

UNOFFICIAL COPY



0520350031

THIS INSTRUMENT PREPARED BY, AND SHOULD BE RETURNED TO:
Scott D. Gudmundson, Esq.
MELTZER, PURTILL & STELLE
1515 East Woodfield Road
Second Floor
Schaumburg, Illinois 60173-5431
(847) 330-2400

Doc#: 0520350031
Eugene "Gene" Moore Fee: \$82.50
Cook County Recorder of Deeds
Date: 07/22/2005 01:22 PM Pg: 1 of 30

Property of Cook County

25-0800098551-18
Permanent Real Estate Tax Index No.: DK 25 1487

11-18-126-004-0000
11-18-126-018-0000

Common Address:

1723 - 1735 Benson Avenue; and
818 - 824 Clark, Evanston, Illinois

**SEVENTH AMENDMENT TO MORTGAGE
LOAN DOCUMENTS AND SECURED GUARANTY**

This Seventh Amendment to Mortgage Loan Documents and Secured Guaranty ("Amendment"), is made this 27th day of May, 2005, by and among PARKWAY BANK AND TRUST COMPANY, as successor trustee to JEFFERSON STATE BANK, not personally, but solely as Trustee ("Trustee") under a Trust Agreement dated May 15, 1995, and known as Trust No. 1966 ("Land Trust"), EVANSTON BENSON LIMITED PARTNERSHIP, an Illinois limited partnership ("Beneficiary" or "EBLP"), EVANSTON ATHLETIC CLUB, INC., an Illinois corporation ("Corporate Guarantor" or "EAC"), PATRICK CUNNINGHAM and BENJAMIN KADISH (each an "Individual Guarantor" and, together with the Corporate Guarantor, referred to as "Guarantors"), and US BANK, N.A., as successor to FIRSTAR BANK, N.A., a national banking association ("Lender"). The Trustee and Beneficiary are sometimes hereinafter collectively referred to as "Borrower."

RECITALS:

Borrower, Guarantors and Lender entered into that certain Mortgage Loan Agreement ("Loan Agreement") dated April 18, 1997 pursuant to which Lender agreed to loan to Borrower an amount equal to Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00) for the refinance of the Real Estate legally described as Parcel 1 on **Exhibit A** attached hereto (the

309 82.50

UNOFFICIAL COPY

“Loan”), which Loan was made on the terms and subject to the conditions contained in the Loan Agreement.

The Loan was originally evidenced by that certain Mortgage Note made by Borrower to Lender as of April 18, 1997 in the principal amount of \$3,750,000.00 (“Note”). The Note is secured by the following documents, each dated April 18, 1997 (collectively, “Loan Documents”):

(i) Mortgage and Security Agreement (“Mortgage”) made by the Trustee to Lender and recorded in Cook County as Document No. 97281480 and covering the Real Estate;

(ii) Assignment of Rents and Leases (“Assignment of Rents”) made by the Borrower to Lender and recorded in Cook County as Document No. 97281481;

(iii) Combined Security Agreement and Collateral Assignment of Beneficial Interest in Land Trust made by Beneficiary to, and accepted by, Lender and acknowledged by Trustee and lodged with the Trust;

(iv) Security Agreement made by Borrower, as Debtor, to Lender, as Secured Party;

Pursuant to that certain Secured Guaranty made by Corporate Guarantor dated April 18, 1997 (the “Corporate Guaranty”) and that certain Secured Guaranty made jointly and severally by the Individual Guarantors dated April 18, 1997 (the “Individual Guaranty”; the Corporate Guaranty and the Individual Guaranty are referred to herein collectively as the “Guaranty”), in favor of Lender, the Corporate Guarantor and Individual Guarantors, jointly and severally, guaranteed (i) the payment of the amounts provided for under the Loan, including the Note, the Loan Agreement, the Mortgage, the Assignment of Rents and the other Loan Documents, and (ii) the performance of the covenants to be performed and observed under the Note, the Loan Agreement, the Mortgage and the other Loan Documents.

Pursuant to that certain Environmental Indemnity Agreement dated April 18, 1997 (“Environmental Indemnity”), Beneficiary and the Guarantors agreed, among other things, to jointly and severally indemnify Lender from and against any loss or damage arising as the result of the existence of any Hazardous Materials (as such terms defined in the Environmental Indemnity) on the Real Estate.

Each of the Guaranty and the Environmental Indemnity shall where applicable be included within the definition of “Loan Documents” herein.

Borrower, Guarantors and Lender entered into that certain First Amendment to Mortgage Loan Documents and Secured Guaranty (“First Amendment”) dated May 25, 1999, and recorded May 27, 1999, in Cook County as Document No. 99511842, pursuant to which Lender agreed to loan to Borrower an additional Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00),

UNOFFICIAL COPY

limit the obligations of the Individual Guarantors under the Individual Guaranty, and certain other amendments. Accordingly, the amount of the Loan was increased to Four Million One Hundred Fifty-Eight Thousand Seven Hundred Nine and 95/100 Dollars (\$4,158,709.95) and Borrower executed and delivered to Lender a Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) note (the "\$550,000.00 Note") dated May 25, 1999 to evidence such increase, and the Loan Documents were amended to secure the \$550,000.00 Note.

Borrower, Guarantors and Lender entered into that certain Second Amendment to Mortgage Loan Documents and Secured Guaranty ("Second Amendment") dated July 9, 1999 and recorded July 15, 1999 in Cook County as Document No. 99679367 pursuant to which Lender agreed to increase the amount of the Loan by One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) to Five Million Five Hundred Forty-One Thousand One Hundred Eighty-Seven and 12/100 Dollars (\$5,541,187.12) to finance the acquisition of certain real property commonly known as 1727-1735 Benson and 818-824 Clark, Evanston, Illinois, legally described as Parcel 2 on Exhibit A attached hereto (the "Adjoining Property"), which adjoins the Real Estate. The increase in the amount of the Loan was evidenced by a certain Mortgage Note in the principal amount of One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) payable to the order of Lender on or before January 9, 1999 (the "Mortgage Note").

Borrower, Guarantors and Lender entered into that certain Third Amendment to Mortgage Loan Documents and Secured Guaranty effective as of January 9, 2000 and recorded on February 9, 2000 in the Cook County Recorder's Office as Document No. 00169724 ("Third Amendment") pursuant to which Lender agreed to amend the Loan Documents to extend the Maturity Date (as defined in the Mortgage Note) of the Mortgage Note for six (6) months from January 9, 2000 to July 9, 2000.

Borrower, Guarantors and Lender entered into that certain Fourth Amendment to Mortgage Loan Documents and Secured Guaranty ("Fourth Amendment") dated July 9, 2000 and recorded September 14, 2000 in the Cook County Recorder's Office as Document No. 00716255 pursuant to which Lender agreed to amend the Loan to, among other things, (i) extend the Maturity Date from July 9, 2000 to May 1, 2002; (ii) amend the Loan Rate payable under the Mortgage Note from the Prime Rate (as defined in the Mortgage Note) to a floating annual rate equal to the Prime Rate less one-half of one percent (0.50 %); and (iii) amend the Mortgage Note such that, in addition to the payments of interest as required under the Mortgage Note, commencing on September 1, 2000, Borrower was also obligated to pay monthly payments of principal in the amount of \$5,833.00 each.

Borrower, Guarantors and Lender entered into that certain Fifth Amendment to Mortgage Loan Documents and Second Guaranty ("Fifth Amendment") dated May 1, 2002 and recorded July 25, 2002 in the Cook County Recorder's Office as Document No. 0020815687 pursuant to which Lender agreed to amend the Loan to, among other things (i) extend the Maturity Date from May 1, 2002 to May 1, 2004; (ii) combine the Note and the \$550,000.00 Note into a single Amended and Restated Note, with the principal balance thereof payable in monthly installments of Twenty Thousand Nine Hundred Fifty Six and No/100 Dollars (\$20,956.00) each, plus accrued

UNOFFICIAL COPY

interest at a floating annual rate equal to the Prime Rate less one-half of one percent (.50%), with a balloon payment of the outstanding principal and accrued and unpaid interest due and payable on the May 1, 2004 Maturity Date; and (iii) modify certain covenants set forth in the Loan Agreement.

Pursuant to the Fifth Amendment, the Note and the \$550,000.00 Note were combined into a single Amended and Restated Note made jointly and severally by Trustee and Beneficiary, as Maker, in favor of Lender, as Payee, dated May 1, 2002 ("Amended and Restated Note").

Borrower, Guarantors and Lender entered into that certain Sixth Amendment to Mortgage Loan Documents and Secured Guaranty ("Sixth Amendment") dated April 29, 2004, and recorded June 7, 2004 in the Cook County Recorder's Office as Document No. 0415922109, pursuant to which Lender agreed to amend the Loan to, among other things (i) extend the Maturity Date from May 1, 2004 to May 1, 2006; and (ii) amend and restate the Mortgage Note.

Pursuant to the Sixth Amendment, the Mortgage Note was amended and restated in its entirety by an Amended and Restated Mortgage Note, in the original principal amount of One Million One Hundred Thirty-Nine Thousand Five Hundred Sixteen and 95/100 Dollars (\$1,139,516.95) made jointly and severally by Trustee and Beneficiary, as Maker, in favor of Lender, as Payee, dated April 29, 2004 ("Amended and Restated Mortgage Note").

Each of the Loan Documents herein shall refer to such documents as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment and Sixth Amendment.

As of the date hereof, the total outstanding principal balance of the Loan is Four Million One Hundred Two Thousand Two Hundred Ninety Three and 74/100 Dollars (\$4,102,293.74), \$3,038,605.79 of which is evidenced by and due and payable pursuant to the terms of the Amended and Restated Note and \$1,063,687.95 of which is evidenced by and due payable pursuant to the terms of the Amended and Restated Mortgage Note.

Borrower and Guarantors have now requested that Lender amend the Loan to, among other things (i) increase the amount of the Loan by Three Hundred Ninety Seven Thousand Seven Hundred Six and 26/100 Dollars (\$397,706.26) and consolidate such increase, together with the outstanding amounts of the Amended and Restated Note and Amended and Restated Mortgage Note, into a single Amended and Restated \$4,500,000.00 Note, with the principal balance thereof payable in monthly installments of \$25,000.00 each, plus accrued interest at a floating rate equal to one (1) month LIBOR plus one and three quarters percent (1-3/4%), with a balloon payment of the outstanding principal and accrued and unpaid interest due and payable on May 1, 2010; and (ii) modify and restate certain covenants set forth in the Loan Agreement, and Lender has agreed to do so upon and subject to the terms and conditions set forth in this Seventh Amendment.

UNOFFICIAL COPY

NOW, THEREFORE, in consideration of the foregoing recitals, each of which is incorporated herein and made a contractual part hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Lender, Guarantors and Borrower hereby agree as follows:

1. Recitals. The Recitals set forth above are hereby incorporated herein and made a part hereof. Except as otherwise expressly indicated, all capitalized terms used herein or in any of the Recitals shall have the same meaning as ascribed to them in the Loan Agreement.

2. Confirmation. Borrower and Guarantors hereby confirm and certify to Lender that each representation and warranty contained in the Loan Documents, as amended, are true, complete and accurate in all respects as of the date hereof.

3. Amendment to Loan Agreement. The Loan Agreement is hereby amended as follows:

(i) Maturity Date. The Maturity Date of the Loan is hereby extended for a period of four (4) years from May 1, 2006 to May 1, 2010. The entire outstanding principal balance of the Loan, and accrued and unpaid interest thereon due at the applicable Loan Rate, shall be due and payable in full on the May 1, 2010 Maturity Date.

(ii) Loan Increase. The current outstanding principal balance of the Loan is \$4,102,293.74, of which \$3,038,605.79 is evidenced by and due and payable pursuant to the terms of the Amended and Restated Note, and \$1,063,687.95 is evidenced by and due and payable pursuant to the terms of the Amended and Restated Mortgage Note. Upon satisfaction by Borrower of the conditions set forth in Paragraph 5 hereof, the Loan shall be increased by, and Lender shall disburse to Borrower in a single lump sum disbursement (the "Increase"), an amount equal to Three Hundred Ninety Seven Thousand Seven Hundred Six and 26/100 Dollars (\$397,706.26), resulting in an outstanding principal balance of \$4,500,000.00. Borrower shall utilize the Increase in order to fund the renovations described on **Exhibit B** attached hereto.

(iii) Loan Rate. The Loan currently bears interest at a floating annual rate equal to the Prime Rate, less one-half of one percent. From and after the date hereof, the outstanding principal balance of the Loan shall bear interest at, and Loan Rate shall be defined as, a floating annual rate equal to one and three quarters percent (1-3/4%) plus the one month LIBOR rate quoted by Lender from Telerate, Page 3750, or any successor thereto, which shall be the one month LIBOR rate in effect and reset each New York Banking Day (as hereinafter defined), adjusted for any reserve requirement and any subsequent cost arising from a change in government regulation. The term "New York Banking Day" means any day (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York. Lender's internal records of applicable interest rates shall be determinative in the absence of manifest error.

UNOFFICIAL COPY

(iv) Mortgage Note. In order to evidence the terms of the Loan, as increased and amended hereby, Trustee and Beneficiary agree to execute and deliver to Lender, and the Loan shall be due and payable in accordance with the terms of, the Amended and Restated \$4,500,000.00 Note in the form attached hereto and made a part hereof as **Exhibit C**. From and after execution and delivery of the Amended and Restated \$4,500,000.00 Note by Borrower, the Amended and Restated Note and the Amended and Restated Mortgage Note shall each be cancelled and returned by Lender to Borrower and of no further force or effect. The Amended and Restated \$4,500,000.00 Note is not intended, nor shall it be deemed or construed, as a novation of the obligations currently evidenced by the Amended and Restated Note and the Amended and Restated Mortgage Note, but as the amendment and restatement thereof.

(v) Financial Covenants. Section 7 of the Loan Agreement is hereby deleted in its entirety, and replaced with the following:

7. FINANCIAL COVENANTS.

7.1 Affirmative Covenants. Until all obligations of the Borrower hereunder, under the Note and under the Loan Documents are paid and performed in full, Borrower and Guarantors agree that, unless at any time Lender shall otherwise expressly consent in writing, each of Borrower and Guarantors shall:

(a) Books of Account and Financials. Keep books of account and prepare financial statements and shall cause to be furnished to Lender the following (all of the foregoing and following to be kept and prepared in accordance with generally accepted accounting principals applied on a consistent basis, unless Borrower's or any Guarantor's, as the case may be, certified public accountants concur in any changes therein and such changes are disclosed to Lender and are consistent with then generally accepted accounting principles) such data and information (financial and otherwise) as Lender, from time to time, may reasonably request, bearing upon or related to the Project Borrower's financial condition or results of operations:

(i) as soon as available, but not later than ninety (90) days after the close of each fiscal year of Borrower and Corporate Guarantor hereafter, year end cash-basis and accrual forms of the annual compilation statements of Borrower and Corporate Guarantor as at the end of such year, each as reviewed by a firm of independent certified public accountants reasonably acceptable to Lender;

(ii) as soon as available, but not later than March 31 of each year, updated personal financial statements of each Individual Guarantor as of December 31 of the prior year, on

UNOFFICIAL COPY

Lender's standard form, or such other form reasonably satisfactory to Lender;

(iii) as soon as available, but not later than forty (40) days after the end of each calendar quarter hereafter, internally-prepared interim financial statements of Borrower and Corporate Guarantor for the current calendar quarter, and year-to-date of the current year then elapsed;

(iv) concurrently with the delivery of the financial statements described in Subsections (i) through (iii) above, an attested statement signed by a general partner of Beneficiary that he or she is not aware of the existence of any condition or event which constitutes or would, upon notice or lapse of time or both, constitute an Event of Default or, if he or she is aware of such condition or event, the nature thereof;

(v) concurrently with the delivery of the financial statements described in Section (iii) above which coincides with the end of any calendar quarter, an attested statement signed by a general partner of the Beneficiary setting out the current "Cash Flow Ratio", as calculated in accordance with the terms of Paragraph 7.2(b) herein, and the current "Net Worth" of Corporate Guarantor, as calculated in accordance with the terms of Paragraph 7.2(d) herein; and

(vi) such other data and information (financial and otherwise) as Lender, from time to time, may reasonably request, bearing upon or related to the Project, Borrower's and/or any Guarantor's financial condition or results of operations.

(b) Notice of Default, Adverse Information, Litigation. Forthwith upon learning of the occurrence of any of the following, furnish to Lender written notice thereof, describing the same, and the steps being taken by Borrower with respect thereto: (A) the occurrence of an Event of Default or an Unmatured Event of Default; (B) the institution of, or any adverse determination in, any litigation, arbitration proceeding or governmental proceeding, pending or threatened, which is material to Borrower and/or any Guarantor; or (C) any other material information relating to any adverse change in the financial condition or which may materially and adversely affect the operations, financial condition or business of Borrower, any Guarantor, or Lender's security interest in the Project.

(c) Books, Records and Inspections. Maintain complete and accurate books and records; permit access upon notice by Lender to such books and records and permit Lender to inspect the properties and operations of

UNOFFICIAL COPY

Borrower at its principal place of business set forth herein upon three (3) business days' prior notice provided, however, such notice requirements shall not apply if an Event of Default or Unmatured Event of Default has occurred or is continuing under this Agreement or any of the Loan Documents.

(d) Tax Returns. As soon as available, but not later than April 15 of each year, Borrower shall provide Lender with copies of the federal, state, and local, if any, income tax returns of Borrower and each Guarantor, in the form said returns are filed, each certified as true, correct and complete by Borrower and each Guarantor.

7.2 Negative Covenants. Without Lender's prior written consent, which Lender may or may not in its sole and absolute discretion give, each of Borrower and Guarantor covenants that:

(a) Secured Debt. Corporate Guarantor shall not incur any secured debt in excess of Two Hundred Thousand and No/100 Dollars (\$200,000.00) in the aggregate during any one calendar year during the term hereof. This covenant shall be tested annually on the last day of each calendar during the term hereof.

(b) Cash Flow Ratio. They shall not permit or allow the Cash Flow Ratio (as herein defined), at any time, to be less than 1.35 to 1.0 on an aggregate basis for Corporate Guarantor and Borrower. For purposes hereof, the Cash Flow Ratio shall be defined as Cash Flow Available divided by Debt Service Required, where "Cash Flow Available" equals the net operating income of Corporate Guarantor and Borrower plus depreciation and amortization of Corporate Guarantor and Borrower plus interest expense of Corporate Guarantor and Borrower minus dividends or other shareholder/partnership distributions by Borrower and/or Corporate Guarantor; and "Debt Service Required" equals principal payments required on all indebtedness of Borrower and/or Corporate Guarantor plus interest expenses of Borrower and/or Corporate Guarantor. The Cash Flow Ratio shall be tested quarterly, on a rolling four (4) quarter basis, on the last day of each calendar quarter during the term hereof. For the purpose of computing the Cash Flow Ratio for Corporate Guarantor and Borrower, an addback of \$600,000.00 shall be made for the distribution made by Borrower during the fourth quarter of 2004.

(c) Liens. Shall not create or permit to exist, any mortgage, pledge, title, retention lien or other lien, encumbrance or security interest with respect to any assets owned or hereafter acquired, except for (i) current taxes and charges not delinquent or being contested in good faith and by appropriate proceedings for which a bond is posted in the amount contested; (ii) liens arising in the ordinary course of business for sums not due or sums being contested in good faith and by appropriate proceedings, and not involving any

UNOFFICIAL COPY

deposits or advances, or borrowed money or the deferred purchase price of property or services; (iii) liens in favor of Lender; or (iv) liens securing the secured debt, if any, of Corporate Guarantor expressly permitted pursuant to the terms of Paragraph 7.2(a) above.

(d) Net Worth. Corporate Guarantor shall not cause or permit its tangible Net Worth, on an accrual basis, to fall below Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00). The tangible Net Worth shall be tested on the last day of each calendar quarter during the term hereof. For purposes hereof, "Net Worth" equals the total of all assets properly appearing on the balance sheet of Corporate Guarantor in accordance with generally accepted accounting principles, less the sum of the following:

- (i) the book amount of all such assets which would be treated as intangibles under generally accepted accounting principles, including, without limitation, all such items as goodwill, trademarks, trademark rights, trade names, trade name rights, brands, copyrights, patents, patent rights, licenses, deferred charges and unamortized debt discount and expense;
- (ii) any write-up in the book value of any such assets resulting from a revaluation thereof subsequent to the date hereof;
- (iii) all reserves, including reserves for depreciation, obsolescence, depletion, insurance, and inventory valuation, but excluding contingency reserves not allocated for any particular purpose and not deducted from assets;
- (iv) the amount, if any, at which any shares of stock of Corporate Guarantor appear on the asset side of such balance sheet;
- (v) all liabilities of Corporate Guarantor shown on such balance sheet;
- (vi) all investments in foreign affiliates and non-consolidated domestic affiliates; and
- (vii) all accounts or notes due to Corporate Guarantor from any shareholder, director, officer, employee or affiliate of Corporate Guarantor or from any relative of such party."

UNOFFICIAL COPY

4. Other Conforming Amendments. The Mortgage, the Assignment of Rents, the Security Agreement, the Guaranty, the Environmental Indemnity Agreement and the other Loan Documents are hereby amended to reflect and secure the amended obligations and liabilities made herein. Borrower and Guarantors agree that Lender shall have the right to record this Seventh Amendment to reflect the matters stated herein.

5. Additional Requirements. The obligations of Lender to make the amendments to the Loan described herein shall be subject to Borrower and others having delivered, or having caused to be delivered, to Lender, the following items, all of which shall be in form and substance acceptable to Lender:

- (a) This Seventh Amendment, executed by all parties (other than Lender);
- (b) Letter of Direction executed by the Beneficiary;
- (c) An Endorsement to the Loan Policy issued by the Title Company which (i) extends the effective date of the Loan Policy to the date of recording of this Amendment; (ii) reflects the extended Maturity Date of the Loan; (iii) reflects the \$370,917.26 increase in the amount of the Loan; and (iv) raises no exceptions or other matters to title which are objectionable to Lender;
- (d) Certificates of Existence/Good Standing for Beneficiary and Corporate Guarantor;
- (e) Amended and Restated \$4,500,000.00 Note, executed by Trustee and Beneficiary; and
- (f) Such other documents as Lender may reasonably require.

6. Loan Expenses. In addition to the loan expenses described in the Loan Agreement, as amended, Borrower hereby agrees to pay all expenses, charges, costs and fees hereby relating to the amendment of the Loan as amended hereby, including Lender's reasonable attorneys' fees in connection with the negotiation and documentation of the agreements contained in this Seventh Amendment, all recording fees and charges, if any, title insurance charges and premiums, if any, and all other expenses, charges, costs and fees referred to in or necessitated by the terms of this Seventh Amendment.

7. Representations and Warranties. Borrower and each Guarantor, jointly and severally, represent and warrant to Lender that (i) it or he has full power and authority to execute and deliver this Seventh Amendment and to perform its or his respective obligations hereunder; (ii) upon the execution and delivery of this Seventh Amendment, the Loan Documents, as amended by this Seventh Amendment, shall be valid, binding and enforceable upon Borrower and each Guarantor, in accordance with their terms; (iii) execution and delivery of this Seventh

UNOFFICIAL COPY

Amendment does not and will not contravene, conflict with, violate or constitute a default under any applicable law, rule, regulation, judgment, decree or order, or any agreement, indenture or instrument to which any Borrower is a party or by which either Borrower and/or Guarantor, as the case may be, are bound; (iv) no default or event or condition which would become a default with the giving of notice and/or the passage of time, exists under the Loan Documents, as amended by this Seventh Amendment; (v) there is not any condition, event, or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending or threatened affecting Borrower, or which would prevent Borrower from complying with or performing its obligations under the Loan Documents, as amended by this Seventh Amendment, within the time limits set forth therein for such compliance or performance, and no basis for any such matter exists.

8. Miscellaneous.

(a) Except as expressly amended herein, the Loan Documents shall be and remain in full force and effect in accordance with their respective terms.

(b) This Seventh Amendment shall be binding on the Trustee, the Beneficiary, and Guarantors and their respective heirs, legatees, administrators, personal representatives, successors and permitted assigns, and shall inure to the benefit of Lender, its successors and assigns. The obligations and liabilities of the Trustee, the Beneficiary and the Guarantors under this Amendment shall be joint and several, subject only to the limitations, if any, contained herein and in the Loan Documents as amended by this Amendment.

(c) This Seventh Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9. Reaffirmation of Guaranty. By their execution and delivery hereof, each Guarantor consents to the amendments to the Loan described herein and the execution and delivery of this Seventh Amendment by Borrower. Each Guarantor further acknowledges that its or his, as the case may be, Guaranty of the Loan dated April 18, 1997, as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment and Seventh Amendment shall be and continue in full force and effect, and the validity and enforceability thereof shall not be affected hereby. The Individual Guarantors acknowledge and agree that the Five Hundred Thousand and No/100 Dollars (\$500,000.00) limitation of liability of each Individual Guarantor set forth in Paragraph 5 of the First Amendment is hereby deleted in its entirety and from and after the date here shall be no further force and/or effect. Such limitation does not apply to the Amended and Restated \$4,500,000.00 Note, it being the intent of the parties hereto that the Individual Guarantor and the Corporate Guarantor each fully guaranty (i) repayment of the Amended and Restated \$4,500,000.00 Note; and (ii) costs of collection described therein.

UNOFFICIAL COPY

10. Trustee's Exculpation. This Amendment is executed by the Trustee, not personally, but solely as Trustee aforesaid pursuant to the direction of Beneficiary and in the exercise of the power and authority conferred upon and vested in such Trustee, and it is expressly understood and agreed that nothing in this Amendment shall be construed as creating any liability on Trustee, all such liability being expressly waived by every person or entity now or hereafter claiming any right, title or interest hereunder.

[Remainder of page intentionally left blank.]

This agreement is signed by Parkway Bank & Trust Co. not individually but solely as Trustee. Said Trust Agreement and hereby made a part hereof and any claims against said Trustee shall be barred from the signing of this Agreement shall be waived by the Trustee. No liability shall be held hereunder, and no liability shall be held hereunder for the performance of any of the terms or conditions of this Agreement with respect to the validity or condition of the title of said property or for any payment with respect thereto. Any and all personal liability of Parkway Bank & Trust Co. is hereby expressly waived by the parties hereto and their respective heirs, executors and assigns.

Property of Cook County Clerk's Office


UNOFFICIAL COPY

~~upon the direction of its beneficiaries~~

IN WITNESS WHEREOF, this Seventh Amendment to Loan and Security Agreement is executed effective as of the date above written.

LENDER:

US BANK, N.A., as successor to
FIRSTSTAR BANK, N.A.

By: 
Craig B. Collinson, Senior Vice President


The Trustee in executing this document SPECIFICALLY EXCLUDES all references to any environmental condition of the premises whether under the Illinois ENVIRONMENTAL PROTECTION ACT or otherwise. The beneficiary of this trust, as management and control of the premises and as such, has the authority on its/their own behalf to execute as environmental representative but not as agent for or on behalf of the Trustee.

BORROWER:

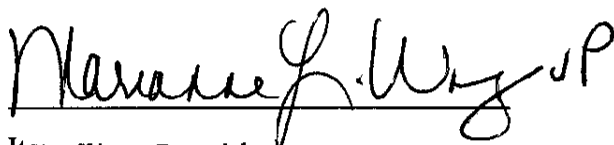
PARKWAY BANK AND TRUST COMPANY,
as Successor Trustee to Jefferson State Bank,
as Trustee aforesaid and not individually.

PARKWAY BANK & TRUST COMPANY, as Trustee




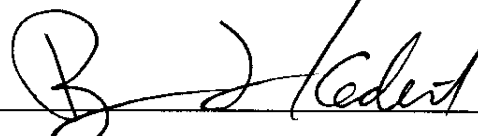
By: 
Its: Assistant Trust Officer

ATTEST:

By: 
Its: Vice President

EVANSTON BENSON LIMITED PARTNERSHIP,
an Illinois limited partnership

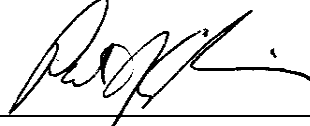
By: 
Patrick Cunningham, general partner

By: 
Benjamin Kadish, general partner

UNOFFICIAL COPY

GUARANTORS:

EVANSTON ATHLETIC CLUB, INC.,
an Illinois corporation

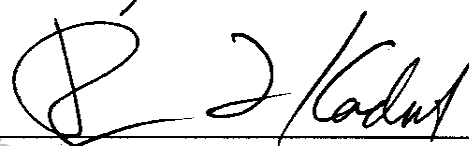
By: 
Patrick Cunningham, President

ATTEST:

By: 
Benjamin Kadish, Secretary

In addition to acknowledging and agreeing to the terms of the Seventh Amendment, the undersigned Individual Guarantors each acknowledge that: (i) they have reviewed the terms of Paragraph 7 of the Seventh Amendment; (ii) they agree and acknowledge that the \$500,000.00 limitation of liability set forth in the First Amendment no longer applies to the Loan as amended and increased hereby; and (iii) their guaranty of the Loan is unlimited, and they have fully guaranteed (a) repayment of the Amended and Restated \$4,500,000.00 Note; and (b) costs of collection described therein.


PATRICK CUNNINGHAM, individually


BENJAMIN KADISH, individually

UNOFFICIAL COPY

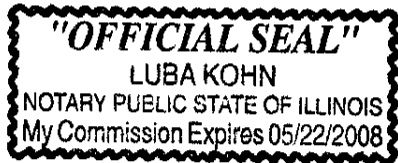
STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Jo Ann Kubinski, the Assistant Trust Officer of PARKWAY BANK AND TRUST COMPANY, as successor trustee to Jefferson State Bank, as Trustee of Trust No. 1966 ("Mortgagor"), and Marianne L. Wagener, the Vice President of said Mortgagor, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Asst. Trust Officer and Vice President, 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 Mortgagor, as Trustee for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal, this 27th day of May, 2005.


 NOTARY PUBLIC

[SEAL]



My Commission expires: _____

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS.

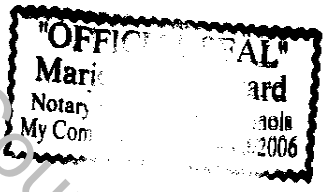
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that PATRICK J. CUNNINGHAM, the President, and BENJAMIN L. KADISH, the Secretary, of EVANSTON ATHLETIC CLUB, INC., an Illinois corporation ("Guarantor"), who are personally known to me to be the same persons whose name are subscribed to the foregoing instrument as such President and Secretary of said Guarantor, 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 as President and Secretary of Guarantor, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal, this 25th day of May, 2005.



 NOTARY PUBLIC

[SEAL]



My Commission expires: _____

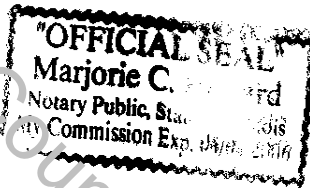
UNOFFICIAL COPY

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that PATRICK J. CUNNINGHAM and BENJAMIN L. KADISH, each as general partners of EVANSTON BENSON LIMITED PARTNERSHIP, an Illinois limited partnership ("Borrower"), who are personally known to me to be the same persons whose name are subscribed to the foregoing instrument as such General Partners of said Borrower, 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 as General Partners of Borrower, and as the free and voluntary act of the Landlord, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal, this 25th day of May, 2005.

McHeward
 NOTARY PUBLIC



[SEAL]

My Commission expires: _____

UNOFFICIAL COPY

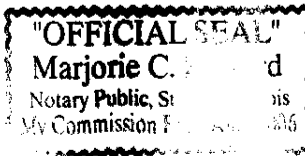
STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that PATRICK J. CUNNINGHAM, individually ("Guarantor"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Guarantor, 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 25th day of May, 2005.

McHoward

 NOTARY PUBLIC



[SEAL]

My Commission expires: _____

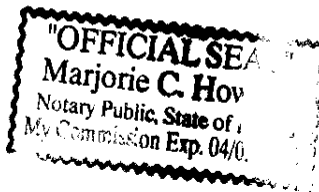
UNOFFICIAL COPY

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that BENJAMIN L. KADISH, individually ("Guarantor"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Guarantor, 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 20th day of May, 2005.

McHawnd
 NOTARY PUBLIC



[SEAL]

My Commission expires: _____

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS.

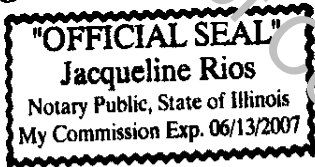
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that CRAIG B. COLLINSON, the Senior Vice President of US BANK, N.A. ("Lender"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Lender, 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 use and purposes therein set forth.

GIVEN under my hand and Notarial seal, this 27th day of May, 2005.

Jacqueline Rios

 NOTARY PUBLIC

[SEAL]



My Commission expires: 6-13-2007

UNOFFICIAL COPY

EXHIBIT A

Legal Description of Premises

PARCEL 1:

LOT 15 AND 16 IN NORTHWESTERN UNIVERSITY RESUBDIVISION OF BLOCK 17 IN THE SOUTHEAST QUARTER (1/4) OF THE NORTHWEST QUARTER (1/4) OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. NO.: 11-18-126-004

COMMON ADDRESS: 1723 BENSON AVENUE
EVANSTON, ILLINOIS

PARCEL 2:

LOT 1 IN NORDON'S CONSOLIDATIONS OF THE WEST 100 FEET OF LOTS 18 AND 19 AND 17 (EXCEPT THE EAST 55.19 FEET OF THE NORTH 1/2 THEREOF) IN NORTHWESTERN UNIVERSITY'S RESUBDIVISION OF BLOCK 17 IN EVANSTON IN SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAN THEREOF RECORDED JANUARY 28, 1988 AS DOCUMENT 88042206, IN COOK COUNTY, ILLINOIS.

P.I.N. NO.: 11-18-126-018

COMMON ADDRESS: 1727-1735 BENSON AVENUE AND 818-874 CLARK
EVANSTON, ILLINOIS

UNOFFICIAL COPY

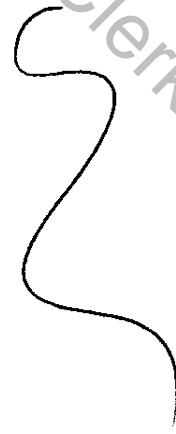
EXHIBIT B

Renovations



**COOK COUNTY
RECORDER
EUGENE "GENE" MOORE
SKOKIE OFFICE**

Property of Cook County Clerk's Office



UNOFFICIAL COPY

EXHIBIT C

Amended and Restated \$4,500,000.00 Note

Property of Cook County Clerk's Office



COOK COUNTY
RECORDER
EUGENE "BOB" MOORE
SKOKIE, ILL.

UNOFFICIAL COPY**AMENDED AND RESTATED
MORTGAGE NOTE**Re: 1727-35 Benson Avenue and 818-824 Clark

\$4,500,000.00

May __, 2005
Chicago, Illinois

FOR VALUE RECEIVED, PARKWAY BANK AND TRUST COMPANY, as successor trustee to Jefferson Sate Bank, as Trustee of Trust No. 1966 under a Trust Agreement dated May 15, 1995 ("Trustee") and EVANSTON BENSON LIMITED PARTNERSHIP, an Illinois limited partnership ("Beneficiary") (Trustee and Beneficiary are sometimes collectively referred to as "Maker") hereby promise to pay to the order of US BANK, N.A., as successor to Firststar Bank, N.A., a national banking association ("Lender"), the principal sum of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) at the place and in the manner hereinafter provided (the "Loan"), together with interest thereon from the date hereof on the balance of the principal remaining from time to time unpaid at the rates described below.

The term of the Loan commenced on April 18, 1997 ("Loan Opening Date") and shall continue thereafter until May 1, 2010, when the outstanding principal balance and all then accrued and unpaid interest on the principal balance of the Note shall be due and payable ("Maturity Date").

The principal amount of this Note starting from time to time from and after the date hereof shall bear interest at a floating annual rate (the "Loan Rate") equal to one and three-quarters percent (1.75%) plus the one-month LIBOR rate quoted by Lender from Telerate Page 3750 or any successor thereto, which shall be that one-month LIBOR rate in effect and reset each New York Banking Day, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation. The term "**New York Banking Day**" means any day (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York. Lender's internal records of applicable interest rates shall be determinative in the absence of manifest error. Interest accruing on the principal outstanding under the Loan from time to time shall (a) be computed on the basis of a year consisting of 360 days, (b) be charged for the actual number of days within each monthly period for which interest is charged, and (c) shall change concurrently with each change in the one-month LIBOR rate without notice to Maker.

The Loan shall be payable in equal monthly installments of principal in the amount of \$25,000.00 each, plus accrued interest at the Loan Rate, with each installment due and payable on the first day of each month during the term of the Loan. The next payment is due on June 1, 2005, with monthly installments continuing through and including the Maturity Date. If not sooner paid or declared due as the result of an Event of Default, a balloon payment of all outstanding principal, plus accrued and unpaid interest, shall be due and payable on the Maturity Date

UNOFFICIAL COPY

The Loan may be prepaid in whole or in part at any time; provided, in the event of any prepayment of this Note, Maker shall pay to Lender all fees, costs and interest accrued to the date of such prepayment.

All payments and prepayments on account of the indebtedness evidenced by this Note shall be first applied to accrued and unpaid interest on the unpaid principal balance of this Note, secondly, to all other sums then due Lender hereunder or under any of the Loan Documents, and the remainder, if any, to said unpaid principal balance. No payment and/or prepayment shall reduce and/or affect the amount of the monthly installments due hereunder (i.e., \$25,000.00 principal plus accrued interest), which monthly installment shall be and remain due and payable from and after the date of such prepayment.

After maturity or the earlier acceleration of the indebtedness evidenced by this Note, or if said indebtedness has not been accelerated, during any period in which an Event of Default (as hereinafter defined) exists under this Note or any of the Loan Documents, Maker shall pay interest on the balance of principal remaining unpaid during any such period at an annual rate equal to four percent (4%) plus the applicable Loan Rate ("Default Rate"). The interest accruing under this paragraph shall be immediately due and payable by Maker to the holder of this Note and shall be additional indebtedness evidenced by this Note.

In the event any payment of interest or principal due hereunder or any escrow fund payment or deposit for taxes or insurance due under the Mortgage (as hereinafter defined) is not made within ten (10) days after the date when such payment is due in accordance with the terms hereof or thereof, then, in addition to the payment of the amount so due, Maker shall pay to Lender a "processing charge" equal to five cents (5¢) for each whole dollar so overdue, or Twenty-Five Dollars (\$25.00), whichever is greater, to defray part of the cost of collection and handling such late payment. Maker agrees that the damages to be sustained by the holder hereof for the detriment caused by any late payment is extremely difficult and impractical to ascertain, and that the amount of five cents (5¢) for each one dollar due or \$25.00 is a reasonable estimate of such damages, does not constitute interest, and is not a penalty.

All payments of principal and interest hereunder shall be paid in coin or currency which, at the time or times of payment, is the legal tender for public and private debts in the United States of America and shall be made at such place as Lender or the legal holder or holders of this Note may from time to time appoint, and in the absence of such appointment, then at the offices of Lender, 30 North Michigan Avenue Chicago, Illinois 60602. Payment submitted in funds not available until collected shall continue to bear interest until collected. If payment hereunder becomes due and payable on a Saturday, Sunday or legal holiday under the laws of the State of Illinois, the due date thereof shall be extended to the next succeeding business day, and interest shall be payable thereon at the then applicable Loan Rate during such extension.

This Note amends and restates in their entirety (i) that certain Amended and Restated \$1,139,516.95 Note (the "Amended and Restated \$1,139,516.95 Note") dated April 29, 2004, made by Maker to Lender; and (ii) that certain Amended and Restated \$3,772,065.79 Note (the "Amended and Restated \$3,772,065.79 Note") dated May 1, 2002, made by Lender to Maker.

UNOFFICIAL COPY

The Amended and Restated \$1,139,516.95 Note amended and restated in its entirety a certain Mortgage Note in the original principal amount of \$1,400,000.00 dated July 9, 1999 made by Maker to Lender (the "\$1,400,000.00 Note"). The \$1,400,000.00 Note was previously executed and delivered by Maker pursuant to the terms of the Second Amendment to Mortgage Loan Documents and Secured Guaranty ("Second Amendment") dated July 9, 1999 among Maker, Corporate Guarantor (as herein defined), Individual Guarantors (as herein defined) and Lender. The Amended and Restated \$3,772,065.79 Note amended and restated in their entirety (i) that certain Secured Promissory Note in the original principal amount of \$3,750,000.00 dated April 18, 1997 made by Maker to Lender (the "\$3,750,000.00 Note" and (ii) that certain Mortgage Note in the original principal amount of \$550,000.00 dated May 25, 1999 made by Lender to Maker (the "\$550,000.00 Note"). The \$3,750,000.00 Note was previously executed and delivered by Maker pursuant to the terms of the Mortgage Loan Agreement dated April 18, 1997 ("Loan Agreement") among Maker, Guarantors and Lender. The \$550,000.00 Note was previously executed and delivered by Maker pursuant to the terms of the First Amendment to Loan Documents and Secured Guaranty dated May 25, 1999 (the "First Amendment") among Maker, Guarantors and Lender. In addition to the First Amendment and the Second Amendment, the Loan Agreement was previously amended by the Third Amendment to Mortgage Loan Documents and Secured Guaranty dated January 9, 2000, the Fourth Amendment to Mortgage Loan Documents and Secured Guaranty dated July 9, 2000, the Fifth Amendment to Loan Documents and Secured Guaranty dated May 1, 2002 and the Sixth Amendment to Mortgage Loan Documents and Secured Guaranty dated April 29, 2004.

Pursuant to Seventh Amendment to Mortgage Loan Documents and Secured Guaranty of even date herewith, the parties agreed to further amend the Loan Agreement to increase the amount of the Loan by \$397,706.26, from \$4,102,293.74 to \$4,500,000.00, and to amend and restate the Amended and Restated \$1,400,000.00 Note and the Amended and Restated \$3,772,075.69 Note in their entirety, and this Note is the Amended and Restated \$4,500,000.00 Note described in the Seventh Amendment. This Note and any and all other liabilities and obligations and indebtedness of Maker to Lender, whether such liabilities, obligation or indebtedness are now existing or hereafter created, direct or indirect, absolute or contingent, joint or several, due or to become due, howsoever created, arising or evidenced, and howsoever acquired by Lender, are secured, inter alia, by the collateral described in the Loan Agreement, as amended, the Security Agreement dated April 18, 1997 made by Maker to Lender, the Secured Guaranty made by Evanston Athletic Club, Inc. ("Corporate Guarantor"), a related party to Maker, the Assignment of Rents and Leases dated April 18, 1997 made by Maker to Lender, and the Mortgage and Security Agreement (the "Mortgage") dated April 18, 1997 made by Trustee to Lender creating a first mortgage lien on certain real property (the "Premises") legally described in Exhibit A attached to the Mortgage (said security documents, all as amended by the First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments, and any other document or instrument evidencing and/or securing this Note or delivered to induce Lender to disburse the proceeds evidenced hereby are hereinafter collectively referred to as the "Loan Documents"). Reference is hereby made to the Loan Documents (which are incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a legal description of the Premises, a statement of the covenants and agreements contained therein, a statement of the rights, remedies, and security afforded thereby, and all matters therein contained.

UNOFFICIAL COPY

Execution and delivery of this Note by Borrower, and the replacement of the Amended and Restated \$1,400,000.00 Note and the Amended and Restated \$3,772,075.69 Note hereby shall not be deemed or construed as a novation of the obligations evidenced by the Amended and Restated \$1,400,000.00 Note and the Amended and Restated \$3,772,075.69 Note, but as the amendment and restatement thereof.

The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Note:

- (a) the failure by Maker to make payment of principal or interest or payment of any other amount due to Lender under this Note, within ten (10) days after the date when any such payment is due in accordance with the terms hereof, or the failure of Maker to make payment of any amounts due to Lender under any of the other Loan Documents within ten (10) days after notice from Lender that any such payment is due in accordance with the terms thereof; or
- (b) the occurrence of any one or more of the "Events of Default" under Paragraph 14 of the Mortgage; or
- (c) the occurrence of an "Event of Default" under any of the Loan Documents other than the Mortgage; or
- (d) the occurrence of an Event of Default under any of the other loans made or participated in by Lender in which Maker, or any entity affiliated with Maker, or any Guarantor hereof is a party, including, without limitation, the loan made by Lender to Corporate Guarantor.

At the election of the holder hereof, and without notice, the principal balance remaining unpaid under this Note, and all unpaid interest accrued thereon, shall be and become immediately due and payable in full in the case of the occurrence of any Event of Default. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent Event of Default. No holder hereof shall, by any act of omission or commission, be deemed to waive any of its rights, remedies or powers hereunder or otherwise unless such waiver is in writing and signed by the holder hereof, and then only to the extent specifically set forth therein. The rights, remedies and powers of the holder hereof, as provided in this Note, the Mortgage and in all of the other Loan Documents are cumulative and concurrent, and may be pursued singly, successively or together against Maker, any guarantor hereof, the Premises and any other security given at any time to secure the repayment hereof, all at the sole discretion of the holder hereof. If any suit or action is instituted or attorneys are employed to collect this Note or any part thereof, Maker promises and agrees to pay all costs of collection, including reasonable attorneys' fees, costs and expenses and court costs.

Maker, the Guarantors, Corporate Guarantor and all others who now are or may at any time become liable for all or any part of the obligations evidenced hereby, expressly agree hereby to be jointly and severally bound, and jointly and severally: (i) waive and renounce any and all homestead, redemption and exemption rights and the benefit of all valuation and appraisal

UNOFFICIAL COPY

privileges against the indebtedness evidenced by this Note or by any extension or renewal hereof; (ii) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (iii) waive any and all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default, or enforcement of the payment hereof or hereunder; (iv) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (v) agree that the liability of Maker, each guarantor, endorser or obligor shall be unconditional and without regard to the liability of any other person or entity for the payment hereof, and shall not in any manner be affected by any indulgence or forbearance granted or consented to by Lender to any of them with respect hereto; (vi) consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and (vii) consent to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such makers, endorsers, guarantors or other obligors, or security shall not affect the liability of Maker, any guarantor and all other now liable for all or any part of the obligations evidenced hereby.

The proceeds of the loan evidenced by this Note were used solely for the purposes specified in 815 ILCS 205/4 (1994), as amended, and the principal sum advanced is for a business loan which comes within the purview of such section. Maker agrees that the obligation evidenced by this Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C., Section 1601, et seq.

Time is of the essence hereof.

This Note is governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the statutes, substantive laws and decisions of the State of Illinois. This Note may not be changed or amended orally but only by an instrument in writing signed by the party against whom enforcement of the change or amendment is sought.

Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Maker or any beneficiary thereof or of any lessee, operator, concessionaire or licensee of Maker or any beneficiary thereof in the conduct of their respective businesses, and by the execution of this Note, Maker agrees to indemnify, defend, and hold Lender harmless from and against any and all damages, costs, expenses and liability that may be incurred by Lender as a result of a claim that Lender is such partner, joint venturer, agent or associate.

This Note has been made and delivered at Chicago, Illinois and all funds disbursed to or for the benefit of Maker will be disbursed in Chicago, Illinois.

In the event one or more of the provisions contained in this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, and

UNOFFICIAL COPY

this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

This Note is executed by the Trustee, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee, and no personal liability shall be asserted or be enforceable against said Trustee, because or in respect of this Note or the making issue or transfer thereof, all such liability, if any, being expressly waived by each holder hereof. Nothing herein contained shall modify or discharge the personal liability expressly assumed by the guarantors of this Note, and each original and successive holder of this Note accepts the same upon the express condition that no duty shall rest upon said Trustee to sequester the rents, issues and profits arising from the property described in the Mortgage, or the proceeds arising from the sale or other disposition thereof, but that in case of default in the payment of this Note or of any installment hereof, the sole remedies of the holder hereof shall be any one or more of the: (a) foreclosure or other enforcement of the Mortgage, in accordance with the terms and provisions thereof; (b) enforcement of any liens or any other security given to secure the indebtedness evidenced hereby; or (c) enforcement of the personal liability of the guarantors of this Note.

[Remainder of page intentionally left blank.]

CLERK OF COOK COUNTY
CLERK'S OFFICE

UNOFFICIAL COPY

Maker has executed this Note as of the day and year first written above.

MAKER:

PARKWAY BANK AND TRUST COMPANY, as
Successor Trustee to JEFFERSON STATE BANK,
as trustee as aforesaid

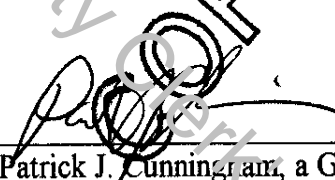
By: _____
Its: _____

ATTEST:

By: _____
Its: _____

EVANSTON BENSON LIMITED PARTNERSHIP,
an Illinois limited partnership

By:  _____
Benjamin L. Kadish, a General Partner

By:  _____
Patrick J. Cunningham, a General Partner