

# UNOFFICIAL COPY

MODIFICATION AGREEMENT -91-448875

This Modification Agreement ("Agreement") is entered into effective as of December 1, 1990 by and between LaSalle National Bank, not personally but solely as Trustee under the Trust Agreement dated April 5, 1977 and known as Trust No. 10-32324-09, having a place of business at 135 South LaSalle Street, Chicago, Illinois 60690 ("Mortgagor"), and Nicholas J. Lepkaluk ("Beneficiary"), on the one hand, and Benjamin Franklin Federal Savings Association, a Texas federal savings and loan association formerly known as Benjamin Franklin Savings Association and having a place of business at 5444 Westheimer, Houston, Texas 77056 ("Mortgagee"), on the other hand.

WHEREAS, Security Capital Credit Corporation, a Delaware corporation ("Security Capital"), made a loan in the principal amount of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) (the "Loan") to Mortgagor;

WHEREAS, the Loan is evidenced by a Secured Promissory Note dated December 16, 1985 in the principal amount of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) payable by Mortgagor to the order of Security Capital, as modified by the Modification Agreement dated September 1, 1988 by and between Mortgagor and Mortgagee, recorded August 15, 1989 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 89-378195 (the "Modification Agreement") (as modified, the "Note"), and is secured by the Mortgage and Security Agreement dated December 10, 1985 executed by Mortgagor in favor of Security Capital, recorded December 16, 1985 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 85-325428, as modified by the Modification Agreement (as modified, the "Mortgage"), and by the Assignment of Leases and Rents dated December 10, 1985 executed by Mortgagor and Beneficiary in favor of Security Capital, recorded December 16, 1985 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 85-325429, as modified by the Modification Agreement (as modified, the "Assignment") (the Note, Mortgage and Assignment being hereinafter referred to collectively as the "Loan Documents");

WHEREAS, the Note was endorsed to Mortgagee and the Mortgage and Assignment were assigned to Mortgagee by the Assignment of Security Documents dated December 12, 1985 executed by Security Capital in favor of Mortgagee, recorded February 13, 1986 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 86-062514;

THIS INSTRUMENT WAS PREPARED BY AND UPON RECORDING SHOULD BE RETURNED TO:

Robert L. Cimala, Esq.  
Tressler, Soderstrom, Maloney & Pries  
200 West Adams Street  
Suite 3000  
Chicago, Illinois 60606

Box 15

TT 260997 Dkw 1 all Box 15

COOK COUNTY RECORDER 91-448875

91-448875

# UNOFFICIAL COPY

WHEREAS, the Mortgage encumbers property therein described (referred to therein and herein as the "Mortgaged Property"), including the land described in Exhibit A attached hereto and made a part hereof;

WHEREAS, Mortgagor and Beneficiary, the holder and owner of one hundred percent (100%) of the beneficial interest in Mortgagor, have requested Mortgagee to extend the maturity date of the Note from December 1, 1990 to December 1, 1991; and

WHEREAS, Mortgagor, Beneficiary and Mortgagee have agreed to modify the Loan Documents as provided herein;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable considerations, the receipt and sufficiency of all of which are hereby acknowledged, the parties hereto agree as follows:

1. Mortgagor hereby reaffirms the grant to Mortgagee of the right, title and interest in the Mortgaged Property granted pursuant to the Mortgage including, without limitation, the security interest thereby granted in that portion of the Mortgaged Property consisting of personal property and fixtures, whether presently encumbered by such security interest or hereafter acquired by Mortgagor.

2. Mortgagor hereby makes and confirms each and every representation and warranty set forth in the Note, all of which shall be deemed made by Mortgagor to Mortgagee as of the date hereof. Mortgagor also hereby reaffirms that the "Interest Rate" under the Note is presently a fixed rate of twelve percent (12%) per annum.

3. Mortgagee has been informed that American National Bank and Trust Company of Chicago, not personally but solely as Trustee under the Trust Agreement dated December 12, 1988 and known as Trust No. 107080-06 ("American"), and Elms Limited Partnership, Marvin Pechter and Lillian Pechter as Trustees of the Marvin Pechter Trust u/t/a 4/5/83 and Phillip Pechter and Ada Pechter as Trustees of the Phillip Pechter Trust u/t/a 4/5/83 have received a written commitment from Royal Neighbors to refinance the property which is the subject of the Mortgage and Security Agreement of American in favor of Mortgagee, as modified, which mortgage secures the Secured Promissory Note in the original principal amount of One Million Eight Hundred Thousand and No/100 Dollars (\$1,800,000.00) payable by American to the order of Mortgagee, as modified (the "Loan 153 Note"). If such refinancing is completed or the Loan 153 Note is paid in full during the term of the Note and Mortgage, simultaneously with the completion of such refinancing or the payment in full of the Loan 153 Note as aforesaid, Mortgagor shall pay to Mortgagee

01-23-1991

the sum of Sixty Thousand and No/100 Dollars (\$60,000.00), which sum shall be applied by Mortgagee to reduce the outstanding principal balance of the Note.

4. Mortgagor hereby makes and confirms each and every representation and warranty set forth in the Mortgage, all of which shall be deemed made by Mortgagor to Mortgagee as of the date hereof.

5. Mortgagor and Beneficiary hereby make and confirm each and every representation and warranty set forth in the Assignment, all of which shall be deemed made by Mortgagor and Beneficiary, as the case may be, to Mortgagee as of the date hereof.

6. Beneficiary hereby makes and confirms each and every representation and warranty set forth in the Assignment and Security Agreement dated December 16, 1985 by and between Beneficiary and Mortgagee (the "Assignment and Security Agreement"), all of which shall be deemed made by Beneficiary to Mortgagee as of the date hereof.

7. Mortgagor and Beneficiary hereby reaffirm the assignment and transfer to Mortgagee and its successors and assigns of all right, title and interest of Mortgagor and Beneficiary in, to and under the Leases and the Guaranties (as said terms are defined in the Assignment), which assignment and transfer was granted by Mortgagor and Beneficiary to Mortgagee in Paragraph 11 of the Modification Agreement.

8. Beneficiary hereby reaffirms the assignment and transfer to Mortgagee of all right, title and interest of Beneficiary in, to and under the Assigned Trust Deed and Assigned Note (as said terms are defined in the Assignment of Instalment Note and Trust Deed Junior Mortgage dated December 30, 1988 by Beneficiary in favor of Mortgagee, recorded August 15, 1989 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 89-378193 (the "Trust Deed Assignment"), which assignment and transfer was granted by Beneficiary to Mortgagee in the Trust Deed Assignment. Further, Beneficiary hereby makes and confirms each and every representation and warranty set forth in the Trust Deed Assignment, all of which shall be deemed made by Beneficiary to Mortgagee as of the date hereof.

9. Beneficiary hereby (a) reaffirms all of his obligations under the Guaranty dated December 16, 1985 executed by Beneficiary in favor of Security Capital (the "Guaranty"), as the same has been modified hereby, and (b) agrees that he has no defenses to, or claims, charges or set-offs against his obligations under the Guaranty.

# UNOFFICIAL COPY

9 1 0 1 3 6 7 5

10. Paragraph 5 of the Note is deleted in its entirety and the following is substituted in its place:

5. The outstanding principal balance of this Note and all accrued and unpaid interest and other charges hereunder shall be payable in full on December 1, 1991 (the "Maturity Date").

11. Paragraph 11 of the Note is deleted in its entirety and the following is substituted in its place:

11. It is agreed that time is and shall be of the essence in the performance of all obligations hereunder and under the Security Documents. It shall be an Event of Default hereunder if Borrower shall fail to make any payment when such payment is due, if any "Event of Default" shall occur under any of the Security Documents or if any "Event of Default" shall occur under any of the Other Loan Documents. If an Event of Default shall occur, then, or at any time thereafter, the entire principal balance of this Note, irrespective of the Maturity Date, together with the then accrued and unpaid interest thereon and other charges hereunder, at the election of Holder, and without notice of such election, shall become due and payable immediately. Notwithstanding the foregoing, Holder shall not be entitled to accelerate the maturity of the principal balance of this Note or declare any other sums owing hereunder to be immediately due and payable, or exercise any other of its remedies provided in this Note or the Security Documents solely on the basis of an Event of Default premised upon non-payment of any sums due hereunder or due or required to be paid under the Security Documents, unless Holder has given written notice to Borrower of such Event of Default and Borrower has failed to cure such Event of Default within five (5) days after delivery of such notice. The preceding sentence shall in no way impair or prevent Holder from assessing the late charge described in paragraph 12 below or from accruing interest on the outstanding principal balance of this Note and other sums outstanding and unpaid under the Security Documents at the "Default Rate" (as defined herein).

12. Prior to or simultaneously with the execution of this Agreement by the parties hereto, each of the following conditions precedent must be fulfilled:

# UNOFFICIAL COPY

9 1 4 3 6 7 5

(a) Mortgagor and Beneficiary shall have delivered to Mortgagee a duly executed original of the Subordination Agreement of even date herewith by Chicago Title and Trust Company, not personally but solely as Trustee ("Chicago Title"), and Coro Real Estate Corporation N.V. ("Coro") for the benefit of Mortgagee, a copy of which (excluding the exhibit thereto) is attached hereto as Exhibit B;

(b) Mortgagor and Beneficiary shall have delivered to Mortgagee a duly executed original of the Subordination Agreement of even date herewith by Products Filling & Packaging Company for the benefit of Mortgagee, a copy of which (excluding the exhibit thereto) is attached hereto as Exhibit C; and

(c) Mortgagor and Beneficiary shall have delivered to Mortgagee a duly executed original of the Guaranty of even date herewith of Beneficiary, a copy of which (excluding the exhibit thereto) is attached hereto as Exhibit D.

13. Mortgagor and Beneficiary hereby represent and warrant to Mortgagee that Mortgagor and Beneficiary are finalizing arrangements to pay in full the Instalment Note of Mortgagor in the original principal amount of One Hundred Seventy-Five Thousand and No/100 Dollars (\$175,000.00) (the "Instalment Note") which is secured by the Trust Deed Junior Mortgage dated December 17, 1985 held by Chicago Title as Trustee for the benefit of Coro (the "Trust Deed Junior Mortgage"). In the event that by June 30, 1991 (a) the Instalment Note has not been paid in full and the Trust Deed Junior Mortgage has not been released or (b) Mortgagor and Beneficiary have not delivered to Mortgagee evidence satisfactory to Mortgagee's legal counsel that the maturity dates specified in the Instalment Note and the Trust Deed Junior Mortgage have been extended for a minimum period of one (1) year, an "Event of Default" under the Loan Documents shall be deemed to have occurred.

14. The parties hereto acknowledge and agree that, except as provided in this Agreement and in the Modification Agreement, the Loan Documents, the Assignment and Security Agreement, the Trust Deed Assignment and the Guaranty have not been modified, amended, canceled, terminated, released, superseded or otherwise rendered of no force and effect.

15. Each of the Loan Documents, the Assignment and Security Agreement, the Trust Deed Assignment and the Guaranty, as modified hereby, are hereby ratified and confirmed by the parties hereto, and every provision, covenant, condition, obligation, right and power contained in and under each of the Loan Documents, the Assignment and Security Agreement, the Trust Deed Assignment and the Guaranty, as so modified, shall continue in full force and effect. Mortgagor and Beneficiary, as the case

9143675



# UNOFFICIAL COPY

9 1 1 1 3 4 / 5

may be, hereby agree to perform, observe and comply with all the terms, provisions, covenants, agreements and conditions of the Loan Documents, the Assignment and Security Agreement, the Trust Deed Assignment and the Guaranty. Each reference in any of the Loan Documents, the Assignment and Security Agreement, the Trust Deed Assignment and the Guaranty to any of the other Loan Documents is hereby modified to refer to said Loan Document as modified hereby.

16. This Agreement shall be binding upon and inure to the benefit of the respective heirs, administrators, legal representatives, successors and assigns of the parties hereto.

17. This Agreement is executed by Mortgagor, not personally but solely as Trustee under the Trust Agreement dated April 5, 1977 and known as Trust No. 10-32324-09. It is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the covenants, undertakings, representations and agreements herein made are made and intended, not as personal covenants, undertakings, representations and agreements of Mortgagor individually, or for the purpose of binding it personally, but this Agreement is executed and delivered by Mortgagor solely in the exercise of the powers conferred upon it as Trustee under the aforesaid Trust Agreement and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against, LaSalle National Bank on account hereof, or on account of any covenant, undertaking, representation, warranty or agreement herein contained, either expressed or implied, all such personal liability, if any, being hereby expressly waived and released by the parties hereto or holder hereof, and by all persons claiming by or through or under said parties or holder thereof.

IN WITNESS WHEREOF, Mortgagor, Beneficiary, and Mortgagee have executed this Agreement effective as of the day and year first above written.

LaSalle National Bank, not personally but solely as Trustee as aforesaid

Attest:

By:

Title: ASSISTANT SECRETARY

(Seal)

By:

Title: Assistant Vice President



UNOFFICIAL COPY

9 1 4 4 5 6 7 5

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, PATRICIA K SCHELLHASE, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Nicholas J. Lepkaluk, 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 and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

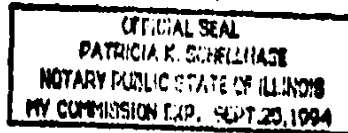
GIVEN under my hand and notarial seal this 28 day of June, 1991.

Patricia K. Schellhase  
Notary Public

My Commission Expires:

9-25-94

(Seal)



Connecticut  
STATE OF ~~TEXAS~~ )  
 ) SS.  
Hartford  
COUNTY OF ~~HARRIS~~ ) Alastenberg

I, Grace Lowrey, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Charles P. Waters [name], Vice President [title] of Benjamin Franklin Federal Savings Association, a Texas federal savings and loan association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President [title], appeared before me this day in person and acknowledged that (s)he signed and delivered 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; and the said Vice President [title] acknowledged that (s)he, as custodian of the corporate seal of said corporation, did affix said corporate seal to said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for said uses and purposes.

GIVEN under my hand and notarial seal this 29<sup>th</sup> day of July, 1991.

Grace Lowrey  
Notary Public

My Commission Expires: 3/31/91

(Seal)

91445675



# UNOFFICIAL COPY

9 1 1 1 3 6 7 5

## EXHIBIT A - LEGAL DESCRIPTION

That part of the West 298.1 feet of the East 1/2 of the North East 1/4 of Section 13, Township 39 North, Range 12 East of the Third Principal Meridian, lying South of the right of way conveyed to the Chicago and Wisconsin Railroad Company, by Warranty Deed dated October 31, 1885 and recorded October 31, 1885, in Book 1708, Page 157 as Document 865809 (except the West 33 feet thereof dedicated for street by Plat. filed February 16, 1891 in Book 46 of Plats, Page 26 as Document 1419420, and except the South 33 feet thereof taken for Harrison Street and except that part of the East 2.97 feet of the West 298.1 feet of the East 1/2 of the North East 1/4 of Section 13, Township 39 North, Range 12 East of the Third Principal Meridian, lying Southerly of the following described line:

Beginning in the East line of the West 298.1 feet aforesaid 406.97 feet North of the South line of said North East 1/4 (as measured on the East line of the said West 298.1 feet) and extending Northwesterly to a point in the West line of the East 2.97 feet aforesaid 407.30 feet North of the South line of said North East 1/4 (as measured on the West line of said East 2.97 feet) except that part condemned for highways in Case No. 53 C 14880, all in Cook County, Illinois.

Permanent Index Numbers: 15-13-226-001 Volume: 163  
15-13-226-008

91443870

Box 15

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Box 15