immediately before the last grammatical paragraph of the Note:

"Time is the essence of all payments required to be made under the terms and provisions of this Note."

5. All notice, grace or cure rights which may be contained in the Note are hereby deleted and waived by each obligor

6. The Note is hereby amended to add the following as additional Events of Default thereunder:

(a) the occurrence of a default by Borrower or any guarantor of the Note in any other obligations, indebtedness or loans which at any time may be owing by Borrower or any such guarantor to Bank, or

(b) a breach or default of any term, condition, covenant, representation or warranty contained in this Agreement.

7. The Note is hereby amended to add the following as additional Principal Covenants:

(a) no secondary financing of the Property will be permitted; and

(b) the Bank will require a principal paydown upon the sale of any lot at a minimum release price of \$0.50 p.s.f. or 100% of net proceeds, whichever is greater.

8. The Note is hereby amended to provide that upon the occurrence of an Event of Default, Bank shall have the right to exercise any one or more of the rights and remedies specified in the Note.

9. All references contained in the Note to the Mortgage and the other Loan Documents shall be deemed to refer to the Mortgage and the other Loan Documents, as amended by this Agreement.

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## III. MORTGAGE, GUARANTY, AND OTHER LOAN DOCUMENTS.

1 The Mortgage, the Guaranty and the other Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Note, as amended by this Agreement.

2. The following provision is hereby added to the Mortgage as an additional Event of Default thereunder:

"The sale, transfer, conveyance, assignment, grant of option to purchase, encumbrance, contracting, mortgaging or other pledge or disposition of all or any portion of (i) the Property, (ii) the beneficial interest in the Trust/Borrower, or (iii) any partnership interest, stock or other interest in Borrower, the Trust, Beneficiary or any partner or shareholder of Beneficiary."

3 The Mortgage is hereby amended by adding the following provisions thereto:

"Mortgagor hereby covenants and agrees that Mortgagor shall not apply for or avail itself of any appraisement, valuation, 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 this Mortgage, but hereby waives the benefit of such laws. To the fullest extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any claims based on allegations that Mortgagee has failed to act in a commercially reasonable manner (except as otherwise expressly provided in this Mortgage or the other Loan Documents) and any and all rights to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Notes. Mortgagor hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption provided in the Illinois Mortgage Foreclosure Law."

5. All notice, grace or cure rights which may be contained in the Original Mortgage including, without limitation, in Paragraph 22 or in any of the Loan Documents are hereby deleted and waived by each Obligor

6. All references contained in the Mortgage, the Guaranty and the other Loan Documents to the Note shall be deemed to refer to the Note, as amended by this Agreement.

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7. All references contained in the Mortgage, the Guaranty and the other Loan Documents to any other Loan Document shall be deemed to refer to said other Loan Document, as amended by this Agreement.

## IV. MISCELLANEOUS.

1. Each Obligor jointly and severally represents and warrants to Bank the following:

(a) Each Obligor has full power and authority to execute and deliver this Agreement and to perform their respective obligations hereunder. Upon execution and delivery thereof, this Agreement will be valid, binding and enforceable upon each obligor. Execution and delivery of this Agreement does not and will not contravene, conflict with, violate or constitute a default under (i) any partnership agreement, articles of incorporation or by-laws governing any Obligor, (ii) any applicable law, ordinance, rule or regulation of any kind whatsoever, or (iii) any agreement, indenture or instrument to which any Obligor is a party or is bound or which is binding upon or applicable to the Property or any portion thereof.

(b) There is not any condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceeding, action, examination, claim or demand pending, or to any Obligor's knowledge, threatened, affecting any Obligor or the Property involving any risk of a judgment or liability which, if satisfied, would have a materially adverse effect on the financial condition, business or properties of any Obligor, affecting or involving the validity or priority of the lien of the Mortgage or any of the other Loan Documents, or which would prevent any Obligor from complying with or performing his, her or its respective obligations under the Note, the Guaranty, the Mortgage or any of the other Loan Documents, all as amended by this Agreement, within the time limits set forth therein for such compliance or performance, and no basis for any such matter exists.

(c) No default or event or circumstance which with the giving of notice, the passage of time, or both would constitute an Event of Default under the Note, the Mortgage or any of the other Loan Documents, all as amended by this Agreement.

(d) The transaction contemplated by this Agreement is not a transfer subject to the Illinois Responsible Property Transfer Act, Ill. Rev. Stat. ch. 30, par. 901 et seq ("IRPTA"), and delivery and recording of a disclosure document is not required. In the event it is determined that IRPTA does apply to this transaction, Borrower covenants and agrees to comply with the provisions of IRPTA and pay all costs and expenses associated therewith, including but not limited to, the costs associated with the recording of said disclosure document.

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(e) Pagbrisa Development & Construction Company is a validly existing corporation under the laws of the State of Illinois and is in good standing under the laws of the State of Illinois.

(f) Pagbrisa Development & Construction Company is the sole beneficiary of the Trust and has the sole power of direction under the Trust.

(g) The most recent financial statements for each Obligor provided to Bank fairly and accurately present the financial condition of each such person or entity and to the extent applicable, the results of operations for each such entity for the applicable periods covered thereby.

(h) Each representation and warranty made by each Obligor in favor of Bank in connection with the Loan remains accurate in all respects, subject only to changes expressly permitted by Bank.

2. The terms, provisions, waivers, covenants, agreements, representations and warranties contained in the Loan Documents are hereby ratified and confirmed and shall remain in full force and effect in accordance with their respective terms.

3. The obligation of Bank to enter into this Agreement shall be subject to each obligor having delivered or caused to be delivered to Bank, the following, all of which shall be in form and substance acceptable to Bank:

(a) This Agreement,

(b) A current certified copy of the Trust Agreement establishing the Trust and any Amendments thereof,

(c) A certified copy of the letter of direction from Pagbrisa Development & Construction Company to the Trust authorizing the Trust to execute this Agreement,

(d) A date-down endorsement to the title insurance policy insuring the lien of the Mortgage, updating the effective date of such policy to the date of recording of this Agreement, amending the description of the insured Mortgage to reflect the recording of the First Amendment this Agreement and disclosing no exceptions to title objectionable to Bank;

(e) Evidence satisfactory to Bank that all insurance required by the Mortgage is in full force and effect;

(f) An Environmental Certificate duly executed by each Obligor;

(g) All other documents which Bank may reasonably request.

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4. To further induce Bank to enter into this Agreement, in addition to the covenants and agreements of Obligors set forth in the Note and the other Loan Documents, each Obligor agrees with Bank as follows:

(a) Each Obligor shall comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Property and the use thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety.

(b) Bank and its representatives shall have the right to inspect the Property and the books and records with respect thereto at all reasonable times, and access thereto shall be permitted for those purposes.

(c) Borrower shall keep and maintain or cause to be kept and maintained full, complete and accurate books and records showing in detail all aspects of the ownership, operation, management and leasing of the Property. Obligors will from time to time furnish to Bank such information and reports, financial and otherwise concerning each Obligor and the Property, as Bank reasonably requires, including without limitation, the following:

(i) within ninety (90) days after the end of each calendar year, personal financial statements for John Bria and Lawrence Pagni to include cash flows on all income producing properties, such financial statements to be on Bank's standard form or another form acceptable to Bank, setting forth the information therein required as of December 31 of the immediately preceding year, and certified by each as fairly and accurately presenting the information contained therein; and

(ii) at any time and from time to time upon request by Bank, Obligor shall obtain from each tenant of the Property an estoppel certificate on a form designated by Bank, and containing no statements unacceptable to Bank.

In the event any Obligor shall fail to comply with any of the requirements of this Paragraph 4, and Bank shall incur any costs or expenses in connection with obtaining any of the required documents or otherwise causing such requirements to be satisfied, including the payment of attorneys' fees, all such costs and expenses shall constitute additional indebtedness due by Obligors to Bank, evidenced by the Note and secured by the Mortgage and the other Loan Documents. Such costs and expenses shall be paid by each Obligor forthwith upon demand, and shall bear interest from the date so incurred by Bank until paid at the Default Rate set forth in the Note.

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5. Each Obligor agrees to pay all expenses, charges, costs and fees, including without limitation, attorneys' fees, incurred by Bank in connection with the negotiation and documentation of the agreements contained in this Agreement, together with all expenses, charges, costs and fees related to the delivery and issuance to Bank of the items described in Paragraph 3 above, including without limitation, all title examination charges, survey costs, environmental audit fees, escrow fees, recording fees, appraisal fees, annual property inspection fees, tax search fees, release of document fees, and renewal of UCC security interest fees contemplated by this Agreement (collectively, the "Additional Loan Expenses"). The Additional Loan Expenses shall be paid by each Obligor forthwith upon demand, and shall bear interest from the date so incurred by Bank until paid at the default rate set forth in the Note.

6. Each Obligor hereby reaffirms, ratifies and confirms its, his or her respective obligations and liabilities under the Note, the Mortgage and the other Loan Documents to which it, he or she is a party, all as amended by this Agreement, and the liens and security interests created thereby, and acknowledges that as of the date of delivery of this Agreement to Bank, no Obligor has any defenses, claims, counter-claims, rights of offset, objections or set-offs to the enforcement by Bank of the obligations and liabilities of each Obligor under the Note, the Mortgage and the other Loan Documents, all as so amended.

7. Each of the Guarantors, in their capacity as guarantors of the Loan, hereby consent to the execution and delivery by Borrower of this Agreement. Each of the Guarantors acknowledges and agrees that its, his or her respective duties, obligations and liabilities under the Guaranty and any other Loan Documents to which it, he or she is a party, all as amended by this Agreement, shall not in any manner be impaired, discharged or released by the execution and delivery of this Agreement. Each of the Guarantors hereby ratifies and confirms its, his or her respective obligations and liabilities under the Guaranty and the other Loan Documents, as so amended, and acknowledge that as of the date of delivery of this Agreement to Bank, none of the Guarantors has any defenses, claims, counter-claims, rights of offset, objections or set-offs to the enforcement by Bank of the obligations and liabilities of the Guarantors under the Guaranty and the other Loan Documents, as so amended.

8. Bank may, at any time hereafter, without notice and at Bank's sole option, appropriate and apply toward the payment of the obligations due to Bank under the Note and the Loan Documents, whether due or not, any moneys, credits or other property belonging, individually or collectively, to any Obligor, in the possession or under the control of Bank, as well as any indebtedness (whether then due or not then due) of Bank to any Obligor, however created or arising, including without limitation, any and all balances, credits, deposits, accounts, or moneys of any Obligor, and Bank is hereby given a first and prior lien upon such moneys, credits, indebtedness and other property.

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9. Each Obligor hereby waives and forever discharges and releases Bank and its past present and future employees, officers, directors, shareholders, affiliates, subsidiaries, attorneys, agents, successors and assigns (collectively, the "Released Parties") from and against any and all actions, claims, demands, damages, debts, losses, liabilities and causes of action, at law and in equity, and all other obligations of every kind and nature, whether known or unknown, direct or indirect, new or existing, which any or all of the Obligors have, have had or may have against any or all of the Released Parties, by reason of any matter, cause or thing whatsoever, including without limitation, any matter, cause or thing arising out of or relating to the Loan, the Loan Documents or the Property.

10. If a petition under any Section, Chapter or provision of the United States Bankruptcy Code (the "Code") or similar law or statute is filed by or against any of the Obligors, Obligors hereby acknowledge and agree that (i) they shall not contest, and they shall consent to, the relief requested in any motion or application of Bank made in any court of competent jurisdiction seeking modification or termination of any automatic stay or other injunction against Bank resulting from such filing, and (ii) they shall execute any order or other document necessary to effectuate such modification or termination. If at any time an Obligor seeks relief under the Code including, without limitation, the filing of a petition under Chapter 7 or 11 thereof, such Obligor shall be deemed to have taken such action in bad faith. Furthermore, if such action is taken against such Obligor by a third party, such Obligor shall take all action necessary to have (A) the petition filed by such third party dismissed, including consenting to the immediate dismissal thereof, and (B) any additional relief requested by such third party denied.

11. Except as expressly provided herein, the Note, the Guaranty, the Mortgage and the other Loan Documents shall remain in full force and effect in accordance with their respective terms. In the event of any contradiction, conflict or discrepancy between any term or provision of this Agreement and any term or provision of any one or more of the Note, the Guaranty, the Mortgage or the other Loan Documents, the term or provision of this Agreement shall prevail.

12. Each party to this Agreement acknowledges that it, he or she has read this Agreement, that it, he or she fully understand its terms, provisions and consequences and that the entry into this Agreement is voluntary and free from duress, fraud or undue influence of any kind.

13. This Agreement shall be and become effective and binding pursuant to the terms hereof after execution by all parties 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 different from the actual date of execution.

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

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15. In the event one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

16. 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 any 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 any 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.

17. This Agreement shall not be amended, modified or supplemented without the written agreement of each Obligor and Bank at the time of such amendment, modification or supplement. No waiver of any provision of this Agreement, the Note or any other Loan Document shall be effective unless set forth in writing signed by Bank, and any such waiver shall be effective only to the extent therein set forth. Failure by Bank to insist upon full and prompt performance of any provisions of this Agreement, the Note or any of the other Loan Documents, or to take action in the event of any breach of any such provision or upon the occurrence of any default or Event of Default hereunder or thereunder shall not constitute a waiver of any rights of Bank, and Bank may at any time thereafter while such breach, default or Event of Default remains uncured exercise all rights and remedies specified herein or therein or provided by applicable law and equitable principles with respect to such breach, default or Event of Default.

18. This Agreement shall be binding on and enforceable against each Obligor and their respective heirs, legatees, legal representatives, successors and assigns and shall inure to the benefit of Bank, its successors and assigns. The obligations of each Obligor under this Agreement shall be joint and several.

19. All notices which any party may be required or may desire to give in connection with the Loan or this Agreement shall be in writing, and shall be deemed given when delivered in person to such party, on the next business day following delivery by a recognized overnight express delivery courier, or two (2) business days after deposit in the United States certified or registered mail, return receipt requested, addressed to the applicable party at the address of such party set forth below, or at such other address as the party to whom notice is to be given has specified by notice hereunder to the party seeking to give such notice.

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(a) if to Bank, at the address first set forth above, to the attention of the Real Estate Loan Department, or

(b) if to Borrower or any other Obligor, at the address set forth below.

20 This Agreement may be executed in counterparts, and all such counterparts when taken together shall constitute one and the same instrument.

21 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO KNOWINGLY AND VOLUNTARILY MUTUALLY (A) WAIVE THE RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION, CLAIM, COUNTERCLAIM, CROSS-CLAIM, THIRD-PARTY CLAIM, DISPUTE, DEMAND, SUIT OR PROCEEDING ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE NOTE, THE MORTGAGE, THE GUARANTY OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY MODIFICATION THEREOF, OR ANY CONDUCT OF ANY PARTY RELATING THERETO, AND (B) AGREE THAT ANY SUCH ACTION, CLAIM, SUIT OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.

22 This Agreement is executed by the Trustee under the Trust, not personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in said Trustee, and it is expressly understood and agreed that nothing in this Agreement shall be construed as creating any liability on said Trustee to personally perform any express or implied covenant, condition or obligation under this Agreement, all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Agreement.

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## RIDER ATTACHED TO AND MADE A PART OF THIRD EXTENSION AND MODIFICATION AGREEMENT

DATED Feb. 15, 1996 UNDER TRUST NO. 2686EG, 2687EG  
and 2690EG

This instrument is executed by NBU Bank, Successor Trustee to NBD Trust Company of Illinois, not personally but as Trustee under Trust No 2686, 2687, 2690 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 NBU Bank, are undertaken by it solely as Trustee as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against NBU Bank, by reason of anything contained in said instrument, or in any previously executed document, whether or not executed by said NBU 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 or security hereunder. No duty shall rest upon NBU Bank, personally or as said Trustee to adjust the rents, issues, and profits arising from the property in said trust estate, or the proceeds arising from the sale or other disposition thereof; but so far as said Trustee and its successors and said NBD 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 NBU 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.

NBU Bank, Successor Trustee to NBD Trust Company of Illinois,  
as Trustee under Trust No. 2686, 2687 and not individually  
and 2690-EG

ATTEST:

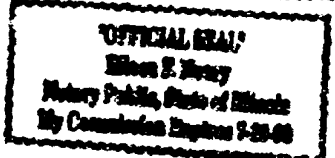
Wayne H. Goble, Jr.  
Assistant Vice President

By: Annette N. Brusca  
Assistant Vice President

STATE OF ILLINOIS  
COUNTY OF Cook

I, the undersigned a Notary Public in and for said County in the State aforesaid, do hereby certify that Annette N. Brusca Asst. Vice President and Wayne H. Goble, Jr. Asst. Vice President of NBU Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Asst. Vice President and Asst. Vice President, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Corporation, for the uses and purposes herein set forth, and the said Asst. Vice President did also then and there acknowledge that he/she as custodian of the Corporate seal of said Corporation did affix the said Corporate seal of said Corporation to said instrument as his/her own free and voluntary act, and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13<sup>th</sup> day of March A.D. 1996



[Signature]  
Notary Public

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COOK COUNTY CLERK'S OFFICE  
100 N. LAUREL ST. CHICAGO, IL 60602  
TEL: 312.603.1000 FAX: 312.603.1001  
WWW.COOKCOUNTYCLERK.COM

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IN WITNESS WHEREOF, this Agreement has been entered into as of the date first written above.

NBD Bank Successor by Merger to NBD Trust Company of Illinois, not personally, but solely as Trustee under Trust Agreements dated February 8, 1990 and known as Trust No's 2686EG, 2687EG and 2690EG.

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

EXONERATION PROVISION RESTRICTING  
Title: ~~TRUSTEE OF NBD BANK ATTACHED~~  
HEREIN IS HEREBY EXPRESSLY MADE A  
ATTACHED HERETO.

Title: \_\_\_\_\_

Pagbrisa Development & Construction Company, an Illinois Corporation

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

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_

John Bria, individually

Lawrence Pagni, individually

Notice Address for Obligors:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NBD BANK, an Illinois banking corporation

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

Title: Ass't Vice President

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, the \_\_\_\_\_ of NBD Bank, (the "Trustee"), and \_\_\_\_\_ the \_\_\_\_\_ of the Trustee, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trustee for the uses and purposes therein set forth; and the said \_\_\_\_\_ then and there acknowledged that (s)he, as custodian of the seal of said Trustee, did affix the seal of said Trustee to said instrument as his/her own free and voluntary act and as the free and voluntary act of said Trustee for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

NOTARY PUBLIC

(SEAL)

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DuPAGE )

I, Monica E. Basse, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Jana Bris, the President of Pagbriss Development & Construction Company, an Illinois corporation (the "Corporation"), and Lawrence Agni, the \_\_\_\_\_ of the Corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, as the free and voluntary act of the Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 12<sup>th</sup> day of MAY, 1996.

NOTARY PUBLIC

(SEAL)

NOTICIAL SEAL  
Monica E. Basse  
Notary Public, State of Illinois  
My Commission Expires 01/01/99

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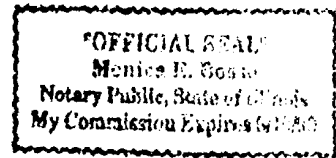
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DUPAGE )

I, Menica E. Bosse, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT John Bria, who is 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 own free and voluntary act, for the uses and purposes therein set forth

GIVEN under my hand and notarial seal, this 11<sup>th</sup> day of MARCH, 1996.

Menica E. Bosse  
NOTARY PUBLIC

(SEAL)



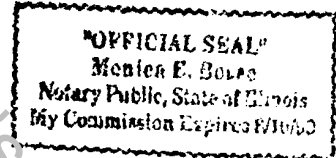
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DUPAGE )

I, Menica E. Bosse, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Lawrence Pagni who is 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 own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 10<sup>th</sup> day of MARCH, 1996.

Menica E. Bosse  
NOTARY PUBLIC

(SEAL)



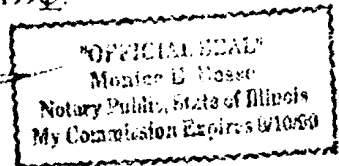
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DUPAGE )

I, Menica E. Bosse, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT LANET R. SIENKO, the Asst. Vice President of NBD BANK (the "Bank"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Asst. Vice President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of the Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 10<sup>th</sup> day of MARCH, 1996.

Menica E. Bosse  
NOTARY PUBLIC

(SEAL)



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## EXHIBIT A LEGAL DESCRIPTION OF PROPERTY

LOTS 3, 4, 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 7. 31W714 EAGLE POINTE DRIVE

**P.I.N.:** 01-19-101-001  
(Covers entire subdivision)  
01-19-101-004 = Lot 3  
01-19-101-005 = Lot 4  
01-19-101-008 = Lot 7

90043989

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