



Doc#: 0335242007
Eugene "Gene" Moore Fee: \$78.00
Cook County Recorder of Deeds
Date: 12/18/2003 07:41 AM Pg: 1 of 28

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28
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Property of Cook County
Recorder of Deeds

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 4th day of December, 2003, by and among **PRAIRIE MATERIAL SALES, INC.**, an Illinois corporation ("Borrower"), and **AMCORP BANK, N.A.**, a national banking association, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Eleven Million Three Hundred Thousand and no/100 Dollars (\$11,300,000.00) as evidenced by a Promissory Note dated June 27, 2002, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Original Note").

B. The Loan is secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated June 27, 2002 from Borrower to Lender, recorded with the Recorder of Deeds in Cook County, Illinois on July 2, 2002 and August 9, 2002, as Document Nos. 0020729722 and 0020874041, respectively, and recorded with the Recorder of Deed in

This document prepared by and after recording return to:

Daniel J. Kopp, Esq.
Schwartz, Cooper, Greenberger
& Krauss, Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

Permanent Index Numbers:

04-22-400-007 and 04-22-400-008
11-32-300-073
02-23-221005, 02-23-221-007, 02-23-401-012
and 02-23-401-055

Addresses of Property:

2900 Old Willow Road, Glenview, IL
26452 N. Butterfield Road, Vernon Hills, IL
3651 Burdick, Rolling Meadows, IL

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Lake County, Illinois on July 11, 2002 and July 29, 2002 as Document Nos. 4961946 and 4971137, respectively ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Environmental Indemnity Agreement dated June 27, 2002 from Borrower to Lender (the "Indemnity Agreement"); and (iii) certain other loan documents (the Original Note, the Mortgage, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. Borrower desires to amend the Loan Documents in order to adjust the interest rate, reduce the maximum principal amount, allow reborrowing (i.e., convert part of the Loan to a revolving loan) and provide for the issuance of a letter of credit, all as provided herein.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date.** The Maturity Date of the Loan is hereby amended to November 5, 2005. Any reference in any Loan Document to the "Maturity Date" shall mean November 5, 2005.

2. **Principal and Interest; Notes.**

(a) The maximum principal amount of the Loan is reduced from \$11,300,000.00 to \$10,000,000.00 (subject to Paragraphs 17(b), 22(b), 28(b), 29, 33 and 38(o) of the Mortgage, Paragraphs 3 and 4 of this Agreement and any other provision of the Loan Documents regarding advances by Lender).

(b) The Loan shall consist of a revolving loan of \$5,875,000.00 as provided in Paragraph 3 below (the "Revolving Loan") and a letter of credit reimbursement obligation of \$4,125,000.00 as provided in Paragraph 4 below (the "LOC Reimbursement"). All references to the "Loan" in this Agreement and in the Loan Documents shall mean the Revolving Loan and the LOC Reimbursement, collectively.

(c) The Original Note shall be amended and restated and shall consist of two promissory notes: (x) a Revolving Promissory Note in the amount of \$5,875,000.00 (the "Revolving Note") and (y) a Letter of Credit Demand Note in the amount of \$4,125,000.00 (the "Letter of Credit Note"). Forms of the Revolving Note and the Letter of Credit Note are attached as Exhibits C-1 and C-2, respectively. References to the "Note" in this Agreement and the Loan Documents shall mean the Revolving Note and the Letter of Credit Note, collectively. Execution and delivery of the Revolving Note and the Letter of Credit Note is a condition precedent to the agreements contained herein.

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(d) The Loan Rate and terms of repayment of principal and interest are set forth in the Revolving Note and the Letter of Credit Note.

3. **Revolver**. Provided no Event of Default exists, any portion of the principal balance of the Revolving Loan which is repaid may be reborrowed by Borrower prior to the Maturity Date, provided that in no event shall the outstanding principal balance of the Revolving Loan at any time exceed \$5,875,000.00.

4. **Letter of Credit**.

(a) Subject to the terms and conditions of this Agreement, provided no Event of Default or event or condition which, with the giving of notice, the passage of time or both would constitute an Event of Default, then exists, Lender hereby agrees, upon Borrower's request, to issue for the account of Borrower a letter of credit in the form set forth on Exhibit B hereto (the "Letter of Credit").

The obligation of Lender to issue the Letter of Credit is subject to the conditions that as of the date of issuance no order, judgment or decree of any governmental body shall purport by its terms to enjoin or restrain Lender from issuing the Letter of Credit and no law, rule or regulation applicable to Lender and no directive (whether or not having the force of law) from any governmental authority with jurisdiction over Lender shall prohibit the issuance of letters of credit generally or the issuance of such Letter of Credit in particular.

(b) If Lender shall make any payment on or pursuant to the Letter of Credit, such payment shall be deemed automatically to constitute an advance of the Loan, regardless of whether an Event of Default shall have occurred and be continuing or whether all conditions to lending have been met. Borrower shall reimburse Lender on demand for any amounts paid by Lender with respect to the Letter of Credit, including, without limitation, all amounts paid upon any draw with respect thereto and all fees, costs and expenses paid upon any draw with respect thereto. Upon such reimbursement the amount reimbursed shall no longer be deemed to constitute an advance of the Loan and may not be reborrowed. The obligations of Borrower to reimburse Lender for payments made with respect to the Letter of Credit shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances whatsoever, and shall not be subject to any qualification or exception whatsoever, including, without limitation, any of the following circumstances:

(i) Any lack of validity or enforceability of this Agreement or the Letter of Credit;

(ii) The existence of any claim, set off, defense or other right that Borrower may have at any time against a beneficiary named in the Letter of Credit or any transferee of the Letter of Credit (or any person for whom any such transferee may be acting), Lender or any other person, whether in connection with this Agreement or the Letter of Credit, the transactions contemplated herein or any unrelated transactions;

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(iii) Any draft, demand, certificate or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(iv) Payment by Lender under the Letter of Credit against presentation of a demand, draft or certificate or other document which does not comply with the terms of the Letter of Credit (unless Lender has acted with gross negligence or willful misconduct, as determined by a final judgment, not subject to review on appeal, of a court of competent jurisdiction);

(v) Any other circumstance or happening whatsoever, which is similar to any of the foregoing; or

(vi) The occurrence of any Event of Default.

Without limiting the generality of the foregoing, Borrower's obligation to reimburse Lender for an advance under the Letter of Credit shall be further evidenced by the Letter of Credit Note.

(c) Borrower shall pay in arrears to Lender, on the last day of each calendar quarter, a per annum letter of credit fee equal to one percent (1%) of the maximum amount available to be drawn under the Letter of Credit during such Quarter, which amount shall be based on the number of days the Letter of Credit is actually outstanding.

(d) Borrower hereby assumes all risks of the acts and omissions of or misuse of the Letter of Credit by the beneficiaries of the Letter of Credit. In furtherance and not in limitation of the foregoing, absent gross negligence or willful misconduct, as determined by a final judgment, not subject to review on appeal, of a court of competent jurisdiction, Lender shall not be responsible (a) for the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of the Letter of Credit, even if the same prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (b) for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign the Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (c) for failure of the beneficiary of the Letter of Credit to comply fully with conditions required in order to draw upon such Letter of Credit, other than conditions expressly stated in such Letter of Credit; (d) for errors, omissions, interruptions or delays in transmission or delivery of any communications pertaining to the Letter of Credit; (e) for any loss or delay in the transmission or otherwise of any document required in order to make a drawing under the Letter of Credit or of the proceeds thereof; (f) for the misapplication by the beneficiary of the Letter of Credit of the proceeds of any drawing under such Letter of Credit; and (g) for any consequences arising from causes beyond the control of Lender. None of the above shall affect, impair or prevent the vesting of Lender's rights or powers hereunder.

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(e) Borrower agrees that the Mortgage and all other Loan Documents also secure Borrower's obligation to reimburse Lender for draws under the Letter of Credit.

5. **Mortgage.** The following paragraph is hereby added as Paragraph 38(o) of the Mortgage:

“(o) **Revolving Credit and Letter of Credit.** This Mortgage is given to secure a revolving credit loan and letter of credit reimbursement obligations and shall secure not only presently existing indebtedness under the Note, the Loan Agreement or any other Loan Documents but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, as are made within 20 years from the date hereof to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no Indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness including future advances, from the time of its filing for record in the recorder's or registrar's office of the county in which the real estate is located. This Mortgage secures, among other Indebtedness, a “revolving credit” arrangement within the meaning of 815 ILCS 205/4.1 and 205 ILCS 5/5d. The total amount of Indebtedness may increase or decrease from time to time, as provided in the Note, and any disbursements which Mortgagee may make under this Mortgage, the Note or any other document with respect hereto (e.g., for payment of taxes, insurance premiums or other advances to protect Mortgagee's liens and security interests, as permitted hereby) shall be additional Indebtedness secured hereby. This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.”

6. **Financial Covenants.** Paragraphs 16(i) and 35 of the Mortgage shall continue in full force and effect.

7. **Financial Reporting.** Borrower shall furnish to Lender such financial information regarding Borrower and the Property as Lender may from time to time reasonably request, which shall include, without any further request therefor, annual audited financial statements for Borrower certified by Borrower to be true, correct and complete no later than ninety (90) days after the end of each year, together with an unqualified accountant's opinion in a form satisfactory to Lender.

8. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

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(a) The representations and warranties in the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Original Note (or the Revolving Note or the Letter of Credit Note), the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Original Note (or the Revolving Note or the Letter of Credit Note), the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of Illinois and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

9. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's Title Insurance Policy Nos. 1401 007996008, 1409 000661290 and 1401 007996009 (collectively, the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement, insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender, and adding a revolving credit endorsement and a letter of credit endorsement.

10. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees and attorneys' fees and expenses.

11. **Miscellaneous.**

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

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(b) This Agreement shall not be construed more strictly against Lender than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender, and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Original Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

LENDER:

AMCORE BANK, N.A.

By: *Timothy S. Hanson* AVP
Name: Timothy S. Hanson
Title: ASSISTANT VICE PRESIDENT

BORROWER:

PRAIRIE MATERIAL SALES, INC.

By: *J. Alan Oremus*
Name: J. Alan Oremus
Title: Pres.

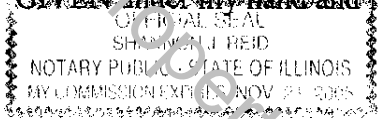
Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I Shannon Reid a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Timothy S. Hanson MVP of AMCORE BANK, N.A., 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 and delivered 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 4th day of December 2003.



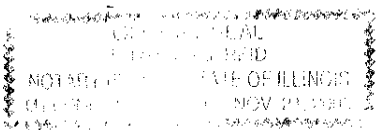
Shannon Reid
Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I Shannon Reid a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that J. Alan Bremer, President of PRAIRIE MATERIAL SALES, INC. 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 and delivered 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 4th day of December 2003.



Shannon Reid
Notary Public

My Commission Expires: _____

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EXHIBIT A

THE PROPERTY

YARD 21

Parcel 1:

THE SOUTH 442.30 FEET OF THE NORTH 794.76 FEET OF THAT PART OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN (AS MEASURED ON THE EAST LINE THEREOF) LYING EAST OF THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD, IN COOK COUNTY, ILLINOIS

Parcel 2:

THAT PART OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THEREFROM THE NORTH 794.76 FEET, AS MEASURED ON THE EAST LINE THEREOF) LYING EAST OF THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD, IN COOK COUNTY, ILLINOIS.

PIN: 04-22-400-007-0000 and 04-22-400-008-0000

Address: 2900 Old Willow Road
Glenview, IL

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YARD 24

THAT PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 32, TOWNSHIP 44 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF SAID QUARTER SECTION WITH THE EASTERLY RIGHT-OF-WAY LINE OF THE MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY COMPANY (SAID POINT BEING 214.3 FEET EAST OF THE NORTHWEST CORNER OF SAID QUARTER SECTION); THENCE EAST ALONG THE NORTH LINE OF SAID QUARTER SECTION, 890.6 FEET TO THE CENTER LINE OF BUTTERFIELD ROAD; THENCE SOUTH 17 DEGREES 48 MINUTES EAST ALONG THE CENTER OF SAID ROAD, 469.5 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF THE ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, THENCE WESTERLY ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, 703.7 FEET TO THE EASTERLY RIGHT-OF-WAY OF SAID MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY COMPANY; THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY COMPANY, 712.5 FEET TO THE PLACE OF BEGINNING (EXCEPT THE SOUTHERLY 25.00 FEET THEREOF (AS MEASURED PERPENDICULARLY) AND ALSO EXCEPT THAT PART THEREOF DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY COMPANY LYING 25.00 FEET (AS MEASURED PERPENDICULARLY) NORTHERLY OF THE NORTHERLY RIGHT OF WAY LINE OF THE ELGIN, JOLIET AND EASTERN RAILWAY; THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE OF SAID MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY COMPANY, 101.40 FEET; THENCE EASTERLY ALONG A LINE FORMING AN ANGLE OF 146 DEGREES 50 MINUTES 49 SECONDS (MEASURED COUNTER CLOCKWISE THEREFROM), 63.13 FEET; THENCE EASTERLY ALONG A LINE FORMING AN ANGLE OF 148 DEGREES 08 MINUTES 13 SECONDS (MEASURED CLOCKWISE THEREFROM), 117.59 FEET; THENCE SOUTHEASTERLY ALONG A LINE FORMING AND ANGLE OF 146 DEGREES 00 MINUTES 15 SECONDS (MEASURED COUNTER CLOCKWISE THEREFROM), 21.83 FEET TO A POINT ON A LINE LYING 25.00 FEET (AS MEASURED PERPENDICULARLY) NORTHERLY OF AND PARALLEL WITH THE NORTHERLY RIGHT OF WAY LINE OF SAID ELGIN, JOLIET AND EASTERN RAILWAY COMPANY; THENCE SOUTHWESTERLY ALONG THE LAST DESCRIBED PARALLEL LINE, 248.46 FEET, MORE OR LESS, TO THE POINT OF BEGINNING), IN LAKE COUNTY, ILLINOIS.

PIN: 11-32-300-073-0000

Address: 26452 N. Butterfield Road
Vernon Hills, IL

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YARD 35

Parcel 1:

THAT PART OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE CHICAGO AND NORTHWESTERN RAILROAD (EXCEPT THE WEST 600 FEET THEREOF) TOGETHER WITH THAT PART OF THE NORTH $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE CHICAGO AND NORTHWESTERN RAILROAD (EXCEPT THE WEST 600 FEET THEREOF AND EXCEPT THAT PART LYING EAST OF A LINE 333 FEET WEST OF, AS MEASURED ALONG THE SOUTHERLY LINE OF SAID CHICAGO AND NORTHWESTERN RAILROAD, AND PARALLEL WITH THE EAST LINE OF SAID SECTION 23) EXCEPT FROM THE ABOVE DESCRIBED PREMISES TAKEN AS A TRACT, THE EASTERLY 50 FEET (AS MEASURED ALONG THE SOUTHERLY LINE) THEREOF, AND EXCEPT THE SOUTH 33 FEET THEREOF, HERETOFORE DEDICATED FOR A PUBLIC STREET BY DOCUMENT NO. 26866158, ALL IN COOK COUNTY, ILLINOIS.

Parcel 2:

THE EAST 120.0 FEET OF THE WEST 600.0 FEET OF THE NORTH $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 23, AND THE EAST 120.0 FEET OF THE WEST 600.0 FEET OF THAT PART OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 23 (LYING SOUTH OF THE SOUTHERLY LINE OF THE CHICAGO AND NORTHWESTERN RAILROAD) ALL IN TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THE SOUTH 33.0 FEET THEREOF, HERETOFORE DEDICATED FOR A PUBLIC STREET BY DOCUMENT NO. 26866158, IN COOK COUNTY, ILLINOIS.

PIN: 02-23-221-005-0000, 02-23-221-007-0000, 02-23-401-012-0000,
and 02-23-401-055-0000

Address: 3650 Burdnick
Rolling Meadows, IL

Nov. 24. 2003 12:22PM

UNOFFICIAL COPY No. 4684 P. 2**EXHIBIT B**

To: Arch Insurance Group
 Arch Insurance Company
 311 South Wacker Drive
 Chicago, IL 60606

DRAFT

By Order of: Prairie Material Sales, Inc.
 IRREVOCABLE STANDBY LETTER OF CREDIT NO. S2003-459

**AMCORE
BANK**

Gentlemen:

We hereby establish our irrevocable standby letter of credit in your favor and authorize you to draw on:

AMCORE Bank, NA, 501 Seventh Street, Rockford, IL 61104. Attn: Letter of Credit for the account of Prairie Material Sales, Inc., 7601 W. 79th Street, Bridgeview, IL 60455 a sum or sums not exceeding FOUR MILLION ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$4,125,000.00) AVAILABLE BY YOUR DRAFT AT SIGHT MARKED "DRAWN UNDER AMCORE BANK, NA IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER S2003-459 DATED NOVEMBER 20, 2003", accompanied by:

Beneficiary's signed certification stating that Beneficiary has been called upon to make payment, or Beneficiary has incurred actual un-reimbursed liability, loss costs or expense, including reasonable attorney fees, pursuant to Arch Insurance Group Policy No. 41WCI1966000 and 41CAB1966200 (collectively, the "Policy"), detailed as to amount and incurrence, on behalf of prairie Material Sales, inc. under the Policy.

It is a condition of this Irrevocable Standby Letter of Credit that it shall be deemed automatically extended without amendment for a period of one year from the expiration date specified in the following paragraph, or any future expiration date, unless, at least sixty (60) days prior to such expiration, we shall notify you in writing at the address above that we elect not to renew this Irrevocable Standby Letter of Credit for such additional period or periods. Upon receipt by you of such notice from us, you may draw hereunder by means of your draft on us at sight accompanied by your written certification that liability on the aforesaid policy is still outstanding and that the proceeds of your draft will be used by you to save yourself harmless from any and all liability and to meet payments as may be due there under. Under no circumstance will this letter of credit be extended beyond October 1, 2004.

We hereby agree with the drawers, endorses and bona fide holders of drafts drawn under and in compliance with the terms of this Irrevocable Standby Letter of Credit that the same will be duly honored within one business day of receipt if presented to the above mentioned paying bank on or before October 1, 2004 together with the Irrevocable Standby Letter of Credit.

DRAFT

Letter of Credit # S2003-459

PAGE-2

Partial drawing(s) are permitted.

This Irrevocable Standby Letter of Credit is subject to the International Standby Practices 1998 (ISP98) International Chamber of Commerce Publication no. 590.

Sincerely,

AMCORE BANK N.A.

By:

DRAFT

ATTEST:

DRAFT

Property of Cook County Clerk's Office

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EXHIBIT C-1

AMENDED AND RESTATED REVOLVING NOTE

\$5,875,000.00

December ____, 2003
Chicago, Illinois

1. **Agreement to Pay.** FOR VALUE RECEIVED, PRAIRIE MATERIAL SALES, INC., an Illinois corporation ("**Borrower**") hereby promises to pay to the order of AMCORE BANK, N.A., its successors and assigns ("**Lender**"), the principal sum of Five Million Eight Hundred Seventy-Five Thousand and No/100 Dollars (\$5,875,000.00) ("**Loan**"), at the place and in the manner hereinafter provided, together with interest thereon at the rate or rates described below, and any and all other amounts which may be due and payable hereunder from time to time.

2. **Interest Rate.**

2.1 **Interest Prior to Default.** Interest shall accrue on the outstanding principal balance of this Note from the date hereof through November 5, 2005, ("**Maturity Date**") at an annual rate equal to four and twenty-four hundredths percent (4.24%) ("**Loan Rate**").

2.2 **Interest After Default.** From and after the Maturity Date or upon the occurrence and during the continuance of an Event of Default, interest shall accrue on the balance of principal remaining unpaid during any such period at an annual rate ("**Default Rate**") equal to three percent (3%) plus the Loan Rate; provided, however, in no event shall the Default Rate exceed the maximum rate permitted by law. The interest accruing under this paragraph shall be immediately due and payable by Borrower to the holder of this Note upon demand and shall be additional indebtedness evidenced by this Note.

2.3 **Interest Calculation.** Interest on this Note shall be calculated on the basis of a 360-day year and the actual number of days elapsed in any period in which interest is due.

3. **Payment Terms.**

3.1 **Principal and Interest.** Payments of principal and interest due under this Note, if not sooner declared to be due in accordance with the provisions hereof, shall be made as follows:

(a) Commencing on January 1, 2004, and on the first Business Day of each month thereafter through and including the month in which the Maturity Date occurs, payments of accrued and unpaid interest on the outstanding principal balance hereof shall be due and payable.

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(b) The unpaid principal balance of this Note, if not sooner paid or declared to be due in accordance with the terms hereof, together with all accrued and unpaid interest thereon and any other amounts due and payable hereunder or under any other Loan Document (as hereinafter defined), shall be due and payable in full on the Maturity Date.

3.2 Application of Payments. Prior to the occurrence of an Event of Default, all payments and prepayments on account of the indebtedness evidenced by this Note shall be applied as follows: (a) first, to fees, expenses, costs and other similar amounts then due and payable to Lender, (b) second, to accrued and unpaid interest on the principal balance of this Note, (c) third, to any escrows, impounds or other amounts which may then be due and payable under the Loan Documents (as hereinafter defined), (d) fourth, to any other amounts then due Lender hereunder or under any of the Loan Documents, and (e) last, to the unpaid principal balance of this Note. Any prepayment on account of the indebtedness evidenced by this Note shall not extend or postpone the due date or reduce the amount of any subsequent monthly payment of principal and interest due hereunder. After an Event of Default has occurred and is continuing, payments may be applied by Lender to amounts owed hereunder and under the Loan Documents in such order as Lender shall determine, in its sole discretion.

3.3 Method of Payments. All payments of principal and interest hereunder shall be paid by automatic debit, wire transfer, check or in coin or currency which, at the time or times of payment, is the legal tender for public and private debts in the United States of America and shall be made at such place as Lender or the legal holder or holders of this Note may from time to time appoint in the payment invoice or otherwise in writing, and in the absence of such appointment, then at the offices of Lender at 1933 Meacham Road, Suite 110, Schaumburg, Illinois 60173. Payment made by check shall be deemed paid on the date Lender receives such check; provided, however, that if such check is subsequently returned to Lender unpaid due to insufficient funds or otherwise, the payment shall not be deemed to have been made and shall continue to bear interest until collected. Notwithstanding the foregoing, the final payment due under this Note must be made by wire transfer or other final funds.

3.4 Late Charge. If any payment of interest or principal due hereunder is not made within ten days after such payment is due in accordance with the terms hereof, then, in addition to the payment of the amount so due, Borrower shall pay to Lender a "late charge" of five cents for each whole dollar so overdue to defray part of the cost of collection and handling such late payment. Borrower agrees that the damages to be sustained by the holder hereof for the detriment caused by any late payment are extremely difficult and impractical to ascertain, and that the amount of five cents for each one dollar due is a reasonable estimate of such damages, does not constitute interest, and is not a penalty.

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3.5 **Prepayment.** This Note may be prepaid, either in whole or in part, without penalty or premium, at any time and from time to time upon fourteen (14) days prior written notice to Lender.

4. **Security.** This Note is secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing ("**Mortgage**") dated June 27, 2002 made by Borrower to Lender (and amended by a Modification of Loan Documents between Borrower and Lender of even date herewith (the "**Modification**")) creating a first mortgage lien on certain real property ("**Premises**") legally described in Exhibit A attached to the Mortgage (the Mortgage and any other document now or hereafter given to evidence or secure payment of this Note or delivered to induce Lender to disburse the proceeds of the Loan, as such documents are amended by the Modification and may hereafter be further amended, restated or replaced from time to time, are hereinafter collectively referred to as the "**Loan Documents**"). Reference is hereby made to the Loan Documents (which are incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a statement of the covenants and agreements contained therein, a statement of the rights, remedies, and security afforded thereby, and all matters therein contained.

5. **Events of Default.** The occurrence of any one or more of the following events shall constitute an "**Event of Default**" under this Note:

5.1 the failure by Borrower to pay (i) any installment of principal or interest payable pursuant to this Note on the date when due, (ii) any installment of principal or interest payable pursuant to the Letter of Credit Note (as defined in the Modification) when due, or (iii) any other amount payable to Lender under this Note, the Letter of Credit Note, the Mortgage or any of the other Loan Documents within ten (10) days after the date when any such payment is due in accordance with the terms hereof or thereof; or

5.2 the occurrence of any "**Event of Default**" under the Mortgage or any of the other Loan Documents; or

5.3 the occurrence of the dissolution, insolvency or winding-up of Borrower.

6. **Remedies.** At the election of the holder hereof, and without notice, the principal balance remaining unpaid under this Note, and all unpaid interest accrued thereon and any other amounts due hereunder, shall be and become immediately due and payable in full upon the occurrence of any Event of Default. Failure to exercise this option shall not constitute a waiver of the right to exercise same in the event of any subsequent Event of Default. No holder hereof shall, by any act of omission or commission, be deemed to waive any of its rights, remedies or powers hereunder or otherwise unless such waiver is in writing and signed by the holder hereof, and then only to the extent specifically set forth therein. The rights, remedies and powers of the holder hereof, as provided in this Note, the Mortgage and in all of the other Loan Documents are cumulative and concurrent, and may be pursued singly, successively or together against Borrower, the Premises and any other security given at any time to secure the repayment hereof, all at the sole discretion of the holder hereof. If any suit or action is instituted or attorneys are

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employed to collect this Note or any part hereof, Borrower promises and agrees to pay all costs of collection, including reasonable attorneys' fees and court costs.

7. **Covenants and Waivers.** Borrower and all others who now or may at any time become liable for all or any part of the obligations evidenced hereby, expressly agree hereby to be jointly and severally bound, and jointly and severally: (i) waive and renounce any and all homestead, redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced by this Note or by any extension or renewal hereof; (ii) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (iii) except as expressly provided in the Loan Documents, waive any and all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default, or enforcement of the payment hereof or hereunder; (iv) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (v) agree that the liability of each Borrower, endorser or obligor shall be unconditional and without regard to the liability of any other person or entity for the payment hereof, and shall not in any manner be affected by any indulgence or forbearance granted or consented to by Lender to any of them with respect hereto; (vi) consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and (vii) consent to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such makers, endorsers, guarantors or other obligors, or security shall not affect the liability of Borrower and all others now liable for all or any part of the obligations evidenced hereby. This provision is a material inducement for Lender making the Loan to Borrower.

8. **Other General Agreements.**

8.1 The Loan is a business loan which comes within the purview of Section 205/4, paragraph (1)(c) of Chapter 815 of the Illinois Compiled Statutes, as amended. Borrower agrees that the Loan evidenced by this Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C., Section 1601, et seq.

8.2 Time is of the essence hereof.

8.3 This Note is governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the statutes, laws and decisions of the State of Illinois. This Note may not be changed or amended orally but only by an instrument in writing signed by the party against whom enforcement of the change or amendment is sought.

8.4 Lender shall not be construed for any purpose to be a partner, joint venturer, agent or associate of Borrower or of any lessee, operator, concessionaire or licensee of Borrower in the conduct of its business, and by the execution of this Note, Borrower agrees to indemnify, defend, and hold Lender harmless from and against any

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and all damages, costs, expenses and liability that may be incurred by Lender as a result of a claim that Lender is such partner, joint venturer, agent or associate.

8.5 This Note has been made and delivered at Chicago, Illinois and all funds disbursed to or for the benefit of Borrower will be disbursed in Chicago, Illinois.

8.6 This Note shall inure to the benefit of and may be enforced by Lender and its successors and assigns.

8.7 If any provision of this Note is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Borrower and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

8.8 If the interest provisions herein or in any of the Loan Documents shall result, at any time during the Loan, in an effective rate of interest which, for any month, exceeds the limit of usury or other laws applicable to the Loan, all sums in excess of those lawfully collectible as interest of the period in question shall, without further agreement or notice between or by any party hereto, be applied upon principal immediately upon receipt of such monies by Lender, with the same force and effect as though the payer has specifically designated such extra sums to be so applied to principal and Lender had agreed to accept such extra payment(s) as a premium-free prepayment. Notwithstanding the foregoing, however, Lender may at any time and from time to time elect by notice in writing to Borrower to reduce or limit the collection to such sums which, when added to the said first-stated interest, shall not result in any payments toward principal in accordance with the requirements of the preceding sentence. In no event shall any agreed to or actual exaction as consideration for this Loan transcend the limits imposed or provided by the law applicable to this transaction or the makers hereof in the jurisdiction in which the Premises are located for the use or detention of money or for forbearance in seeking its collection.

8.9 Lender may at any time assign its rights in this Note and the Loan Documents, or any part thereof and transfer its rights in any or all of the collateral, and Lender thereafter shall be relieved from all liability with respect to such collateral. Lender shall notify Borrower of any such assignment not later than thirty (30) days prior to the effective date of such assignment. Borrower may not assign its interest in this Note, or any other agreement with Lender or any portion thereof, either voluntarily or by operation of law, without the prior written consent of Lender.

9. **Notices.** All notices required under this Note will be in writing and will be transmitted in the manner and to the addresses or facsimile numbers required by the Mortgage, or to such other addresses or facsimile numbers as Lender and Borrower may specify from time to time in writing.

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10. **Consent to Jurisdiction.** TO INDUCE LENDER TO ACCEPT THIS NOTE, BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS NOTE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON BORROWER, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT THE ADDRESS STATED IN THE MORTGAGE AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

11. **Waiver of Jury Trial.** BORROWER AND LENDER (BY ACCEPTANCE OF THIS NOTE) HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS NOTE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS NOTE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS NOTE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

12. **Amendment and Restatement.** This Amended and Restated Revolving Note, together with the Letter of Credit Note, shall be in substitution for and replacement of that certain Promissory Note executed and delivered by Borrower as of June 27, 2002 in favor of Lender (the "Prior Note") and shall not constitute payment, settlement or a novation of the Prior Note, or release or otherwise adversely affect any lien or security interest securing any indebtedness under the Prior Note or under any other agreement.

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IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the day and year first written above.

BORROWER:

PRAIRIE MATERIAL SALES, INC., an Illinois corporation

By: _____

Name: _____

Title: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT C-2****AMENDED AND RESTATED
LETTER OF CREDIT DEMAND NOTE**

\$4,125,000.00

December ____, 2003
Chicago, Illinois

1. **Agreement to Pay.** FOR VALUE RECEIVED, PRAIRIE MATERIAL SALES, INC., an Illinois corporation (“**Borrower**”) hereby promises to pay to the order of AMCORE BANK, N.A., its successors and assigns (“**Lender**”), the principal sum of Four Million One Hundred Twenty-Five Thousand and No/100 Dollars (\$4,125,000.00) or such lesser amount as shall have actually been borrowed by Borrower from Lender under a letter of credit facility established by Lender as hereinafter described (“**Loan**”), at the place and in the manner hereinafter provided, together with interest thereon at the rate or rates described below, and any and all other amounts which may be due and payable hereunder from time to time. Any amounts drawn under the “Letter of Credit” issued by Lender pursuant to a Modification of Loan Documents of even date herewith (the “**Modification**”) herewith by and between Lender and Borrower shall constitute funds advanced by Lender under this Note, shall be deemed principal indebtedness owed by Borrower to Lender hereunder and shall be payable as provided herein.

2. **Interest Rate.**

2.1 **Interest Prior to Default or Demand.** Interest shall accrue on the outstanding principal balance of this Note from the date hereof through November 5, 2005, (“**Maturity Date**”) at an annual rate equal to four and twenty-four hundredths percent (4.24%) (“**Loan Rate**”).

2.2 **Interest After Default or Demand.** From and after the Maturity Date or demand for payment by Lender, or upon the occurrence and during the continuance of an Event of Default, interest shall accrue on the balance of principal remaining unpaid during any such period at an annual rate (“**Default Rate**”) equal to three percent (3%) plus the Loan Rate; provided, however, in no event shall the Default Rate exceed the maximum rate permitted by law. The interest accruing under this paragraph shall be immediately due and payable by Borrower to the holder of this Note upon demand and shall be additional indebtedness evidenced by this Note.

2.3 **Interest Calculation.** Interest on this Note shall be calculated on the basis of a 360-day year and the actual number of days elapsed in any period in which interest is due.

3. **Payment Terms.**

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3.1 **Principal and Interest.** Payments of principal and interest due under this Note, if not sooner declared to be due in accordance with the provisions hereof, shall be made as follows:

(a) If demand for payment in full has not been made, commencing on the first Business Day of the month immediately following any draw upon the Letter of Credit, and on the first Business Day of each month thereafter through and including the month in which the Maturity Date occurs, payments of accrued and unpaid interest on the outstanding principal balance hereof shall be due and payable.

(b) The unpaid principal balance of this Note, if not sooner paid or declared to be due in accordance with the terms hereof, together with all accrued and unpaid interest thereon and any other amounts due and payable hereunder or under any other Loan Document (as hereinafter defined), shall be due and payable in full on the earlier of (a) demand by Lender or (b) in the absence of prior demand by Lender, the Maturity Date.

3.2 **Application of Payments.** Prior to the occurrence of an Event of Default or demand for payment by Lender, all payments and prepayments on account of the indebtedness evidenced by this Note shall be applied as follows: (a) first, to fees, expenses, costs and other similar amounts then due and payable to Lender, (b) second, to accrued and unpaid interest on the principal balance of this Note, (c) third, to any escrows, impounds or other amounts which may then be due and payable under the Loan Documents (as hereinafter defined), (d) fourth, to any other amounts then due Lender hereunder or under any of the Loan Documents, and (e) last, to the unpaid principal balance of this Note. Any prepayment on account of the indebtedness evidenced by this Note shall not extend or postpone the due date or reduce the amount of any subsequent monthly payment of principal and interest due hereunder. After an Event of Default has occurred and is continuing or after demand for payment by Lender, payments may be applied by Lender to amounts owed hereunder and under the Loan Documents in such order as Lender shall determine, in its sole discretion.

3.3 **Method of Payments.** All payments of principal and interest hereunder shall be paid by automatic debit, wire transfer, check or in coin or currency which, at the time or times of payment, is the legal tender for public and private debts in the United States of America and shall be made at such place as Lender or the legal holder or holders of this Note may from time to time appoint in the payment invoice or otherwise in writing, and in the absence of such appointment, then at the offices of Lender at 1933 Meacham Road, Suite 110, Schaumburg, Illinois 60173. Payment made by check shall be deemed paid on the date Lender receives such check; provided, however, that if such check is subsequently returned to Lender unpaid due to insufficient funds or otherwise, the payment shall not be deemed to have been made and shall continue to bear interest until collected. Notwithstanding the foregoing, the final payment due under this Note must be made by wire transfer or other final funds.

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3.4 **Late Charge.** If any payment of interest or principal due hereunder is not made within ten days after such payment is due in accordance with the terms hereof, then, in addition to the payment of the amount so due, Borrower shall pay to Lender a "late charge" of five cents for each whole dollar so overdue to defray part of the cost of collection and handling such late payment. Borrower agrees that the damages to be sustained by the holder hereof for the detriment caused by any late payment are extremely difficult and impractical to ascertain, and that the amount of five cents for each one dollar due is a reasonable estimate of such damages, does not constitute interest, and is not a penalty.

3.5 **Prepayment.** This Note may be prepaid, either in whole or in part, without penalty or premium, at any time and from time to time upon fourteen (14) days prior written notice to Lender.

4. **Security.** This Note is secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing ("**Mortgage**") dated June 27, 2002 made by Borrower to Lender (and amended by the Modification) creating a first mortgage lien on certain real property ("**Premises**") legally described in Exhibit A attached to the Mortgage (the Mortgage and any other document now or hereafter given to evidence or secure payment of this Note or delivered to induce Lender to disburse the proceeds of the Loan, as such documents are amended by the Modification and may hereafter be further amended, restated or replaced from time to time, are hereinafter collectively referred to as the "**Loan Documents**"). Reference is hereby made to the Loan Documents (which are incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a statement of the covenants and agreements contained therein, a statement of the rights, remedies, and security afforded thereby, and all matters therein contained.

5. **Events of Default.** The occurrence of any one or more of the following events shall constitute an "**Event of Default**" under this Note:

5.1 the failure by Borrower to pay (i) any installment of principal or interest payable pursuant to this Note on the date when due (or, in the case of outstanding principal, upon demand for payment by Lender), (ii) any installment of principal or interest payable pursuant to the Revolving Note (as defined in the Modification) on the date when due, or (iii) any other amount payable to Lender under this Note, the Revolving Note, the Mortgage or any of the other Loan Documents within ten (10) days after the date when any such payment is due in accordance with the terms hereof or thereof; or

5.2 the occurrence of any "Event of Default" under the Mortgage or any of the other Loan Documents; or

5.3 the occurrence of the dissolution, insolvency or winding-up of Borrower.

6. **Remedies.** At the election of the holder hereof, and without notice, the principal balance remaining unpaid under this Note, and all unpaid interest accrued thereon and any other

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amounts due hereunder, shall be and become immediately due and payable in full upon the occurrence of any Event of Default. Failure to exercise this option shall not constitute a waiver of the right to exercise same in the event of any subsequent Event of Default. No holder hereof shall, by any act of omission or commission, be deemed to waive any of its rights, remedies or powers hereunder or otherwise unless such waiver is in writing and signed by the holder hereof, and then only to the extent specifically set forth therein. The rights, remedies and powers of the holder hereof, as provided in this Note, the Mortgage and in all of the other Loan Documents are cumulative and concurrent, and may be pursued singly, successively or together against Borrower, the Premises and any other security given at any time to secure the repayment hereof, all at the sole discretion of the holder hereof. If any suit or action is instituted or attorneys are employed to collect this Note or any part hereof, Borrower promises and agrees to pay all costs of collection, including reasonable attorneys' fees and court costs.

7. **Covenants and Waivers.** Borrower and all others who now or may at any time become liable for all or any part of the obligations evidenced hereby, expressly agree hereby to be jointly and severally bound, and jointly and severally: (i) waive and renounce any and all homestead, redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced by this Note or by any extension or renewal hereof; (ii) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (iii) except as expressly provided in the Loan Documents, waive any and all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default, or enforcement of the payment hereof or hereunder; (iv) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (v) agree that the liability of each Borrower, endorser or obligor shall be unconditional and without regard to the liability of any other person or entity for the payment hereof, and shall not in any manner be affected by any indulgence or forbearance granted or consented to by Lender to any of them with respect hereto; (vi) consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and (vii) consent to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such makers, endorsers, guarantors or other obligors, or security shall not affect the liability of Borrower and all others now liable for all or any part of the obligations evidenced hereby. This provision is a material inducement for Lender making the Loan to Borrower.

8. **Other General Agreements.**

8.1 The Loan is a business loan which comes within the purview of Section 205/4, paragraph (1)(c) of Chapter 815 of the Illinois Compiled Statutes, as amended. Borrower agrees that the Loan evidenced by this Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C., Section 1601, et seq.

8.2 Time is of the essence hereof.

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8.3 This Note is governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the statutes, laws and decisions of the State of Illinois. This Note may not be changed or amended orally but only by an instrument in writing signed by the party against whom enforcement of the change or amendment is sought.

8.4 Lender shall not be construed for any purpose to be a partner, joint venturer, agent or associate of Borrower or of any lessee, operator, concessionaire or licensee of Borrower in the conduct of its business, and by the execution of this Note, Borrower agrees to indemnify, defend, and hold Lender harmless from and against any and all damages, costs, expenses and liability that may be incurred by Lender as a result of a claim that Lender is such partner, joint venturer, agent or associate.

8.5 This Note has been made and delivered at Chicago, Illinois and all funds disbursed to or for the benefit of Borrower will be disbursed in Chicago, Illinois.

8.6 This Note shall inure to the benefit of and may be enforced by Lender and its successors and assigns.

8.7 If any provision of this Note is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Borrower and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

8.8 If the interest provisions herein or in any of the Loan Documents shall result, at any time during the Loan, in an effective rate of interest which, for any month, exceeds the limit of usury or other laws applicable to the Loan, all sums in excess of those lawfully collectible as interest of the period in question shall, without further agreement or notice between or by any party hereto, be applied upon principal immediately upon receipt of such monies by Lender, with the same force and effect as though the payer has specifically designated such extra sums to be so applied to principal and Lender had agreed to accept such extra payment(s) as a premium-free prepayment. Notwithstanding the foregoing, however, Lender may at any time and from time to time elect by notice in writing to Borrower to reduce or limit the collection to such sums which, when added to the said first-stated interest, shall not result in any payments toward principal in accordance with the requirements of the preceding sentence. In no event shall any agreed to or actual exaction as consideration for this Loan transcend the limits imposed or provided by the law applicable to this transaction or the makers hereof in the jurisdiction in which the Premises are located for the use or detention of money or for forbearance in seeking its collection.

8.9 Lender may at any time assign its rights in this Note and the Loan Documents, or any part thereof and transfer its rights in any or all of the collateral, and

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Lender thereafter shall be relieved from all liability with respect to such collateral. Lender shall notify Borrower of any such assignment not later than thirty (30) days prior to the effective date of such assignment. Borrower may not assign its interest in this Note, or any other agreement with Lender or any portion thereof, either voluntarily or by operation of law, without the prior written consent of Lender.

9. **Notices.** All notices required under this Note will be in writing and will be transmitted in the manner and to the addresses or facsimile numbers required by the Mortgage, or to such other addresses or facsimile numbers as Lender and Borrower may specify from time to time in writing.

10. **Consent to Jurisdiction.** TO INDUCE LENDER TO ACCEPT THIS NOTE, BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS NOTE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON BORROWER, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT THE ADDRESS STATED IN THE MORTGAGE AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

11. **Waiver of Jury Trial.** BORROWER AND LENDER (BY ACCEPTANCE OF THIS NOTE), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS NOTE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS NOTE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS NOTE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

12. **Amendment and Restatement.** This Amended and Restated Letter of Credit Demand Note, together with the Revolving Note, shall be in substitution for and replacement of that certain Promissory Note executed and delivered by Borrower as of June 27, 2002 in favor of Lender (the "Prior Note") and shall not constitute payment, settlement or a novation of the Prior Note, or release or otherwise adversely affect any lien or security interest securing any indebtedness under the Prior Note or under any other agreement.

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IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the day and year first written above.

BORROWER:

PRAIRIE MATERIAL SALES, INC., an Illinois corporation

By: _____

Name: _____

Title: _____

Property of Cook County Clerk's Office