

3-11-98

98-04-15-153904

Property

FIRST AMENDMENT OF NOTE, MORTGAGE AND OTHER LOAN DOCUMENTS

LASALLE NATIONAL TRUST, N.A.

THIS FIRST AMENDMENT OF NOTE, MORTGAGE AND OTHER LOAN DOCUMENTS ("Amendment") is made as of April 14, 1998, by and among LASALLE NATIONAL TRUST, N.A. not personally, but solely as Trustee under a certain trust agreement dated March 21, 1983, and known as Trust No. 106163 (the "Trust"), CLP VENTURE, an Illinois general partnership and the sole beneficiary of the Trust ("CLP"), and GEORGE CIBULA, JR. and ROBERT M. PIERANUNZI (jointly, the "Guarantors") (the Trust, CLP and the Guarantors are sometimes hereinafter referred to collectively as the "Obligors") and LASALLE NATIONAL BANK, a national banking association ("Lender").

RECITALS:

A. Lender has loaned to the Trust and CLP the principal sum of \$2,800,000 (the "Original Loan"). The Original Loan is evidenced by a certain Note dated February 28, 1996 (the "Original Note"), made by the Trust and CLP in the original principal amount of \$2,800,000 payable to Lender. The Original Loan matures on March 1, 2005 (the "Maturity Date").

B. Repayment of the Original Loan is secured by the following documents, all of which are dated as of February 28, 1996:

(i) Mortgage (the "Mortgage") made by the Trust to Lender and recorded in the Recorder's Office on March 7, 1996, as Document No. 96-173619 creating a first mortgage lien on certain improved real estate located in Bridgeview, Illinois, and legally described in Exhibit A attached hereto (the "Property");

This instrument was prepared by and, after recording, return to:
Schwartz, Cooper, Greenberger & Krauss
180 North LaSalle Street, Suite 2700
Chicago, Illinois 60601
Attn: Martin I. Behn, Esq.

Permanent Real Estate Tax Index No.:
18-36-101-009

Common Address:
7701 West 79th Street
Bridgeview, Illinois

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(ii) Assignment of Rents and Leases (the "Assignment of Rents") made by the Trust and CLP to Lender and recorded in the Recorder's Office on March 7, 1996, as Document No. 96-173620;

(iii) Security Agreement made by the Trust and CLP, as debtors, to Lender, as secured party; and

(iv) Collateral Assignment of Beneficial Interest in Land Trust made by CLP to Lender.

The aforementioned documents, the Original Note, the Guaranty (as hereinafter defined) and the other documents or agreements delivered to Lender to secure or evidence the Original Loan or to otherwise induce Lender to disburse the proceeds of the Original Loan are hereinafter referred to collectively as the "Loan Documents".

C. The Guarantors have guaranteed repayment of the Original Loan to Lender pursuant to the provisions of a certain Limited Guaranty dated as of February 28, 1996 (the "Guaranty").

D. The Trust, CLP and the Guarantors have requested Lender to loan to the Trust and CLP an additional \$550,000, and Lender is willing to grant such request subject to the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trust, CLP, the Guarantors and Lender hereby agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are incorporated herein and made a part hereof.

2. New Loan. Lender has agreed to make a new loan to the Trust and CLP in the principal amount of \$550,000 (the "New Loan"), subject to the terms and conditions set forth herein. The New Loan shall be evidenced by a Mortgage Note of even date herewith (the "New Note") in the amount of \$550,000 made by the Trust and CLP payable to Lender, and shall bear interest and be repaid in accordance with the terms and conditions of the New Note. On the closing date of the New Loan, \$478,000 of proceeds shall be disbursed in accordance with CLP's instructions and the remaining \$72,000 of proceeds shall be deposited into a segregated blocked account with Lender. Such amount shall be disbursed from such account in four monthly installments of \$18,000 each on the last Business Day of April, May, June and July of 1998 to CLP c/o DRDC, 1125 Tower Lane, Bensonville, Illinois 60106, provided that any portion of an installment that is not disbursed from such account on any such day may be disbursed at any time thereafter, and further provided that (i) no Event of Default exists under the New Note, the Original Note or any of the other Loan Documents at the time of such disbursement, and (ii) no

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default exists under that certain Commercial and Industrial Lease Agreement between CLP, as lessor, and Prairie Packaging, Inc., as tenant (the "Tenant"), dated as of January 23, 1998 (the "Lease"), at the time of such disbursement. The Obligors hereby acknowledge and agree that the repayment of the Original Loan and all disbursements of the New Loan shall be secured by the liens and security interests created by the Mortgage, the Assignment of Rents and the other Loan Documents.

3. Loan Document Modifications; References.

(a) All references to the number "\$2,800,000" in the Mortgage and the other Loan Documents (excluding the Original Note) are hereby deleted and the number "\$3,550,000" is hereby inserted in lieu thereof, and all references to the "Loan" in the Mortgage and the other Loan Documents (excluding the Original Note) shall be deemed to mean both the Original Loan and the New Loan.

(b) The Original Note shall continue to evidence the Original Loan.

(c) All references to the Original Note, the Mortgage, the Guaranty and the other Loan Documents contained in any of the Loan Documents shall be deemed to refer to each of such documents as amended by this Amendment, and all references to the Loan Documents shall be deemed to include, without limitation, the New Note.

(d) The number "\$420,000" contained in Section 16 of the Guaranty is hereby deleted and the number "\$620,000" is inserted in lieu thereof.

4. Lease. CLP hereby covenants to Lender that it shall not amend the Lease without the prior written consent of Lender and that it shall promptly deliver to Lender copies of all material notices received from the Tenant with respect to the Lease. The Obligors acknowledge and agree that a material default under the Lease shall constitute an Event of Default under the Original Note, the New Note and the other Loan Documents.

5. Required Deliveries. Lender's initial disbursement of the proceeds of the New Loan shall be subject to Lender (or Lender's nominee) having received the following in a form and substance acceptable to Lender:

- (a) This Amendment duly executed by the Obligors;
- (b) The New Note;
- (c) Certified copy of the Lease;
- (d) Tenant Estoppel Certificate and Subordination, Nondisturbance and Attornment Agreement executed and delivered by the Tenant;

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(e) Certified copy of letter of direction and pay proceeds letter;

(f) A date-down endorsement to the Title Policy which (i) amends the description of the Mortgage insured under the Title Policy to include this Amendment, (ii) amends the description of the Assignment of Rents to include this Amendment, (iii) extends the effective date of the Title Policy to the date of such initial disbursement, (iv) increases by \$550,000 the amount of insurance coverage provided thereby, (v) includes no additional exceptions to title other than those that have been approved in writing by Lender, and (vi) states that all real estate taxes and assessments applicable to the Property which are due and payable as of the date of such endorsement have been paid in full, and

(g) Such other documents as Lender may reasonably require.

6. Payment of Loan Fee and Additional Loan Expenses. Concurrently with the execution and delivery of this Amendment by the Obligors, the Obligors shall pay to Lender a non-refundable loan fee for the New Loan in the amount of \$5,500. Furthermore, the Obligors hereby agree to pay all of Lender's reasonable attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Amendment, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees referred to in, necessitated by or otherwise relating to this Amendment (collectively, the "Additional Loan Expenses"). If the Additional Loan Expenses are not paid to Lender within five days after written demand therefor by Lender, the Additional Loan Expenses shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate.

7. Defaults. CLP and the Guarantors represent and warrant and the Trust represents to Lender that, to the best knowledge of such person or entity, as of the date hereof no Event of Default or event or condition which could become an Event of Default with the giving of notice or passage of time, or both, exists under the Original Note or the other Loan Documents. CLP and the Guarantors further acknowledge and agree that an Event of Default under the Original Note and the other Loan Documents shall be deemed to exist upon the occurrence of a breach of any of the representations, warranties or covenants set forth in this Amendment or the New Note.

8. No Defenses. CLP and the Guarantors represent and warrant and the Trust represents to Lender there is not any condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending or threatened affecting CLP, the Trust, any Guarantor or the Property, or which would prevent CLP, the Trust or any Guarantor from complying with or performing his or its respective obligations under the Original Note or the other Loan Documents, and no basis for any such matter exists.

9. Authority to Execute Amendment; No Conflict. CLP and each Guarantor represent and warrant and the Trust represents to Lender that he or it has full power and authority to execute and deliver this Amendment and the New Note and to perform his or its respective obligations hereunder and thereunder. Upon the execution and delivery of this Amendment and

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the New Note, they shall each be valid, binding and enforceable upon the Obligors in accordance with their respective terms. Execution and delivery of this Amendment and the New Note do not and will not contravene, conflict with, violate or constitute a default under any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which any Obligor is a party or is bound.

10. Ratification of Liability. Each Obligor hereby ratifies and confirms his or its respective liabilities and obligations under the Original Note, the Guaranty and the other Loan Documents and the liens and security interests created thereby, and acknowledge that he or it no defenses, claims or set-offs to the enforcement by Lender of their respective obligations and liabilities under the Original Note, the Guaranty and the other Loan Documents.

11. Amendment Binding. This Amendment shall be binding on CLP, the Trust, the Guarantors and their respective heirs, legatees, successors and permitted assigns, and shall inure to the benefit of Lender and its successors and assigns.

12. Continued Effectiveness. Except as expressly provided herein, the Original Note and the other Loan Documents shall remain in full force and effect in accordance with their respective terms.

13. Counterparts. This Amendment may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Amendment.

14. Partner Exculpation. Notwithstanding any provision hereof, but subject in all respects to the provisions of the Guaranty, as amended hereby, and the Environmental Indemnity Agreement dated as of February 28, 1996, as amended hereby, made by the Obligors and Middleton/Monroe Venture, an Illinois general partnership in favor of Lender, no general partner of CLP shall be personally liable by reason of any default in the payment or performance of the obligations of the Obligors under this Amendment; provided, however, that the foregoing exculpation shall not impair or otherwise affect any of Lender's rights or remedies against the assets held by CLP or other collateral now or hereafter pledged to Lender as security for the obligations of the Trust or CLP, or against CLP, the Guarantors or any other person or entity liable for the obligations of the Trust or CLP.

15. Trustee Exculpation. This Amendment is executed by LaSalle National Trust, N.A., not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing in this Amendment shall be construed as creating any liability on such Trustee personally to perform any express or implied covenant, condition or obligation under this Amendment, all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Amendment; provided, however, that the foregoing exculpation of the Trustee shall not impair or otherwise affect any of Lender's rights or remedies against the assets held by CLP or other collateral now or hereafter pledged to Lender as security

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for the obligations of the Trust or CLP, or against CLP, the Guarantors or any other person or entity liable for the obligations of the Trust or CLP.

IN WITNESS WHEREOF, this Amendment has been entered into as of the date set forth above.

CLP VENTURE, an Illinois general partnership

By: *George J. Cibula*
George J. Cibula, Jr., general partner

By: *Robert M. Pieranunzi*
Robert M. Pieranunzi, general partner

George J. Cibula
GEORGE J. CIBULA, JR.

Robert M. Pieranunzi
ROBERT M. PIERANUNZI

LASALLE NATIONAL BANK, Successor to the

LASALLE NATIONAL TRUST, N.A., not personally, but solely as Trustee as aforesaid

By: *Rosemary Callan*
Title: SECRETARY VISE PRESIDUM

LASALLE NATIONAL BANK, a national banking association

By: *V. G. Alexander*
Title: V. G. Alexander

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Thomas G. Moffitt a Notary Public in and for said County, in the State aforesaid, do hereby certify that **GEORGE CIBULA, JR.**, 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 the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 11th day of April, 1998.

Thomas G. Moffitt
NOTARY PUBLIC
(SEAL)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

"OFFICIAL SEAL"
THOMAS G. MOFFITT
Notary Public, State of Illinois
My Commission Expires 5-12-98

I, Thomas G. Moffitt a Notary Public in and for said County, in the State aforesaid, do hereby certify that **ROBERT M. PIERANUNZI**, 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 the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 13th day of April, 1998.

Thomas G. Moffitt
NOTARY PUBLIC
(SEAL)

"OFFICIAL SEAL"
THOMAS G. MOFFITT
Notary Public, State of Illinois
My Commission Expires 5-12-98

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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I, KATHLEEN E BYE, a Notary Public in and for said County, in the State aforesaid, do hereby certify that James J. Miller, the INSTANT VICE PRESIDENT of LASALLE NATIONAL TRUST, N.A., as Trustee, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such , appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 14 day of April, 1998.



Kathleen E. Bye
NOTARY PUBLIC
(SEAL)

STATE OF IL)
) SS.
COUNTY OF WILL)

I, Rosemary Heynen, a Notary Public in and for said County, in the State aforesaid, do hereby certify that F. CLAUDE COOPER, the V.P. of LASALLE NATIONAL BANK, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such V.P. appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 14 day of APRIL, 1998.



Rosemary Heynen
NOTARY PUBLIC
(SEAL)

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

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Lawyers Title Insurance Corporation

NATIONAL HEADQUARTERS
RICHMOND, VIRGINIA

SCHEDULE A CONTINUED - CASE NO. 8700310

Lot 1 in the Subdivision of part of the East 1/2 of the Northwest 1/4 of Section 36, Township 38 North, Range 12, East of the Third Principal Meridian, according to the plat thereof recorded April 6, 1982 as Document 26193290, in Cook County, Illinois.

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SCHEDULE A - PAGE 2

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