

# UNOFFICIAL COPY

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Cook County Recorder 39.00



## SECOND MODIFICATION AGREEMENT

THIS SECOND MODIFICATION AGREEMENT ("Modification Agreement") is dated as of the 17<sup>th</sup> day of October, 2000, between LOCK UP CLYBOURN, L.L.C., an Illinois limited liability company, with a mailing address of 800 Frontage Road, Northfield, Illinois 60093 ("Mortgagor"), and U. S. BANK NATIONAL ASSOCIATION, a national banking association with its office at 701 Lee Street, Des Plaines, Illinois 60016 ("Mortgagee").

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### RECITALS:

A. Mortgagor executed and delivered to Mortgagee a certain Construction Mortgage and Security Agreement with Assignment of Rents in favor Mortgagee dated as of June 29, 1998, which encumbered certain real estate legally described on Exhibit "B" attached hereto (such real estate and the improvements now or hereafter located thereon are hereinafter collectively referred to as the "Project"), which document was recorded in the Office of the Recorder of Deeds Cook County, Illinois ("Recorder") on July 6, 1999 as Document Number 99642289 (such document as heretofore or hereafter modified is hereinafter referred to as the "Mortgage"). Mortgagor also executed and delivered to Mortgagee a certain Assignment of Leases and Rents as of June 29, 1999, which encumbered the land legally described on Exhibit "B" attached hereto which document as recorded with the Recorder on July 6, 1999 as Document Number 99642290 ("Assignment").

**This Instrument Prepared By  
and After Recording Return to:**

Edward W. Malstrom  
Schwartz, Cooper, Greenberger  
& Krauss, Chtd.  
180 North LaSalle, Suite 2700  
Chicago, Illinois 60601

**Address of Property:**

See Exhibit B

**Permanent Index No.:**

See Exhibit B

**BOX 333-CT7**

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Property of Cook County Clerk's Office

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B. The Mortgage and Assignment secures a certain loan from Mortgagee to Mortgagor in the aggregated principal amount of \$8,500,000.00 (the "Loan") which Loan is evidenced by a Promissory Note of Mortgagor dated as of June 29, 1999 and payable to the order of Mortgagee in the stated principal amount of \$8,500,000 (the "Note"). The Note, Mortgage and Assignment were all entered into and delivered in connection with a certain Construction Loan Agreement between Mortgagor and Mortgagee dated June 29, 1999 (the "Loan Agreement").

C. Mortgagor and Mortgagee modified the Loan Agreement and other "Loan Documents" (as defined in the Loan Agreement, collectively, the "Original Loan Documents") by that certain Modification Agreement dated as of November 8, 1999 and recorded with the Recorder on November 11, 1999 as Document No. 09073583 ("Modification Agreement") to provide that (i) Mortgagee issue a letter of credit on Mortgagor's behalf to the City of Chicago in the amount of \$51,290.00 (the "Letter of Credit"), (ii) increase the amount of the Loan to \$8,551,290.00, (iii) require the issuance and delivery by Mortgagor to Lender of a Letter of Credit Note dated of even date herewith in the stated principal amount of \$51,290.00 ("Letter of Credit Note"), (iv) modify the Mortgage, Assignment of Rents and all other Original Loan Documents to reflect the increase in the Loan amount and provide that the Loan Agreement, Mortgage, Assignment of Rents and other Loan Documents secure the Loan, as increased, by the Modification Agreement (the Original Loan Documents, as modified by the Modification Agreement are hereinafter collectively referred to as the "Loan Documents"), and (v) change the date of the Mortgage to June 29, 1999.

D. Mortgagor desires to borrow an additional \$603,524 to be used to finance tenant improvements and brokerage commissions for certain retail space in the Project and to alter the "Interest Rate" (as defined in the Note).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor and Mortgagee agree as follows:

1. The stated principal amount of the Note is hereby changed from "\$8,500,000.00" to "\$9,103,524.00". The "Loan Amount" as defined in the Loan Agreement is hereby changed from "\$8,551,290.00" to "9,154,814.00". All references in the Mortgage, Assignment and all other Loan Documents to the stated principal amount of the Note or the Loan Amount shall be modified to reflect these changes.

2. The first seven (7) sentences in Section 2 of the Note are hereby deleted in their entirety and the following shall be inserted in lieu thereof:

"Maker hereby promises to pay to the order of Payee the principal sum of Nine Million One Hundred Three Thousand Five Hundred Twenty-Four and No/00 Dollars (\$9,103,524.00), or so much thereof as is from time to time advanced, in lawful money of the United States of America, and to pay interest at said office of the Lender on the balance of principal from time to time outstanding and unpaid hereon from the date hereof until the maturity hereof (whether by lapse of time, acceleration or otherwise) together with interest at the rate per annum ("Interest Rate") equal to (i) the "Reference Rate" (as defined in Exhibit "A" attached hereto) from time to time in effect, as to the "Prime Based Funds" (as defined in Exhibit "A" attached hereto), or (ii) "LIBOR Based Rate" (as defined in Exhibit "A" attached hereto) as to any "LIBOR Portion" (as defined in as defined Exhibit "A" attached hereto). The Interest Rate, shall fluctuate and be effective when and as the Reference Rate or LIBOR Based Rate fluctuates."

3. Exhibit "A" attached hereto shall become Exhibit "A" to the Note.

4. Mortgagor represents and warrants to the Mortgagee that Mortgagor is and always has been maintained in good standing, free from any default, and there is no uncured Event of Default under any of the Loan Documents as of the date hereof.

5. The modifications provided for in this Modification Agreement shall be effective only upon the following conditions being complied with by Mortgagor:

(a) that the Mortgagor is and always has been maintained in good standing, free from any default, and there is no uncured Event of Default under the Loan Agreement, Note, Mortgage, Assignment or any other Loan Document as of the date hereof;

(b) delivery to Lender of:

(i) an endorsement to Chicago Title Insurance Company Loan Policy No. 7822472 which insure the Mortgage to reflect the recording of this Modification Agreement; and

(ii) payment of a loan fee of \$4,044.00.

6. Except as expressly set forth herein, nothing herein contained shall impair the Loan Agreement, Note, Mortgage, Assignment or other Loan Documents in any way, nor alter, waive, annul, vary, nor affect any provision, condition therein contained, nor affect or impair any right, power or remedy of Mortgagee. It being the intention of the parties hereto that the terms and provisions of the Loan Documents shall continue in full force and effect except as expressly modified in connection herewith.

7. Contemporaneously with the execution and delivery hereof, Mortgagor shall pay or cause to be paid all closing costs and expenses, including title insurance premiums and legal fees incurred by Mortgagee incident to the transactions contemplated herein.

8. Mortgagor hereby acknowledges that (i) Mortgagor has no defense, offset or counterclaim with respect to the payment of any sum owed to Mortgagee, with respect to any covenant in the Loan Documents; (ii) Mortgagee, as of the date hereof, has fully performed all obligations to Mortgagor; and (iii) other than as expressly set forth herein, by entering into this Modification Agreement, Mortgagee does not waive any condition or obligation in the Loan Documents.

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

10. This Modification may be executed in one or more counterparts, which together shall comprise the entire agreement.

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

LOCK UP CLYBOURN, L.L.C. an  
Illinois limited liability  
company

By: Lockup Development  
Corporation, an Illinois  
corporation, its Manager

By: *[Signature]*

Its: President

STATE OF ILLINOIS )  
 ) S.S.  
COUNTY OF COOK )

BEFORE ME, the undersigned authority, on this day personally appeared Robert A. Soudan, THE President of Lockup Development Corporation, an Illinois corporation and the manager of Lock Up Clybourn, L.L.C., an Illinois limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of such corporation as manager of such company.

Given under my hand and seal this 18 day of October, 2000.



Judy Ann Righter

Notary Public In and For  
The State of Illinois

Printed

Name: Judy Ann Righter

My Commission Expires: 10/28/00

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STATE OF Illinois )  
COUNTY OF Cook ) S.S.

BEFORE ME, the undersigned authority, on this day personally appeared JAMES J. WEST known to me to be the VICE PRESIDENT of U. S. Bank National Association and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of such corporation.

Given under my hand and seal this 20<sup>th</sup> day of October, 2000.

Sonia Fernandez

Notary Public In and For  
The State of Illinois

Printed  
Name: Sonia Fernandez

My Commission Expires: 5/13/01



**EXHIBIT "A"**

As used in this Note, the following terms shall, except where the context otherwise requires, have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

A. Banking Day. A day on which banks are open for business in London, England, New York, New York and Chicago, Illinois and also on which dealings in U.S. Dollar deposits are carried on in the Interbank Market.

B. LIBOR. The rate of interest per annum established by Lender from time to time as its reserve adjusted LIBOR rate (Reuters) for an assumed LIBOR period of one month. The determination of LIBOR shall be made by Lender, in its sole judgment, and such determination shall be binding and conclusive upon Borrowers. LIBOR does not purport to be the most favorable rate offered by Lender to its borrowers. If at any time (a) Lender shall have determined (which determination shall be binding and conclusive upon Borrowers) that it has become unlawful for Lender to obtain funds in the London Interbank Offered Market or to make or maintain loans based upon a LIBOR market, or (b) in the event that Lender shall have determined (which determination shall be binding and conclusive upon Borrowers) that by reason of circumstances affecting the London Interbank Offered Market, adequate and reasonable means do not exist for ascertaining LIBOR, then the Loan shall thereafter accrue interest based upon the Reference Rate.

C. Interest Rate. The LIBOR Based Rate or the Reference Rate as provided herein.

D. LIBOR Based Rate. The LIBOR rate, plus two hundred forty (240) basis points per annum (provided, however, that when Zierk's Home Furnishings takes possession of the retail space in the "Project" (as defined in the Loan Agreement), begins paying rent and the self-storage component of the Project is 35% leased (28,000 square feet) the LIBOR Based Rate shall be the LIBOR Rate, plus two hundred twenty five (225) basis points), changing as the LIBOR rate changes from time to time, payment with respect to which shall be computed on the actual days elapsed and a year of 360 days.



E. LIBOR Portion. At any time, the portion of the outstanding principal balance of the Loan on which interest is being charged at the LIBOR Based Rate.

F. Loan. The Loan evidenced by this Note and secured by the Mortgage hereinafter described.

G. London Interbank Offered Market. Means the interbank market located in London, England, where the Lender, or any branch, subsidiary, parent or affiliate of the Lender, may purchase or sell deposits in U.S. dollars to other banks for fixed periods.

H. Prime Based Funds. At any time, the portion of the outstanding principal balance of the Loan on which interest is being charged at the Reference Rate.

I. Reference Rate. The rate determined from time to time by Lender as its Reference Rate and, in determining interest payable hereon, interest shall be adjusted from time to time as and on the date change is effected in the Reference Rate. The Reference Rate does not purport to be the most favorable rate offered by Lender to its borrowers. The written statement or notice from Lender as to what the Reference Rate was on any given date shall be conclusive and in the event that Lender should be an acceptable substitute therefore. Any change in the Interest Rate due to a change in the Reference Rate shall take effect on the date of such change in the Reference Rate.

EXHIBIT BLEGAL DESCRIPTIONPARCEL 1:

LOTS 8 TO 21, BOTH INCLUSIVE, IN BLOCK 5 AND THAT PART OF LOTS 6, 7, 22 AND 23 LYING NORTH OF A LINE DRAWN FROM A POINT ON THE EASTERLY LINE OF LOT 23, SAID POINT BEING 4 FEET SOUTHEASTERLY OF THE NORTHEASTERLY CORNER OF SAID LOT 23 TO A POINT ON THE WESTERLY LINE OF LOT 6, SAID POINT BEING 4 FEET SOUTHEASTERLY OF THE NORTHWESTERLY CORNER OF SAID LOT 6, EXCEPTING THEREFROM THE WESTERLY 15 FEET OF EACH OF SAID LOTS 6 THROUGH 14, IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF THE WESTERLY 15 FEET OF LOTS 6 THROUGH 14, INCLUSIVE, LYING NORTH OF A LINE DRAWN FROM A POINT ON THE EASTERLY LINE OF LOT 23, SAID POINT BEING 4 FEET SOUTHEASTERLY OF THE NORTHEASTERLY CORNER OF SAID LOT 23, TO A POINT ON THE WESTERLY LINE OF LOT 6, SAID POINT BEING 4 FEET SOUTHEASTERLY OF THE NORTHWESTERLY CORNER OF SAID LOT 6, ALL BEING IN BLOCK 5 IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 14-32-406-001-0000  
14-32-406-002-0000  
14-32-406-003-0000  
14-32-406-008-0000  
14-32-406-012-0000  
14-32-406-016-0000

Address: 1920 Clybourn Avenue  
Chicago, Illinois 60614