

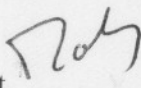
SALT LAKE CITY CORPORATION

LAW DEPARTMENT

ROSS C. ANDERSON
MAYOR
EDWIN P. RUTAN, II
CITY ATTORNEY

CHRISTOPHER E. BRAMHALL
SENIOR CITY ATTORNEY

COUNCIL TRANSMITTAL

TO: Rocky J. Fluhart 
Chief Administrative Officer **DATE:** January 13, 2005

FROM: Christopher E. Bramhall
Senior City Attorney

SUBJECT: Industrial Development Revenue Bonds (Spring Air Project), Series 2003;
Approving a First Amendment to Indenture and a First Amendment to
Loan Agreement

DISCUSSION: Background: There is tremendous consolidation taking place in the mattress industry. We understand that stock of Spring Air Mountain West, Inc. is proposed to be transferred to a separate entity that will be operating the facilities in the future. The company is very confident operations will continue at the present location in Salt Lake City. The original participants in the transaction will continue to be responsible for the payment of all debt service on the bonds. U.S. Bank, as the issuer of the letter of credit securing the repayment of the bonds, has reviewed the proposed transaction and will be comfortable maintaining its letter of credit for the bonds.

Proposal: There were two parties to the original loan agreement (Spring Air Mountain West and LeDuc Properties). The proposed amendment would amend the Loan Agreement and the Indenture to remove Spring Air and to retain LeDuc as the Borrower. Sec. 9.1 of the Indenture permits amendments that are not materially adverse to bondholders.

The drafts for consideration by the City are attached.

RESOLUTION NO. _____ OF 2005

A RESOLUTION OF THE CITY COUNCIL OF SALT LAKE CITY, SALT LAKE COUNTY, UTAH, WITH RESPECT TO THE CITY'S INDUSTRIAL DEVELOPMENT REVENUE BONDS (SPRING AIR PROJECT), SERIES 2003; APPROVING A FIRST AMENDMENT TO INDENTURE AND A FIRST AMENDMENT TO LOAN AGREEMENT.

WHEREAS, pursuant to Utah Code Title 11 Chapter 17, the City Council of Salt Lake City, Salt Lake County, Utah (the "City"), approved Resolution No. 25 of 2003 authorizing the issuance of its Industrial Development Revenue Bonds (Spring Air Project), Series 2003 in the aggregate principal amount of \$3,840,000 (the "Bonds"), for the purpose of financing certain industrial development facilities in Salt Lake City, Utah; and

WHEREAS, the Bonds were issued pursuant to an Indenture between the City and U.S. Bank National Association, as trustee (the "Trustee"), dated as of July 1, 2003 (the "Indenture"); and

WHEREAS, the proceeds of the Bonds were loaned to Spring Air-Mountain West, Inc., a Utah corporation ("Spring Air"), and LeDuc Properties, LLC, a Utah limited liability company ("LeDuc", and together with Spring Air, the "Borrower"), pursuant to a Loan Agreement dated as of July 1, 2003 (the "Loan Agreement"); and

WHEREAS, in October 2003, Spring Air transferred all of its operating assets, excluding certain real property, to Spring Air West, LLC, a Washington limited liability company ("Spring Air West"); and

WHEREAS, H.I.G. Capital LLC has offered to acquire 100% of the stock of Spring Air and 100% of the ownership interest in Spring Air West in effort to consolidate the Spring Air Company licenses and the Spring Air brand (the "Transaction"); and

WHEREAS, to facilitate the Transaction, LeDuc has requested that the Indenture and the Loan Agreement be amended to remove Spring Air from the definition of "Borrower" and to refer to LeDuc as the sole obligor of the Bonds under the terms of the Loan Agreement and the Indenture; and

WHEREAS, Section 9.1 of the Indenture authorizes the execution of a Supplemental Indenture to amend the terms of the Indenture with the prior written consent of U.S. Bank National Association, as the Letter of Credit Bank (the "Letter of Credit Bank") and after receipt of an opinion of counsel that such Supplemental Indenture will not materially adversely affect the interests of bondholders, and such consent and opinion have been or will be obtained; and

WHEREAS, Section 10.4 of the Loan Agreement authorizes the execution of an amendment to the Loan Agreement with the written consent of the Trustee, the Letter of Credit Bank, and the Borrower, and such consent has been or will be obtained; and

WHEREAS, LeDuc has requested that a First Amendment to Indenture, substantially in the form hereto as Exhibit A (the "First Amendment to Indenture") and a First Amendment to Loan Agreement, substantially in the form attached hereto as Exhibit B ("First Amendment to Loan Agreement") be approved by the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SALT LAKE CITY, SALT LAKE COUNTY, UTAH, AS FOLLOWS:

Section 1. First Amendments to Indenture. The City hereby authorizes and approves the execution and delivery of the First Amendment to Indenture, substantially in the form attached hereto as Exhibit A. The Mayor, the City Recorder or their respective duly authorized designees are hereby authorized and directed to execute the First Amendment to Indenture; however, their signatures shall be effectively delivered only upon the execution of the First Amendment to Indenture by the other parties thereto.

Section 2. First Amendments to Loan Agreement. The City hereby authorizes and approves the execution and delivery of the First Amendment to Loan Agreement, substantially in the form attached hereto as Exhibit B. The Mayor, the City Recorder or their respective duly authorized designees are hereby authorized and directed to execute the First Amendment to Loan Agreement; however, their signatures shall be effectively delivered only upon the execution of the First Amendment to Loan Agreement by the other parties thereto.

Section 3. Effectiveness of this Resolution. This Resolution shall become effective upon its adoption.

[Execution Page Follows]

Passed by the City Council of Salt Lake City, Utah this ___ day of January, 2005.

CHAIRPERSON

ATTEST:

CHIEF DEPUTY CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

ATTEST:

CHIEF DEPUTY CITY RECORDER

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 1/13/05
By Car Bull

Exhibit A

[Attach form of First Amendment to Indenture]

Exhibit B

[Attach Form of First Amendment to Loan Agreement]

FIRST AMENDMENT TO INDENTURE

THIS **FIRST AMENDMENT TO INDENTURE** (this "Amendment") is made as of January 1, 2005 among **SALT LAKE CITY, SALT LAKE COUNTY, UTAH**, a municipal corporation duly existing under the laws of the State of Utah (the "Issuer"), and **U.S. BANK NATIONAL ASSOCIATION**, as Trustee (the "Trustee").

WITNESSETH:

WHEREAS, the Issuer and the Trustee entered into an Indenture dated as of July 1, 2003 with respect to the Issuer's Industrial Development Revenue Bonds (Spring Air Project), Series 2003 (the "Bonds"); and

WHEREAS, the Issuer, LeDuc Properties, LLC, a Utah limited liability company ("LeDuc"), and Spring Air-Mountain West, Inc., a Utah corporation ("Spring Air"), entered into a Loan Agreement dated as of July 1, 2003 (the "Loan Agreement"), in connection with the Bonds; and

WHEREAS, pursuant to the terms of the Loan Agreement, the Issuer loaned to Spring Air and LeDuc, collectively as borrower, the proceeds of the Bonds to finance certain industrial development facilities located in Salt Lake City, Utah, and provided for the payment by Spring Air and LeDuc to the Trustee, as assignee of the Issuer, of amounts sufficient for the payment of the principal of and, premium, if any, and interest on the Bonds and certain related expenses; and

WHEREAS, in October 2003, Spring Air transferred all of its operating assets, excluding certain real property, to Spring Air West, LLC, a Washington limited liability company ("Spring Air West") and H.I.G. Capital LLC has offered to acquire 100% of the stock of Spring Air and 100% of the ownership interest in Spring Air West in effort to consolidate the Spring Air Company licenses and the Spring Air brand (the "Transaction"); and

WHEREAS, to facilitate the Transaction, LeDuc has requested that the Indenture be amended to remove Spring Air from the definition of "Borrower" and to refer to only LeDuc as the sole obligor on the Bonds under the terms of the Indenture and the Loan Agreement; and

WHEREAS, Section 9.1 of the Indenture authorizes the execution of a Supplemental Indenture to amend the terms of the Indenture with the prior written consent of U.S. Bank National Association, as the Letter of Credit Bank (the "Letter of Credit Bank"), and after receipt of an opinion of counsel that such Supplemental Indenture will not materially adversely affect the interests of bondholders;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

Section 1. Definitions. All terms capitalized but not defined herein shall have the meanings given to them in the Indenture.

Section 2. Amendments. The Indenture is hereby amended as follows:

(a) The following definition in Section 1.1 of the Indenture ("Definitions") is hereby amended to read as follows (deletions are stricken and additions are double underlined):

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Article shall, for all purposes of this Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Unless otherwise defined in this Indenture, all terms used herein shall have the meanings assigned to such terms in the Act.

...

"Borrower" means ~~, collectively, Spring Air Mountain West, Inc., a Utah corporation, and LeDuc Properties, LLC, a Utah limited liability company,~~ or any individual or entity which is the resulting or transferee entity in any transfer of assets permitted under Section 5.3 of the Loan Agreement and also means, unless the context otherwise requires, an assignee of the Loan Agreement as permitted by Section 5.3 of the Loan Agreement, but does not mean any affiliate of the Borrower.

(b) References in the Indenture to the Borrower regarding the Borrower's obligations thereto and regarding providing consents, notices and approvals shall be deemed to refer solely to LeDuc as Borrower and sole obligor under the terms of the Loan Agreement and Indenture.

Section 3. Ratification and Confirmation. All terms and conditions of the Indenture shall remain in full force and effect and are hereby ratified and confirmed by the Trustee and the Issuer.

Section 4. Effective Date. Pursuant to Section 9.1 of the Indenture, this Amendment shall be effective as of the date written above upon receipt of written consent of the Letter of Credit Bank, upon receipt of an opinion of counsel, and upon execution by the parties hereto.

Section 5. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Utah (without regard to conflicts-of-laws principals thereof).

[Section 6. Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees. The Trustee represents that it has not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly

influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties by their duly authorized officers have executed this Amendment as of the date and year first above written.

**SALT LAKE CITY, SALT LAKE COUNTY,
UTAH**

By: _____
Mayor

ATTESTED AND COUNTERSIGNED

By: _____
City Recorder

U.S. BANK NATIONAL ASSOCIATION

By: _____
_____, Vice President

[EXECUTION PAGE OF FIRST AMENDMENT TO INDENTURE]

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 1/13/05
By [Signature]

FIRST AMENDMENT TO LOAN AGREEMENT

THIS FIRST AMENDMENT TO LOAN AGREEMENT (this "Amendment") is made as of January 1, 2005 among SALT LAKE CITY, SALT LAKE COUNTY, UTAH, a municipal corporation duly existing under the laws of the State of Utah (the "Issuer"), LEDUC PROPERTIES, LLC, a Utah limited liability company ("LeDuc"), and SPRING AIR-MOUNTAIN WEST, INC., a Utah corporation ("Spring Air").

WITNESSETH:

WHEREAS, the Issuer, LeDuc and Spring Air have entered into a Loan Agreement dated as of July 1, 2003 (the "Loan Agreement") in connection with the Issuer's Industrial Development Revenue Bonds (Spring Air Project), Series 2003 (the "Bonds"); and

WHEREAS, pursuant to the terms of the Loan Agreement, the Issuer loaned to Spring Air and LeDuc, collectively as borrower, the proceeds of the Bonds to finance certain industrial development facilities located in Salt Lake City, Utah, and provided for the payment by Spring Air and LeDuc to U.S. Bank National Association, as trustee (the "Trustee"), as assignee of the Issuer, of amounts sufficient for the payment of the principal of and, premium, if any, and interest on the Bonds and certain related expenses; and

WHEREAS, in October 2003, Spring Air transferred all of its operating assets, excluding certain real property, to Spring Air West, LLC, a Washington limited liability company ("Spring Air West") and H.I.G. Capital LLC has offered to acquire 100% of the stock of Spring Air and 100% of the ownership interest in Spring Air West in effort to consolidate the Spring Air Company licenses and the Spring Air brand (the "Transaction"); and

WHEREAS, to facilitate the Transaction, LeDuc has requested that the Loan Agreement be amended to remove Spring Air from the definition of "Borrower" and to refer only to LeDuc as the sole obligor on the Bonds under the terms of the Loan Agreement; and

WHEREAS, Section 10.4 of the Loan Agreement authorizes amendment of the Loan Agreement with the written consent of U.S. Bank National Association, as Trustee and Letter of Credit Bank; and

WHEREAS, the Issuer, LeDuc and Spring Air desire to amend certain provisions of the Loan Agreement as described herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

Section 1. Definitions. All terms capitalized but not defined herein shall have the meanings given to them in the Loan Agreement.

Section 2. Amendments. The Loan Agreement is hereby amended as follows:

(a) The following language in the heading of the Loan Agreement is hereby amended to read as follows (deletions are stricken and additions are double underlined):

THIS LOAN AGREEMENT, dated as of July 1, 2003, among **SALT LAKE CITY, SALT LAKE COUNTY, UTAH**, a municipal corporation duly existing under the laws of the State of Utah (the "Issuer"), ~~**SPRING AIR MOUNTAIN WEST, INC.**~~, a Utah corporation ("~~Spring Air~~"), and **LEDUC PROPERTIES, LLC**, a Utah limited liability company ("**LeDuc Properties**") (~~Spring Air and LeDuc Properties~~ (collectively, or the "Borrower");

(b) The following language in Section 2.2 of the Loan Agreement ("Representations of the Borrower") are hereby amended to read as follows (deletions are stricken and additions are double underlined):

Section 2.2 Representations of the Borrower. The Borrower makes the following representations as the basis for its undertakings herein contained:

(a) The Borrower has the power to enter into and deliver the Borrower Loan Documents and all other documents contemplated hereby to be executed by the Borrower.

(b) The Borrower is, ~~collectively, Spring Air Mountain West, Inc., a Utah corporation, and~~ LeDuc Properties, LLC, a Utah limited liability company. ~~Each~~ The Borrower is an entity is in good standing in the State of Utah and is authorized to transact business in the State of Utah.

(c) References in the Loan Agreement to the Borrower regarding the Borrower's obligations thereto and regarding providing consents, notices and approvals shall be deemed to refer solely to LeDuc as Borrower and sole obligor on the Bonds under the Loan Agreement.

Section 3. Ratification and Confirmation. All terms and conditions of the Loan Agreement shall remain in full force and effect and are hereby ratified and confirmed by the parties hereto.

Section 4. Effective Date. Pursuant to Section 10.4 of the Loan Agreement, this Amendment shall be effective as of the date written above upon receipt of written consent of U.S. Bank National Association, as Trustee and Letter of Credit Bank, and upon execution by the parties hereto.

Section 5. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Utah (without regard to conflicts-of-laws principals thereof).

Section 6. Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees. Spring Air and LeDuc represent that they

have not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties by their duly authorized officers have executed this Amendment as of the date and year first above written.

**SALT LAKE CITY, SALT LAKE COUNTY,
UTAH**

By: _____
Mayor

ATTESTED AND COUNTERSIGNED

By: _____
City Recorder

LEDUC PROPERTIES, LLC

By: _____
Thomas C. LeDuc, Manager

SPRING AIR-MOUNTAIN WEST, INC.

By: _____
Thomas C. LeDuc, Manager

[EXECUTION PAGE OF FIRST AMENDMENT TO LOAN AGREEMENT]

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 11/13/05
By [Signature]