

THIS DOCUMENT PREPARED BY  
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2001-08-24 13:47:38  
Cook County Recorder 39.00

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



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**MODIFICATION OF LOAN DOCUMENTS**

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 20th day of July, 2001, by and among LOCK UP ARMITAGE, L.L.C., an Illinois limited liability company ("Borrower"), CHARLES W. SAMPLE and ROBERT A. SOUDAN (each a "Guarantor" and are 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 Four Million Four Hundred Ninety-Six Thousand Five Hundred and no/100 Dollars (\$4,496,500.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of June 1, 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 June 1, 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 June 1, 1999 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on July 15, 1999, as Document No. 99679348 ("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 June 1, 1999, from Borrower to Lender and recorded in the Recorder's Office on July 15, 1999, as Document No. 99679349 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated June 1, 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").

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C. The Loan is further secured by a Limited Guaranty (the "Guaranty") and a Guaranty of Completion (the "Completion Guaranty"), each dated June 1, 1999 from Guarantors to Lender.

D. Borrower desires to amend the Loan Documents in order to: (i) increase the amount of the Loan by \$300,000.00, (ii) extend the date by which the Reset Conditions (as defined in the Note) must be satisfied to June 1, 2003, (iii) modify the Reset Conditions, as hereinafter provided, (iv) increase the amount of the limitation set forth in the Guaranty from \$2,248,000.00 to \$2,398,250.00, and (v) amend the Debt Service Coverage Ratio set forth in the Mortgage.

## 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. Note. Concurrent with the execution of this Agreement, Borrower shall execute and deliver to Lender an Amended and Restated Mortgage Note (the "Amended Note") which shall replace the Note. From and after the date hereof, all references in the Loan Documents and the Guaranty to the "Note" shall be deemed to be a reference to the Amended Note.

2. Mortgage. The Mortgage is hereby modified as follows:

(a) The first "WHEREAS" paragraph on page 1 of the Mortgage is deleted in its entirety and replaced with the following paragraph:

"WHEREAS, the Mortgagor has executed and delivered to the Mortgagee, the Mortgagor's Amended and Restated Mortgage Note dated as of July 20, 2001, payable to the order of Mortgagee, in the principal sum of Four Million Seven Hundred Ninety-Six Thousand Five Hundred and no/100 Dollars (\$4,796,500.00) (herein called the "Note") bearing interest at the variable rate specified therein, due in the manner as provided therein and in any event on the 1st day of June, 2008, the terms and provisions of which Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and"

(b) Paragraph 43 of the Mortgage is deleted in its entirety and replaced with the following provision:

"43. **Debt Service Ratio.**

a. For all time periods on and after the Conversion Date (as defined in the Note), Mortgagor shall not permit the ratio of Operating Cash Flow (as defined below) during any calendar year or part thereof ("Year") to Debt Service (as defined below) during such Year to be less than 1.30 to 1.00 ("Debt Service Ratio").

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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 Year).

b. As used herein, "Debt Service" for any Year 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 Year.

c. 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.

d. If at any time during any Year (or part thereof) after the Conversion Date Mortgagee reasonably believes that an event has occurred which will cause a decrease in the Operating Cash Flow during such Year (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 Year (or any Year thereafter) shall be less than 1.30 to 1.00, then an Event of Default shall be deemed to exist as of the thirtieth day after Mortgagee notifies Mortgagor in writing of such belief unless Mortgagor, on or before the thirtieth day after Mortgagee notifies Mortgagor in writing of such belief, has delivered to Mortgagee evidence reasonably satisfactory to Mortgagee that the ratio of Operating Cash Flow to Debt Service for such Year is or shall be at least 1.30 to 1.00."

3. Assignment of Leases. The Assignment of Leases is hereby modified by deleting the first "WHEREAS" paragraph on page one thereof in its entirety and replacing it with the following paragraph:

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"WHEREAS, Assignor has executed an amended and restated mortgage note (hereinafter referred to as "Note") dated as of July 20, 2001, payable to the order of LASALLE BANK NATIONAL ASSOCIATION (hereinafter referred to as "Assignee") in the principal amount of Four Million Seven Hundred Ninety-Six Thousand Five Hundred and no/100 Dollars (\$4,796,500.00); and".

4. **Guaranty.** The Guaranty is hereby modified by deleting the amount "\$2,248,000.00" as it appears in paragraph 19(a) thereof, and replacing it with the amount "\$2,398,250.00".

5. **Other Agreements.** Borrower and each Guarantor each agree as follows:

(a) Concurrent with the execution of this Agreement and as a condition to the effectiveness of this Agreement, Borrower shall deliver evidence satisfactory to Lender demonstrating that Borrower has contributed additional cash equity to the Project in an amount no less than \$100,000.00.

(b) The additional \$300,000.00 in Loan proceeds shall be allocated and distributed as follows: (i) \$265,000.00 shall be retained as an interest reserve pursuant to the terms and provisions of paragraph 6.4 of the Loan Agreement, (ii) to pay in full for the security system on the Project and the moving truck owned by Borrower, and (iii) the remaining balance, if any, shall be applied to pay directly or reimburse Borrower for the last due and payable construction costs (out of a total budget of \$60,000) to reconfigure the Unit mix by changing larger Units into smaller Units resulting in an increase in the total Units to 721 Units. All disbursements for construction of the reconfigured Units shall be performed in compliance with the terms and provisions of the Loan Agreement and shall be made through a construction escrow established at the Title Company.

6. **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, Guarantor or any other party whose financial statement has been delivered to

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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.

7. **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. 7814762 (the "Title Policy"), as of the date this Agreement is recorded, increasing the amount of the insurance to \$4,796,500.00, reflecting the recording of this Agreement 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.

8. **Reaffirmation of Guaranty.** 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 Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

9. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay an extension fee in the amount of \$11,991.00 and 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. The conversion fee required to be paid pursuant to the terms and provisions of the Amended Note is in addition to the foregoing extension fee.

10. **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 Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor 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

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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 Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor 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, Guarantor 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.

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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:**

**LASALLE BANK NATIONAL ASSOCIATION**

By: [Signature]  
Its: President

**BORROWER:**

**LOCK UP ARMITAGE, L.L.C., an Illinois limited liability company**

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

By: [Signature]  
Its: President

**GUARANTORS:**

[Signature]  
CHARLES W. SAMPLE, individually

[Signature]  
ROBERT A. SOUDAN, individually

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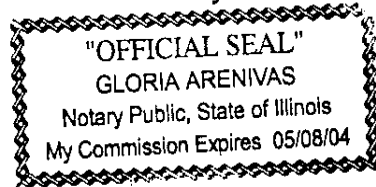
STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I Gloria Arenivas, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jerry Smulic, Sr. V.P. 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 30<sup>th</sup> day of July, 2001.

Gloria Arenivas  
Notary Public

My Commission Expires: \_\_\_\_\_



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, President of Lockup Development Corporation, an Illinois corporation, the sole manager of LOCK UP ARMITAGE, 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 President 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 23 day of July, 2001.



Judy Ann Righter  
Notary Public

My Commission Expires: 10/28/04

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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, 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 23 day of July, 2001.



*Judy Ann Righter*  
\_\_\_\_\_  
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, 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 23 day of July, 2001.



*Judy Ann Righter*  
\_\_\_\_\_  
Notary Public

My commission expires: 10/28/04

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## EXHIBIT A

### THE PROPERTY

PIN NO. 13-36-403-015-0000

ADDRESS: 2525 West Armitage Avenue, Chicago, Illinois

THAT PART OF BLOCK 1, EXCEPT THE SOUTH 53 FEET OF LOTS 44 TO 50, BOTH INCLUSIVE (NOW VACATED) IN B. F. JACOBS' SUBDIVISION OF BLOCK 2 OF W. S. JOHNSTON'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 1; THENCE WESTERLY ALONG THE NORTHERLY LINE OF BLOCK 1, 190.51 FEET TO THE PLACE OF BEGINNING OF THE LINE TO BE DESCRIBED HEREIN; THENCE SOUTHWESTERLY ALONG THE CENTER LINE OF MASONRY WALL, BEING A LINE WHICH FORMS AN ANGLE OF 74 DEGREES, 25 MINUTES, 58 SECONDS AS MEASURED TO THE LEFT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 19.26 FEET; THENCE SOUTHERLY ALONG THE CENTER LINE OF SAID MASONRY WALL, BEING A LINE WHICH FORMS AN ANGLE OF 16 DEGREES, 10 MINUTES, 49 SECONDS AS MEASURED TO THE LEFT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 105.39 FEET; THENCE WESTERLY ALONG THE CENTER LINE OF SAID MASONRY WALL, BEING A LINE WHICH FORMS AN ANGLE OF 89 DEGREES, 32 MINUTES, 29 SECONDS AS MEASURED TO THE RIGHT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 3.95 FEET TO THE WESTERLY FACE OF SAID MASONRY WALL; THENCE SOUTHERLY ALONG SAID WESTERLY FACE, BEING A LINE WHICH FORMS AN ANGLE OF 89 DEGREES, 20 MINUTES, 58 SECONDS AS MEASURED TO THE LEFT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 87.66 FEET; THENCE EASTERLY ALONG SAID SOUTHERLY FACE OF SAID MASONRY WALL, BEING A LINE WHICH FORMS AN ANGLE OF 89 DEGREES, 32 MINUTES, 08 SECONDS, AS MEASURED TO THE LEFT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 0.34 OF A FOOT; THENCE SOUTHERLY ALONG A LINE WHICH FORMS AN ANGLE OF 89 DEGREES, 29 MINUTES, 18 SECONDS AS MEASURED TO THE RIGHT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 53.11 FEET MORE OR LESS TO THE SOUTHERLY LINE OF BLOCK 1 AFORESAID, AT A POINT 36.46 FEET WESTERLY OF THE WEST LINE OF SAID LOT 44 AND WHICH LIES EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 1; THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID BLOCK 1, 334.10 FEET TO THE PLACE OF BEGINNING OF THE LINE TO BE DESCRIBED HEREIN; THENCE SOUTHWESTERLY ALONG THE CENTER LINE OF A MASONRY WALL, A LINE WHICH FORMS AN ANGLE OF 74 DEGREES, 22 MINUTES, 24 SECONDS MEASURED TO THE LEFT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 19.0 FEET; THENCE SOUTHERLY ALONG THE CENTER LINE OF MASONRY WALL BEING A LINE WHICH FORMS AN ANGLE OF 16 DEGREES, 13 MINUTES, 11 SECONDS AS MEASURED TO THE LEFT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 106.21 FEET TO THE SOUTHERLY FACE OF A MASONRY WALL; THENCE WESTERLY ALONG SAID SOUTHERLY FACE BEING A LINE WHICH FORMS AN ANGLE OF 89 DEGREES, 24 MINUTES, 25 SECONDS MEASURED TO THE RIGHT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 6.30 FEET; THENCE SOUTHERLY ALONG A LINE WHICH FORMS AN ANGLE OF 90 DEGREES, 35 MINUTES, 35 SECONDS MEASURED TO THE LEFT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 140.34 FEET TO THE SOUTHERLY LINE OF BLOCK 1 AFORESAID AT A POINT 177.34 FEET WESTERLY OF THE WEST LINE OF SAID LOT 44, ALL IN BLOCK 1 IN B. F. JACOBS' SUBDIVISION OF BLOCK 2 AFORESAID ALL IN COOK COUNTY, ILLINOIS.