

# UNOFFICIAL COPY

F:bas/lasalle/ISSI/mod/081498

THIS INSTRUMENT PREPARED BY:  
Bruce A. Salk  
Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062

98791956

AND AFTER RECORDING MAIL TO:  
Jerry Smulik  
LaSalle Bank National Association  
4747 West Irving Park Road  
Chicago, Illinois 60641-2791

DEPT-01 RECORDING \$35.00  
T:0000 TRAN 0570 09/04/98 11:44:00  
50264 + CG \* - 98 - 794956  
COOK COUNTY RECORDER

## MODIFICATION AGREEMENT

**THIS MODIFICATION AGREEMENT** (hereinafter referred to as the "Modification Agreement") made as of this 1<sup>st</sup> day of August, 1998, by and between Illinois Self Storage Centers IV, an Illinois limited partnership ("Borrower") and Charles W. Sample and Robert A. Soudan (collectively, the "Guarantors") (Borrower and Guarantors are hereinafter collectively referred to as the "Obligors") and LaSalle Bank National Association, formerly known as LaSalle Northwest National Bank ("Lender").

### WITNESSETH:

**WHEREAS**, Borrower has executed and delivered to Lender that certain secured promissory note dated as of November 26, 1996 in the original principal sum of Three Million and 00/100 (\$3,000,000.00) Dollars (the "Note"), which Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor, as amended and modified from time to time, are hereinafter collectively referred to as the "Loan Documents"):

- (i) a real estate mortgage and security agreement of even date with the Note, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 96913957 (the "Mortgage") on property commonly known as 747 North Milwaukee Avenue, Glenview, Illinois and legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises");
- (ii) assignment of leases and rents dated of even date with the Note made by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 96913958;
- (iii) limited guaranty dated of even date with the Note made by Guarantors in favor of Lender (the "Guaranty");
- (iv) environmental indemnity agreement dated as of even date with the Note made by Borrower in favor of Lender.

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BOX 333-CT1

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WHEREAS, Obligors are desirous of increasing the amount of the Note to \$3,130,000.00 and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, first and subsisting lien on the Premises and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there is no existing second mortgage or other liens subsequent to the lien of the Mortgage held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions, or either of them, this Modification Agreement, at the sole election of Lender, shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct. All defined terms used herein and not otherwise defined shall have the meaning ascribed to such term as set forth in the Loan Documents.

2. Concurrent with the execution of this Modification Agreement, Borrower shall execute an amended and restated mortgage note (the "Amended Note") in the principal amount of \$3,130,000.00 dated as of August 1, 1998 made by Borrower in favor of Lender. Each and every reference in the Loan Documents to the "Note" shall be deemed to be a reference to the Amended Note.

3. The Mortgage is amended by adding the following paragraph 4.3:

The Mortgagor and its subsidiaries have reviewed the areas within their business and operations which could be adversely affected by, and have developed or are developing a program to address on a timely basis, the "Year 2000 Problem" (that is, the risk that computer applications used by the Mortgagor and its subsidiaries may be unable to recognize and perform properly date-sensitive functions involving certain dates prior to and any date on or after December 31, 1999), and have made related appropriate inquiry of material suppliers and vendors. Based on such review and program, the Mortgagor believes that the "Year 2000 Problem" will not have a material adverse effect on the Mortgagor. From time to time, at the request of the Lender, the Mortgagor and its subsidiaries shall provide to the Lender such updated information or documentation as is requested regarding the status of their efforts to address the "Year 2000 Problem".

4. The Guaranty is amended by deleting the amount "1,500,000.00" as it appears in the first paragraph on page 2 thereof, and replacing it with the amount "1,565,000.00".

5. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Amended Note.

6. Except for the modifications stated herein, the Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Amended Note and other Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit

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of Lender in connection with the Loan shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Amended Note and other Loan Documents, to forgive or waive any violation, default or breach under the Amended Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.

7. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender a nonrefundable modification fee in the amount of \$1880.00, plus all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees"). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by Lender, such Additional Fees shall be paid by Obligors within five days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Amended Note).

8. The Premises described in the Mortgage shall remain in all events subject to the lien, charge or encumbrance of the Mortgage, or conveyance of title (if any) effected thereby, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to effect the lien, charge or encumbrance of, or warranty of title in, or conveyance effected by the Mortgage, or the priority thereof over liens, charges, encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Amended Note and/or Mortgage, nor shall anything herein contained or done in pursuance thereof affect or be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

9. This Modification Agreement shall extend to and be binding upon each of the Obligors and their heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

10. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Amended Note and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Amended Note and other Loan Documents, as so amended.

11. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois, including all matters of construction, validity and performance.

12. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid Modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

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13. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

14. Lender's consent to this Modification Agreement shall be subject to Lender (or Lender's nominee) having received the following in a form and substance acceptable to Lender on or before August 30, 1998 (the "Modification Termination Date"):

(a) An endorsement to Chicago Title Insurance Company Loan Policy No. 7640049 (the "Title Policy") which (i) amends the description of the Mortgage insured under the Title Policy to include this Modification Agreement, (ii) amends the description of the Assignment of Rents to include this Modification Agreement, (iii) extends the effective date of the Title Policy to the date of the recording of this Modification Agreement, (iv) includes no additional exceptions to title other than those that have been approved in writing by Lender (v) states that all real estate taxes and assessments applicable to the Premises which are due and payable as of the date of such endorsement have been paid in full, and (vi) increases the amount of the Title Policy to \$3,130,000.00; and

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

The Obligors' failure to deliver the aforementioned documents and items to Lender on or before the Modification Termination Date shall, at the option of Lender, result in this Modification Agreement (including all agreements and waivers of Lender contained herein) being null and void.

14 TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

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IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

ILLINOIS SELF STORAGE CENTERS IV, an  
Illinois limited partnership

By: *Charles W. Sample*  
CHARLES W. SAMPLE as Trustee,  
a general partner

By: *Robert A. Soudan*  
ROBERT A. SOUDAN as Trustee,  
a general partner

*Charles W. Sample*  
CHARLES W. SAMPLE, individually

*Robert A. Soudan*  
ROBERT A. SOUDAN, individually

LASALLE BANK NATIONAL ASSOCIATION

By: *J. Salas*  
Title: *Trustee*

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF Lake )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Charles W. Sample and Robert A. Soudan, as trustees, respectively, of the general partners of ILLINOIS SELF STORAGE CENTERS IV, an Illinois limited partnership, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person and acknowledged that they signed, sealed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said limited partnership, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 18th day of August, 1998.

Christine L. Fischer  
Notary Public

My Commission Expires: 05/01/02



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )  
Lake dep

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that CHARLES W. SAMPLE, personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 18th day of August, 1998.

Christine L. Fischer  
Notary Public

My Commission Expires: 05/01/02



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STATE OF ILLINOIS )  
 )  
 ) SS  
COUNTY OF COOK )  
 )  
 ) *Lake Cook*

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that ROBERT A. SOUDAN, personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 18<sup>th</sup> day of August, 1999.

*Christine L. Fischer*

Notary Public

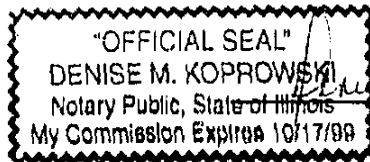


My Commission Expires: 05/01/02

STATE OF ILLINOIS )  
 )  
 ) SS  
COUNTY OF COOK )

I, DENISE KOPROWSKI, a Notary Public in and for said County in the State aforesaid, do hereby certify that TERRY SHULIK, of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, and W/L of said bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Sr Vice President and W/L, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said banking association, for the uses and purposes therein set forth; and the said Sr VP did also then and there acknowledge that (s)he, as custodian for the corporate seal of said banking association did affix the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said banking association, for the uses and purposes set forth.

Given under my hand and notarial seal this 28<sup>th</sup> day of August, 1999.



*Denise M. Koprowski*  
Notary Public

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

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## Exhibit A

LOT 2 IN ISSC IV SUBDIVISION, BEING A SUBDIVISION OF THAT PART LYING EAST OF THE CENTER LINE OF MILWAUKEE AVENUE OF THE SOUTH 283.28 FEET OF LOT 12 (EXCEPT THE EAST 528.0 FEET THEREOF) IN COUNTY CLERK'S DIVISION OF SECTION 32, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NO.: 04-32-401-176-0000

PROPERTY COMMONLY KNOWN AS: 747 NORTH MILWAUKEE AVENUE  
GLENVIEW, ILLINOIS 60025

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