

UNOFFICIAL COPY

99511842

5341/0015 03 001 Page 1 of 16  
1999-05-27 09:21:59  
Cook County Recorder 51.00

THIS INSTRUMENT PREPARED BY,  
AND SHOULD BE RETURNED TO:  
Scott D. Gudmundson  
MELTZER, PURTILL & STELLE  
1515 East Woodfield Road  
Suite 250  
Schaumburg, Illinois 60173-5431  
(847) 330-2400



764925402df

Property of Cook County

Permanent Real Estate Tax Index No.:  
11-18-126-004

16

Address: 1723 Benson Avenue,  
Evanston, Illinois

FIRST AMENDMENT TO MORTGAGE  
LOAN DOCUMENTS AND SECURED GUARANTY

This First Amendment to Mortgage Loan Documents and Secured Guaranty ("Amendment"), dated and made effective this 25<sup>th</sup> day of May, 1999, 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 FIRSTAR BANK ILLINOIS, an Illinois banking corporation ("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 on **Exhibit A** attached hereto (the "Loan"),

**BOX 333-CTI**

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 has requested that Lender increase the amount of the Loan by Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00), limit the obligations of the Individual Guarantors under the Individual Guaranty, and agree to certain other amendments.

Lender has agreed to Borrower's request to increase the Loan amount, limit the obligations of the Individual Guarantors under the Individual Guaranty, and certain other amendments, as hereinafter set forth, provided that the parties execute and deliver this Amendment and that, among other things, Borrower executes and delivers to Lender a new Mortgage Note (the "\$550,000.00 Note"), which \$550,000.00 Note shall be included as part of the Loan Documents.

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.

(a) Increase in the Loan. The original amount of the Loan was \$3,750,000.00, of which \$3,608,709.95 is currently outstanding. The amount of the Loan is hereby increased by Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) to the new Loan amount of Four Million One Hundred Fifty-Eight Thousand Seven Hundred Nine and 95/100 Dollars (\$4,158,709.95) and the Loan Agreement shall now evidence the existence of the new \$550,000.00 Note.

(b) Financial Covenants. Section 7.2 of the Loan Agreement entitled "Negative Covenants" shall be deleted in its entirety and the following new Section shall be substituted in lieu thereof:

"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 Guarantors covenants that:

(a) Secured Debt. EAC shall not incur any secured Debt in excess of Two Hundred Thousand and No/100ths Dollars (\$200,000.00) in the aggregate during any one calendar year during the term hereof.

(b) Cash Flow Ratio. Neither EBLP nor EAC shall permit or allow its Cash Flow Ratio (as herein defined), at any time from and after the first anniversary of the Loan Opening Date, to be less than 1.35 to 1.0, on an aggregate basis. 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 EAC; less EAC's dividends or other shareholder distributions; plus EAC's depreciation and amortization; plus EAC's interest expenses; plus EBLP's net operating income; plus EBLP's depreciation and amortization; plus EBLP's interest expenses; and "Debt Service Required" equals principal payments required on all indebtedness of EBLP and EAC; plus interest expenses of both EBLP and EAC. The Cash Flow Ratio shall be tested annually on the last day of each calendar year during the term hereof.

(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 deposits or advances, or borrowed money or the deferred purchase price of property or services; or (iii) liens in favor of Lender.

(d) Net Worth. EAC shall not cause or permit its tangible Net Worth, on an accrual basis, to fall below Fifty Thousand and No/100ths Dollars (\$50,000.00). 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 EAC 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 EAC appear on the asset side of such balance sheet;

- (v) all liabilities of EAC shown on such balance sheet;
- (vi) all investments in foreign affiliates and nonconsolidated domestic affiliates; and
- (vii) all accounts or notes due to EAC from any shareholder, director, officer, employee or affiliate of EAC or from any relative of such party.”

4. New \$550,000.00 Note. The amount of the Loan is hereby increased by Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) to the new amount of Four Million One Hundred Fifty-Eight Thousand Seven Hundred Nine and 95/100 Dollars (\$4,158,709.95) all as set forth in the \$550,000.00 Note to be executed and delivered by Borrower and delivered to Lender.

5. Amendment of Individual Guaranty. Pursuant to the terms of the Individual Guaranty, the Individual Guarantors guaranteed (i) payment of the Loan evidenced by the Note; (b) performance and observance by Borrower of all other terms, covenants and conditions of the Note, the EBLP Loan Agreement (as defined therein), and the Loan Documents evidencing and/or securing the Loan; (iii) payment of the EAC Notes (as defined therein); and (iv) performance and observance by EAC of all other terms, covenants and conditions of the EAC Notes, the EAC Loan Agreement (as defined therein), and the Loan Documents evidencing and/or securing the loan described in the EAC Loan Agreement (the “EAC Loan”). The Individual Guaranty is hereby amended to reflect the \$550,000.00 increase in the Loan evidenced hereby and to limit the obligation and liability of each Individual Guarantor thereunder with respect to the Loan (as increased pursuant to the terms of this First Amendment) to the sum of (i) Five Hundred Thousand and No/100 Dollars (\$500,000.00), and (ii) costs of collection described in paragraph 9 thereof. Such limitations shall not apply to or be deemed or construed to limit or affect in any way the obligations of the Individual Guarantors with respect to the EAC Loan and/or the obligations of EAC under the Corporate Guaranty, which shall be and remain in full force and effect without limit.

6. 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 First Amendment to reflect the matters stated herein.

7. Amendment Fee. Borrower shall pay to Lender the Amendment Fee of Two Thousand Seven Hundred Fifty and No/100 Dollars (\$2,750.00).

8. 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 First Amendment, executed by all parties (other than Lender);
- (b) The \$550,000.00 Mortgage Note, duly executed by Borrower;
- (c) Payment of the Amendment Fee;
- (d) (i) Certified copies of resolutions of Corporate Guarantor authorizing or ratifying the execution, delivery and performance, respectively, of this Amendment, and any other documents delivered pursuant to the terms of this Amendment; (ii) certified copies of the Articles of Incorporation and By-Laws and Certificate of Good Standing recently issued by the Secretary of State of the State of Illinois setting forth that Corporate Guarantor is in good standing and has full authority to transact business in Illinois; (iii) certified copies of the Certificate of Existence recently issued by the Secretary of State of Illinois setting forth that Borrower is in good standing and has full authority to transact business in Illinois; and (iv) certified copies of the Limited Partnership Agreement and Certificate of Limited Partnership of Borrower;
- (e) An Endorsement to the Loan Policy issued by the Title Company insuring the Mortgage which (i) extends the effective date of the Loan Policy to the date of recording of this First Amendment; (ii) reflects the increase in the amount of the Loan; (iii) insures for all amounts disbursed under the Loan through the date of recording this Amendment; and (v) raises no exceptions or other matters to title which are objectionable to Lender;
- (f) Other Documents. Such other documents as Lender may reasonably require.

9. 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 First Amendment, all Appraisal fees, 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 First Amendment.

10. 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 First Amendment and to perform its or his respective obligations hereunder; (ii) upon the execution and delivery of this First Amendment, it and the Loan Documents, as amended by this First Amendment, shall be valid, binding and enforceable upon Borrower and each Guarantor, in accordance with their terms; (iii) execution and delivery of this First 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 any of Borrower and/or Guarantor 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 First 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 First Amendment, within the time limits set forth therein for such compliance or performance, and no basis for any such matter exists.

11. 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 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 First 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.

(d) 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.

12. 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 First Amendment and the \$550,000.00 Note by Borrower. Each Guarantor further acknowledges that its or his, as the case may be, Guaranty of the Loan dated April 18, 1997 shall be and continue in full force and effect, and the validity and enforceability thereof shall not be affected hereby; provided, however, that from and after the date hereof, the obligations and liability of the Individual Guarantors under the Individual Guaranty shall be limited as provided in paragraph 5 hereof.

# UNOFFICIAL COPY

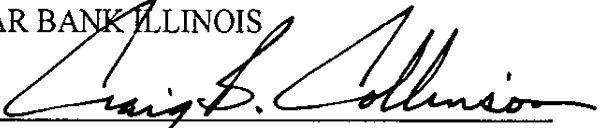
99511842

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

**LENDER:**

FIRSTAR BANK ILLINOIS

By:

  
Craig B. Collinson, First Vice President

**BORROWER:**

PARKWAY BANK AND TRUST COMPANY,  
as successor trustee to Jefferson State Bank,  
as Trustee aforesaid

By:

SEE EXHIBIT A FOR TRUSTEE

Its:

SIGNATURE, ACKNOWLEDGEMENT AND EXCULPATION.


ATTEST:

By: \_\_\_\_\_

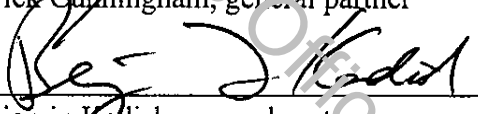
Its: \_\_\_\_\_

EVANSTON BENSON LIMITED  
PARTNERSHIP, an Illinois limited partnership

By:

  
Patrick Cunningham, general partner

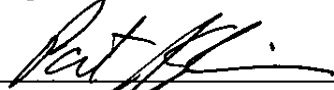
By:

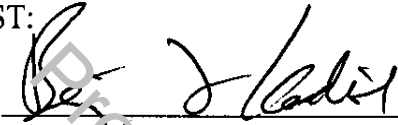
  
Benjamin Kadish, general partner

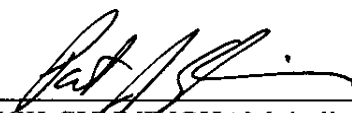



GUARANTORS:

EVANSTON ATHLETIC CLUB, INC.,  
an Illinois corporation

By:   
Patrick Cunningham, President

ATTEST:  
By:   
Benjamin Kadish, Secretary

  
PATRICK CUNNINGHAM, individually  
  
BENJAMIN KADISH, individually

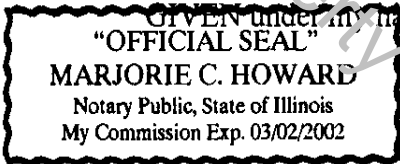
# UNOFFICIAL COPY

99511842

STATE OF ILLINOIS        )  
  )  
COUNTY OF COOK        )        SS.

I, Marjorie Howard, 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 25<sup>th</sup> day of May, 1999.



(SEAL)

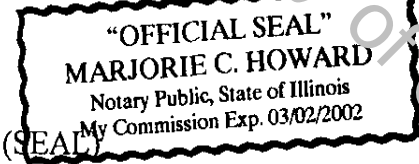
Marjorie Howard  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

STATE OF ILLINOIS )  
 )  
COUNTY OF Cook ) SS.

I, Marjorie Howard, 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 25 day of May, 1999.



McHoward  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

# UNOFFICIAL COPY

99511842

STATE OF ILLINOIS     )  
                                   )  
 COUNTY OF COOK        )     SS.

I, Marjorie Howard, 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 25<sup>th</sup> day of May, 1999.

"OFFICIAL SEAL"  
 MARJORIE C. HOWARD  
 Notary Public, State of Illinois  
 Commission Exp. 03/02/2002  
 (SEAL)

Marjorie Howard  
 NOTARY PUBLIC

My Commission expires: \_\_\_\_\_  
 30086-001/First Amendment to Mortgage Loan Documents and Secured Guaranty - 5-18-99

PROPERTY OF COOK COUNTY CLERK'S OFFICE

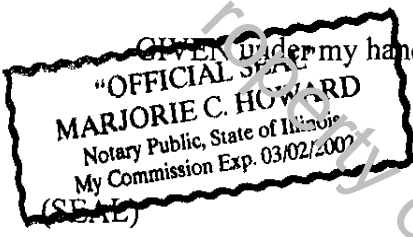
# UNOFFICIAL COPY

99511842

STATE OF ILLINOIS     )  
  )  
  )     SS.  
COUNTY OF COOK     )

I, Marjorie Howard, 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 25 day of May, 1999.



Marjorie Howard  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

CLERK'S OFFICE OF COOK COUNTY CLERK'S OFFICE

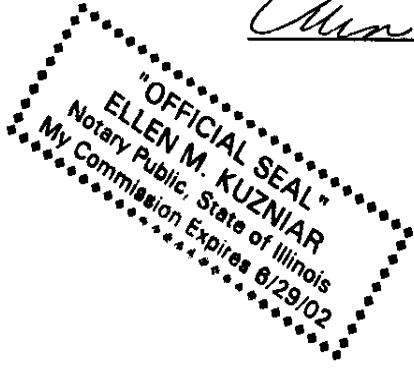
State of Illinois, Cook County ss:

I, ELLEN M. KUZNIAR a Notary Public in and for said County and State, do hereby certify that personally known to me to be  
CRAIG B. COLLINSON  
the same person(s) whose name(s) subscribed to the foregoing instrument, appeared before me this day  
in person and acknowledged that signed and delivered the said instrument as free and voluntary act,  
for the purposes and therein set forth.

Given under my hand and official seal, this 25TH day of MAY, 1999.

My commission expires:

Ellen M. Kuzniar  
Notary Public



Property of Cook County Clerk's Office



EXHIBIT A

Legal Description of Premises

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

30086-001/First Amendment to Mortgage Loan Documents and Secured Guaranty - 5-18-99

