

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:



0010026294

Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062
Attn: Bruce A. Salk

This space reserved for Recorder's use only

7769 394 02 JK 20

Property of Cook County

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 19th day of December, 2000, by and among **LOCK UP KINZIE, L.L.C.**, an Illinois limited liability company ("Borrower"), Charles W. Sample and Robert A. Soudan (collectively, the "Guarantors") and **LASALLE BANK NATIONAL ASSOCIATION**, 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 Six Million Seven Hundred Thousand Dollars (\$6,700,000.00), pursuant to the terms and conditions of a Construction Loan Agreement dated as of October 31, 1999 between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Mortgage Note dated October 31, 1999, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Mortgage and Security Agreement dated October 31, 1999 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on November 12, 1999, as Document No. 09064871 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and of Lessor's Interest in Leases dated October 31, 1999, from Borrower to Lender and recorded in the Recorder's Office on November 12, 1999, as Document No. 09064872 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated October 31, 1999 from Borrower and Guarantors to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, 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. The Loan is further secured by a Limited Guaranty dated October 31, 1999 from Guarantors to Lender (the "Guaranty").

BOX 333-CT

D. The Loan is further secured by a Guaranty of Completion dated October 31, 1999 from Guarantors to Lender (the "Completion Guaranty").

E. Borrower desires to amend the Loan Documents in order to:

(i) Increase the amount of the loan by \$1,120,191.00 to fund increased Project costs, the construction costs of 123 additional mezzanine storage units and increasing the interest reserve, all in accordance with the uses itemized on Exhibit "B" attached hereto and made a part hereof;

(ii) Provide for a reduction in the amount of the Guaranty once Borrower and the Project have achieved certain benchmarks as more specifically provided herein; and

(iii) Require the execution by Borrower of an Amended and Restated Mortgage Note in replacement of the Note.

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. **Amended and Restate Mortgage Note.** Concurrent with the execution of this Agreement, Borrower shall execute and deliver to Lender an Amended and Restated Mortgage Note dated as of the date hereof in the original principal amount of \$7,820,191.00 (the "Amended Note"). Any reference in the Loan Documents (other than the Note) to the "Note" shall be deemed to be a reference to the Amended Note, including any modifications, amendments, restatements and refinancings thereof.

2. **Loan Agreement; Guaranty.** Borrower acknowledges that immediately prior to the Loan amount being increased as herein provided, the outstanding principal balance of the Loan was \$5,827,577.00. The Loan Agreement is hereby amended by (i) supplementing Exhibit "B" with Exhibit "B" attached hereto, (ii) deleting the number "1,072" as it appears in section 2.4 of the Loan Agreement and replacing it with "1,653", (iii) deleting the number "One Million Nine Hundred Seventy-Six Thousand Six Hundred Eighty-Four and 00/100 (\$1,976,684.00) Dollars" as it appears in section 4.1(h) of the Loan Agreement and replacing it with the number "Two Million One Hundred Forty One Thousand Six Hundred Eighty-Four and 00/100 (\$2,141,684.00)", (iv) replacing the number "\$6,700,000.00" as it appears throughout the Loan Agreement and replacing it with the number "\$7,820,191.00", and (v) deleting the date "July 1, 2000" as it appears in sections 9.1 and 12(d) and replacing it with the date "December 31, 2001". Borrower hereby grants to Lender the right of first refusal to provide term loan financing for the Project on the same or substantially similar terms as Borrower is prepared to accept from another lender. Lender agrees to notify Borrower of its election to exercise its right of first refusal in writing within thirty (30) days after receipt by Lender of a proposal or commitment letter from another lender setting forth all of the terms and provisions of the proposed term loan.

Concurrent with the execution of this Agreement, Guarantors shall execute and deliver to Lender an amendment and reaffirmation of the Guaranty therein providing, among other things, that (i) the dollar limitation set forth in paragraph 19(a) shall increase to \$3,910,096.00, and (ii) the dollar amount of \$3,910,096 shall decrease to \$1,173,029.00 once the Project achieves "Stabilization", as herein defined. "Stabilization" shall mean such time as the Project achieves and maintains for one (1) calendar year a 1.30 to 1.0 or greater amortizing Debt Service Ratio, as therein defined.

3. **Mortgage.** Paragraph 42 of the Mortgage is deleted in its entirety and replaced with the following provision:

"During any calendar quarter ending on March 31, June 30, September 30 or December 31 (a "Quarter") after the Premises have achieved "Stabilization", as defined in that certain Amendment and Reaffirmation of Limited Guaranty agreement dated as of December 19, 2000 among Mortgagee and Charles W. Sample and Robert A. Soudan, Mortgagor shall not permit the ratio of Operating Cash Flow (as defined below) during such Quarter to Debt Service (as defined below) during such Quarter to be less than 1.30 to 1.00 ("Debt Service Ratio"). As used herein, "Operating Cash Flow" shall mean for any period all rental income (including minimum rent, additional rent, escalation and pass through payments) actually received by Mortgagor during such period arising from the ownership and operation of the Premises (excluding tenant security deposits, and rent paid during such period by any tenant for more than three months of rental obligations) less the sum of all costs, taxes, expenses and disbursements of every kind, nature or description actually paid or due and payable during such period in connection with the leasing, management, operation, maintenance and repair of the Premises and of the personal property, fixtures, machinery, equipment, systems and apparatus located therein or used in connection therewith, but excluding (i) non-cash expenses, such as depreciation and amortization costs, (ii) state and federal income taxes, (iii) the non-current portion of capital expenditures determined in accordance with generally accepted accounting principles, (iv) debt service payable on the Loan, and (v) principal and interest payments on other loans expressly permitted by Mortgagee. In determining Operating Cash Flow, (a) extraordinary items of income, such as those resulting from casualty or condemnation or lease termination payments of tenants, shall be deducted from income and (b) real estate taxes and insurance premiums shall be treated as expenses to the extent of an annualized amount based upon the amount of the most recent bill for real estate taxes and insurance premiums (regardless of whether the same shall have been paid or have become due and payable during such Quarter) multiplied by one-quarter (1/4).

As used herein, "Debt Service" for any Quarter shall equal the sum of all principal and interest payments on the Loan and any other indebtedness of Mortgagor that is due and payable during such Quarter. Operating Cash Flow and Debt Service shall be calculated by Mortgagee based on the financial information provided to Mortgagee by Mortgagor and independently verified by Mortgagee and the calculations so verified shall be final and binding upon Mortgagor and Mortgagee. If at any time during any Quarter Mortgagee reasonably believes that an event has occurred which will cause a decrease in the Operating Cash Flow during such

Quarter (including, without limitation, an increase in the real estate taxes due to an increase in the assessed valuation of the Premises, the applicable tax rate or otherwise) and, as a result thereof, the ratio of Operating Cash Flow to Debt Service during such Quarter (or any Quarter thereafter) shall be less than 1.30 to 1.00, then an Event of Default shall be deemed to exist as of the last day of such Quarter unless Mortgagor, on or before the last day of such Quarter, has delivered to Mortgagee evidence reasonably satisfactory to Mortgagee that the ratio of Operating Cash Flow to Debt Service as of such day is or shall be at least 1.30 to 1.00."

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

(a) The representations and warranties in the Loan Agreement, 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 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 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, Guarantors 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 its formation or organization 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.

4. **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 No. 007769394 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement, increasing the amount of title insurance to \$7,820,191.00 and 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.

5. **Reaffirmation of Guaranty.** Each Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantors in the Guaranty are, as of the date hereof, true and correct and Guarantors do not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantors, enforceable in accordance with its terms and Guarantors have no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

6. **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, appraisal fees and attorneys' fees and expenses. In addition, Borrower shall pay to Lender a Loan Fee in the amount of \$11,202.00.

7. **Miscellaneous.**

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

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantors and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantors 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 or Guarantors nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantors 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, Guarantors 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 Amended 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.

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

LENDER:

LASALLE BANK NATIONAL ASSOCIATION

BORROWER:

LOCK UP KINZIE, L.L.C.

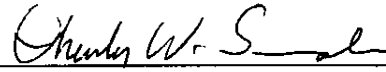
**By: Lockup Development Corporation,
an Illinois corporation, its sole
manager**

By: Judith E Johnson
Name: Judith E Johnson
Title: Vice President

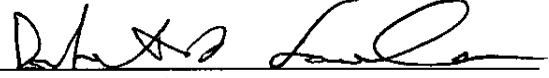
By: Charles W. Sengel
Name: Charles
Title: _____

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

GUARANTORS:



Charles W. Sample



Robert A. Soudan

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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I Patricia A. Harris, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JUDITH JOHNSON, VICE PRESIDENT of LaSalle Bank National Association, 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 29th day of DECEMBER, 2000.



Patricia A. Harris
Notary Public

My Commission Expires: 3/12/01

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Charles W. Sample, Chairman of Lockup Development Corporation, an Illinois corporation, the sole manager of LOCK UP KINZIE, L.L.C., an Illinois limited liability company, 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/she signed, sealed and delivered the said instrument as such Chairman of said corporation on behalf of said limited liability company, pursuant to authority, given by the members of said limited liability company, as his/her own and free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28th day of December, 2000.

Diana Piotrowski
Notary Public

My Commission Expires: 06/24/01



STATE OF ILLINOIS)
) .ss
COUNTY OF Cook)

I the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Charles W. Sample 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 26 day of December, 2000.



[Signature]
Notary Public

My Commission Expires: 10/28/04

STATE OF ILLINOIS)
) .ss
COUNTY OF Cook)

I the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert A. Soudan 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 26 day of December, 2000.



[Signature]
Notary Public

My Commission Expires: 10/28/04

EXHIBIT A

THE PROPERTY

PIN: 17-09-256-002-0000; 17-09-256-003-0000

ADDRESS: 350 West Kinzie Street, Chicago, Illinois

PARCEL 1:

LOTS 9, 10, 11, 12, 13 AND 14 IN BLOCK 2 IN BUTLER WRIGHT AND WEBSTER'S ADDITION TO CHICAGO IN THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY AGREEMENT MADE BY AND BETWEEN CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY AND THE NATIONAL ENAMELING AND STAMPING COMPANY DATED OCTOBER 27, 1904 AND RECORDED AS DOCUMENT 3636093 TO ERECT A BUILDING IN PART SUPPORTED BY A FOUNDATION WHICH MAY BE CONSTRUCTED AND STAND ON A PORTION OF THE FOLLOWING DESCRIBED LAND LYING WEST OF AND ADJOINING PARCEL 1:

THAT PART OF BLOCK 8 LYING SOUTH OF THE ALLEY IN ASSESSORS DIVISION OF PART (SOUTH OF ERIE STREET AND EAST OF CHICAGO RIVER) OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN.

EXHIBIT B

SOURCES

LBNA Loan Increase	1,120,191
Additional Equity	165,000
Total	1,285,191

USES

Fire and Sprinkler	247,640
Wine Storage Build-out	142,500
Future Drainage	25,000
Contingency	11,200
Miscellaneous	12,854
Interest Reserve	530,000
Mezzanine Units	172,967
Stairs	109,269
Other Hard Cost	33,761
Total	1,285,191

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