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Cook County Recorder 46.50

WHEN RECORDED MAIL TO:

First midwest bank
Gurnee Branch
P O Box 9003
Gurnee, IL 60031-2502



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This Mortgage prepared by:

First midwest Banl
300 Park Boulevard
Itasca, IL 60143

Property of Cook County Clerk's Office

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[Signature]

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FIFTH LOAN MODIFICATION AGREEMENT

THIS FIFTH LOAN MODIFICATION AGREEMENT ("Agreement") is made and entered into as of this 1st day of March, 2002 by and between First Midwest Bank, ("Lender" or "Mortgagee"), Harris Bank and Savings Bank, as Trustee formerly known as Suburban National Bank of Palatine, as Trustee, under Trust Agreement dated April 27, 1984 and known as Trust Number 4309 (the "Trust", "Trustee" or "Mortgagor"); Klodno Pivo, Inc., an Illinois corporation ("KPI"), Thomas F. Johnson ("T. Johnson") and Ellen Y. Johnson ("E. Johnson") (T. Johnson and E. Johnson are sometimes collectively referred to as the "Johnsons") (the Trustee, T. Johnson and E. Johnson are sometimes collectively and sometimes singularly referred to as "Borrower" as the context requires).

RECITALS

A. Lender has made loans in the original principal amount of \$4,243,490.31 (the "Loan") to Borrower. The Loan is evidenced by a Line of Credit Note dated October 27, 1994 executed by Borrower in the original principal amount of \$1,600,000.00 (the "Line of Credit Note") and a Term Note dated October 27, 1994 executed by Borrower in the original principal amount of \$2,643,490.31 (the "Term Note"). The Line of Credit Note was repaid in full on February 27, 1996 and canceled. The Term Note is secured by, among other things, (i) a Loan Agreement dated October 27, 1994 executed by Borrower and Lender ("Loan Agreement"), (ii) a Mortgage Agreement dated October 27, 1994 executed by Trustee in favor of Lender and recorded in the Cook County, Illinois Recorder's Office ("Cook Recorder") on December 9, 1994 as Document No. 04035066 (as amended from time to time, the "Wheeling Mortgage"), encumbering the real property described on Exhibit "A" attached hereto and improvements described in the Wheeling Mortgage (the "Wheeling Property"), (iii) a Mortgage Agreement dated October 27, 1994 executed by Trustee in favor of Lender and recorded with the McHenry Recorder on December 9, 1994 as Document No. 94R068361 (as amended from time to time, the "McHenry Mortgage"), encumbering the real property described on Exhibit "B" attached hereto and improvements described in the McHenry Mortgage ("McHenry Property"); (iv) a Collateral Assignment of Leases and Rents dated October 24, 1994 executed by Trustee and the Johnsons

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recorded with the Cook Recorder on December 9, 1994 as Document No. 04035067 (as amended from time to time, the "Wheeling Assignment of Rents"), (v) a Collateral Assignment of Leases and Rents dated October 24, 1994 executed by Borrower in favor of Lender (as amended from time to time, the "McHenry Assignment of Rents"), (vi) a Security Agreement dated October 24, 1994 executed by Borrower in favor of Lender (as amended from time to time, the "Security Agreement"); (vii) and Environmental Indemnity dated October 24, 1994 executed by the Johnsons in favor of Lender (as amended from time to time, the "Collateral Assignment") and (viii) Primary Collateral Assignment under Land Trust dated October 24, 1994 executed by the Johnsons in favor of Lender (as amended from time to time, the "Collateral Assignment") and (ix) such other documents and instruments as were executed and will be executed from time to time in connection with the Loan. The Loan Agreement, the Term Note, Wheeling Mortgage, The McHenry Mortgage, the Wheeling Assignment of Rents, the McHenry Assignment of Rents, Security Agreement, The Environmental Indemnity, the Collateral Assignment and such other documents and instruments executed from time to time, are collectively referred to herein as the "Loan Documents." All capitalized terms used herein shall have the respective meanings ascribed to such terms in the Loan Agreement, unless otherwise defined herein.

B. The terms of the Loan Documents were modified pursuant to (i) a First Loan Modification Agreement dated as of August 29, 1995, (ii) a First Amendment to Mortgage dated as of August 29, 1995 and First Amendment to Collateral Assignment of Leases and Rents dated as of August 29, 1995, each recorded with the McHenry Recorder as Document Nos. 95R037874 and 95R037875, respectively; (iii) a First Amendment to Mortgage dated as of August 29, 1995 and a First Amendment to Collateral Assignment of Leases and Rents dated as of August 29, 1995, each recorded with the McHenry Recorder as Document Nos. 95R037872 and 95R037873, respectively; and (iv) First Amendment to Mortgage dated as of August 29, 1995 and a First Amendment to Collateral Assignment of Leases and Rents, each recorded with the Cook Recorder as Documents Nos. 95650360 and 95650361; respectively (collectively, the "Initial Modification"), whereby among other things, the principal amount of the Loan was increased to Four Million Four Hundred Ninety Three Thousand Four Hundred Ninety and 11/100 Dollars (\$4,493,490.11).

C. Pursuant to the Initial Modification, Borrower executed and delivered to Lender a B&C Promissory Note in the original amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00).

D. The terms of the Loan Documents were further modified pursuant to a Second Loan Modification Agreement ("Second Modification") dated as of April 30, 1998, executed by

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Borrower and Lender and recorded with the Cook Recorder on July 20, 1998 as Document No. 98660060 and with the McHenry Recorder on August 5, 1998, as Document No. 98R00051162, modified pursuant to a Third Loan Modification (Third Modification) dated July 1, 1998 and further modified pursuant to a Fourth Loan Modification (Fourth Modification) dated August 21, 2001, executed by Borrower and Lender, and pursuant to these Modifications, among other things, the Term Loan Maturity Date was extended.

E. Borrower desires to modify the terms and provisions of the Loan Documents to, among other things, extend the Term Loan Maturity.

NOW, THEREFORE, in consideration for the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. The foregoing recitals are hereby incorporated by reference herein.
2. The existing balance of the Loan as of the date hereof is One Million Six Hundred Eighty Nine Thousand Two Hundred Twenty Six and 00/100 Dollars (\$1,689,226.00). Borrower represents, warrants, covenants and agrees that it has no existing claims, defenses, personal or otherwise, rights of setoff or deduction, or any other matter which would affect the validity and enforceability of the Term Note, or any of the other Loan Documents and waives any existing defaults or failures by Lender in the performance of its obligations under the Loan Documents. The Term Loan Maturity date is extended to May 1, 2002.
3. All references in the Loan Documents to the B&C Note are hereby deleted.
4. The obligation of Lender to enter into this Agreement is subject to the following conditions precedent:
 - a. Borrower shall have delivered to Lender:

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- i. evidence that Borrower has good and marketable title to the Mortgaged Properties in fee simple and full possession thereof, free and clear of all liens and encumbrances except the Permitted Encumbrances;
 - ii. this Agreement in form and substance suitable for recording;
 - iii. a date down endorsement to the Title Company Policy containing such coverages and endorsements Lender may require;
 - iv. Form UCC-1 and UCC-2 Financing Statements; and
 - v. certified Resolutions authorizing KPI to enter into, execute and deliver this Agreement and the other documents to be executed and delivered in connection with this Agreement; and
 - vi. such other documents as Lender shall reasonably require.
5. The parties agree that the definition section of the Loan Agreement shall be amended as follows:

Term Loan Maturity Date: May 1, 2002.

6. Section 5.19 of the Loan Agreement is amended to read as follows:

5.19 At the end of each calendar year through the Term Loan Maturity Date, KPI shall maintain a debt service coverage ratio of no less than 1.20:1.0. For purposes of this Section 5.19, debt service coverage ratio shall be defined as the ratio of Net Cash Flow to Net Debt Service. "Net Cash Flow" of KPI for any calendar year is defined as the gross revenues generated from sales for such calendar year less cost of goods sold and reasonable selling expenses and administrative expenses for such calendar year increased or decreased by changes from the previous calendar year in: (i) accounts receivable; (ii) inventory; (iii) accounts payable; and (iv) accrued and prepaid expenses. "Debt Service" of KPI for any calendar year is defined as the sum of all payments for such quarter due on (i) all long term indebtedness (i.e., indebtedness in excess of one year); (ii)

interest expense on all other indebtedness; (iii) all lease expenses and payments; and (iv) all dividends paid to shareholders.

A new Section 5.23 is added to the Loan Agreement to read as follows:

5.23 (a) **Upon request by Lender**, the Borrower covenants and agrees to pay to Lender (or as directed by Lender, to a depository institution ("Depository") monthly until the Term Note has been paid in full, in addition to the monthly payments of principal and interest under the terms of the Term Note and concurrently therewith monthly until the Term Note is fully paid, a sum equal to taxes and assessments next due upon the Mortgaged Properties (all as estimated by the Lender) and the premiums that will next become due and payable on policies of fire, rental value and other insurance covering the Mortgaged Properties required under the terms of the Mortgages, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and insurance premiums will become due and payable, such sums to be held by Lender or the Depository, if any, to pay each of the said items.

(b) All payments described above in this Section 5.23 shall be paid by the Borrower each month in a single payment to be applied by Lender or the Depository, if any, to the foregoing items in such order as Lender shall elect in its sole discretion. Such amounts will be held in an account pledged to Lender, which account shall at Borrower's request, be interest bearing. Interest accruing on monies held in such accounts shall be available to Borrower.

(c) **Upon request by Lender**, the Borrower shall also pay to Lender, at least 30 days prior to the due date of any taxes, assessments or insurance premiums levied on, against or with respect to the Mortgaged Properties, such additional amount as may be necessary to provide Lender or the Depository, if any, with sufficient funds to pay any such tax, assessment and insurance premiums under this Section 5.23 at least 30 days in advance of the due date thereof. The Borrower's failure timely to

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make any payments required under this Section 5.23 shall be an Event of Default.

(d) **If Lender requires** monthly deposits of taxes, assessments and insurance premiums by Borrower, Lender or the Depository, if any, shall, within twenty (20) days of receipt from the Borrower of a written request therefore together with such supporting documentation as Lender may reasonably require (including, without limitation, official tax bills or statements for insurance premiums), cause proper amounts to be withdrawn from the applicable depository account and paid directly to the appropriate tax collecting authority or insurer. Even though the Borrower may have made all appropriate payments to Lender or the Depository, if any, as required by this Section 5.23, the Borrower shall nevertheless have full and sole responsibility or obligation of any kind with respect thereto except with respect to payments required to be made by the Borrower hereunder for which Lender or the Depository, if any, has received funds to cover such payments in full and all statements, invoices, reports or other materials necessary to make such payments, all not less than thirty (30) days prior to the deadline for any such payment. If at any time the funds so held by Lender shall be insufficient to cover the full amount of all taxes, assessments and insurance premiums then accrued (as estimated by Lender) with respect to the then current twelve-month period, the Borrower shall, within ten (10) days after receipt of notice thereof from Lender or the Depository, if any, deposit with Lender or the Depository, if any, such additional funds as may be necessary to remove the deficiency. Failure to do so within such ten (10) day period shall be an Event of Default hereunder and all sums hereby secured shall immediately become due and payable at the option of Lender. In the event of an Event of Default or if the Mortgage Properties are sold under foreclosure or are otherwise acquired by Lender, accumulations under this Section 5.23 may be applied to the Indebtedness in such order of application as Lender may elect in its sole discretion. Any Depository hereunder shall not be liable for any act or omission performed in good faith or pursuant to the direction of any party hereto, but shall be liable for its gross negligence or willful misconduct.

8. Section 6.1 of the Loan Agreement is amended to read as follows:

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- 6.1 The Note shall bear interest at the fixed rate of eight and twenty five one hundredths percent (8.25%) per annum (computed on the basis of actual days elapsed on a three hundred sixty (360) day year). Borrower shall make monthly payments of principal and interest of Seventeen Thousand Five Hundred and 00/100 Dollars (\$17,500.00) which shall be due and payable in arrears on the 10th day of each calendar month during the term of the Loan.
9. The interest rate of seven and one-half percent (7-1/2%) per annum set forth in the Term Note is deleted and replaced with eight and twenty five one hundredths percent (8.25%) per annum.
10. Borrower represents and warrants that no Default Condition exists and that no Event of Default has occurred under the Loan Agreement and the Loan Documents, as hereby amended, and Borrower hereby restates and affirms its respective representations and warranties contained in the Loan Document as fully and with the same effect as if set forth herein and made as of the date hereof, and agrees that the Loan Agreement and the Loan Documents, as amended, secure Borrower's obligations under the Loan.
11. Time is of the essence of this Agreement and every part hereof. All times herein specified are in each case firm and shall not be extended without the prior written approval of Lender.
12. This Agreement shall be binding upon and inure to the benefit of Lender and Borrower, and their respective heirs, legal representative, successors and assigns subject to all limitations currently set forth in the Loan Documents. This Agreement is not intended to benefit any party other than the Borrower, the Lender, and the successors and assigns of the Lender and is specifically not intended to be for the benefit of any party other than those which are party to this Agreement.
13. This Agreement may be executed in two or more counterparts, each of which may be executed by one or more of the parties hereto, but all of which, when taken together, shall constitute but one agreement.

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14. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Illinois applicable to contracts made or to be performed in that State.

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

BORROWER:

KLODNO PIVO, INC., an Illinois corporation
Thomas F. Johnson, President

By: [Signature]
Its: _____

HARRIS TRUST AND SAVINGS BANK f/k/a
HARRIS BANK PALATINE, N.A., as Trustee
as aforesaid u/t/a #4309 and not personally

Attest:

By: [Signature]
Its: Mary M. Bray, Trust Officer

By: [Signature]
Its: Kristin A. Starns, Land Trust Administrator

[Signature]
Thomas F. Johnson

[Signature]
Ellen Y. Johnson

LENDER:

FIRST MIDWEST BANK, N.A.

By: [Signature]
Its: PRESIDENT

SEE EXCULPATORY RIDER ATTACHED
HERETO AND MADE A PART HEREOF

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Exhibit "A"

PARCEL 1: Lots 12 and 13 in Palwaukee Business Center Unit 1, being a subdivision in the South East 1/4 of Section 11, Township 42 North, Range 11 East of the Third Principal Meridian, according to the Plat thereof recorded July 18, 1985 as Document 85106826, in Cook County, Illinois.

PARCEL 2: Lot 11 in Palwaukee Business Center Unit 1, being a subdivision in the South East 1/4 of Section 11, Township 42 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded July 178, 1985 as Document 8516826, Cook county, Illinois.

Address: 601-603 South Chadick Drive, Wheeling, Illinois

PIN: 03-11-408-001-000
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Exhibit "B"

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Lot 7 in Crystal Lake Business Center Unit 3, being a subdivision of part of Section 4, Township 43 North, Range 8 East of the Third Principal Meridian, according to the plat thereof recorded April 5, 1991 as Document No. 91R10906, in McHenry County, Illinois.

Address: 345 Memorial Drive, Crystal Lake, Illinois

PIN: 19-04-302-002-000

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02-027-4374

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EXCULPATORY RIDER

This instrument is executed by the Harris Trust and Savings Bank as Trustee under the provisions of a Trust Agreement dated 4/27/84 and known as Trust no. 4309, not personally, but solely as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. This instrument is executed and delivered by the Trust solely in the exercise of the powers expressly conferred upon the Trustee under the Trust and upon the written direction of the beneficiaries and/or holders of the power of direction of said Trust and Harris Trust and Savings Bank warrants that it possesses full power and authority to execute this instrument. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the trustee while in form purporting to be the said representations, warranties, covenants, undertakings and agreements of said Trustee are each and every one of them not made with the intention of binding Harris Trust and Savings Bank in its individual capacity, but are made and intended solely for the purpose of binding only that portion of the Trust property specifically described herein. No personal liability or personal responsibility is assumed by or nor shall at any time be asserted or enforceable against the Harris Trust and Savings Bank on account of any representations, Warranties, (including but not limited to any representations and/or warranties in regards to potential and/or existant Hazardous Waste) covenants, undertakings and agreements contained in the instrument, (including but not limited to any indebtedness accruing plus interest hereunder) either express or implied or arising in any way out of the transaction in connection with which this instrument is executed, all such personal liability or responsibility, if any, being expressly waived and released, and any liability (including any and all liability for any violation under the Federal and/or State Environmental or Hazardous Waste laws) hereunder being specifically limited to the Trust assets, if any, securing this instrument. Any provision of this instrument referring to a right of any person to be indemnified or held harmless, or reimbursed by the Trustee for any costs, claims, losses, fines, penalties, damages, costs of any nature including attorney's fees and expenses arising in any way out of the execution of this instrument or in connection thereto are expressly waived and released by all parties to and parties claiming, under this instrument. Any person claiming or any provision of this instrument referring to a right to be held harmless, indemnified or reimbursed for any and all costs, losses and expenses of any nature, in connection with the execution of this instrument, shall be construed as only a right of redemption out of the assets of the Trust. Notwithstanding anything in this instrument contained, in the event of any conflict between the body of this exoneration and the body of this instrument, the provisions of this paragraph shall control. Trustee being fully exempted, nothing herein contained shall limit the right of any party to enforce the personal liability of any other party to this instrument.