

FIRST MODIFICATION OF NOTE, MORTGAGE,  
ASSIGNMENT AND SECURITY AGREEMENT

THIS FIRST MODIFICATION OF NOTE, MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT is made as of this 6th day of April, 1987 by and among AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee under Trust Agreement dated November 8, 1978 and known as Trust No. 45170 (the "Trust"), I-90 COMPANY, an Illinois limited partnership ("Beneficiary"), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association ("Lender").

RECITALS:

A. Beneficiary is the sole beneficiary of the Trust, which Trust owns title to certain real property and improvements located thereon legally described on attached Exhibit A (the "Property").

B. The Trust is indebted to Lender in the principal sum of \$7,725,000 which amount Lender advanced to the Trust on April 28, 1986 (the "Loan"). The Loan is evidenced by a certain Mortgage Note (the "Note") dated April 22, 1986, made by the Trust and payable to the order of and delivered to Lender.

C. The Note is personally and unconditionally, jointly and severally guaranteed up to a maximum amount of \$1,000,000 plus all costs of collection, including reasonable attorneys' fees, by the Guarantors (as such term is defined in the Note) and is secured by, among other things, the following: (i) a Mortgage dated April 22, 1986 granted by the Trust to Lender (the "Mortgage") creating a lien on the Property and recorded in the Recorder of Deeds Office of the Cook County, Illinois (the "Recorder's Office") on April 25, 1986 as Document No. 86162742 and filed with the Registrar of Titles of Cook County, Illinois (the "Registrar") on April 25, 1986 as Document No. LR 3510389; (ii) an Assignment of Rents and Lessor's Interest in Leases dated April 22, 1986 by the Trust and Beneficiary in favor of Lender (the "Assignment of Rents") and recorded in the Recorder's Office on April 25, 1986 as Document No. 86162743 and filed with the Registrar on April 25, 1986 as Document No. LR 3510390; (iii) a Collateral Assignment of License Agreement dated April 22, 1986 by the Trust and Beneficiary in favor of Lender (the "Collateral Assignment of License"); (iv) a Subordination of Management Agreement dated April 22, 1986 (the "Subordination of Management Agreement") by The Musikantow Corporation, an Illinois corporation, in favor of Lender and recorded in the Recorder's Office on April 25, 1986 as Document No. 86162744 and re-recorded on May 15, 1986 as Document No. 86195043; (v) a Combined Security Agreement and Assignment of Beneficial Interest in Land Trust dated April 22, 1986 made by Beneficiary in favor of Lender (the "Collateral ABI"); and (vi) a Security Agreement dated April 22, 1986 made by the Trust and Beneficiary to and for the benefit of Lender (the "Security Agreement") (the Mortgage, the Assignment of Rents, the Collateral Assignment of Licenses, the Subordination of Management Agreement, the Collateral ABI, the Security Agreement, any other documents or instruments evidencing or securing the Note and any statement or certificate as to facts delivered to Lender by or on behalf of Beneficiary are hereinafter collectively referred to as the "Loan Documents").

*Handwritten notes:*  
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D. The Trust and Beneficiary have requested that Lender increase the principal amount of the Loan from \$7,725,000 to \$10,500,000. Lender has agreed to so increase the principal amount of the Loan, subject to the Trust and Beneficiary agreeing to the terms and conditions contained in this First Modification.

E. The Trust, Beneficiary and Lender have agreed to modify the Note and Loan Documents to reflect the increase in the principal amount of the Loan.

NOW THEREFORE, in order to induce Lender to increase the principal amount of the Loan from \$7,725,000 to \$10,500,000, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trust, Beneficiary and Lender hereby agree as follows:

1. The recitals set forth above are incorporated herein and made a part hereof.

2. The principal amount of the Loan and the Note shall be increased from \$7,725,000 to \$10,500,000 and all references in the Note and the Loan Documents to the principal sum of the Note or the amount of the loan evidenced by the Note hereby are increased from \$7,725,000 to \$10,500,000.

3. The Note hereby is amended by deleting in line sixteen of the first paragraph thereof the words "prime rate ("Prime") of interest" and substituting in lieu thereof the words "reference rate ("Reference Rate") of interest".

4. The Note hereby is amended by deleting in line three of the third paragraph thereof the word "Prime" and substituting in lieu thereof the words "Reference Rate".

5. The Note hereby is amended by deleting in lines one and three of the fourth paragraph thereof the words "Prime Rate" and substituting in lieu thereof the words "Reference Rate".

6. The second paragraph of the Note hereby is deleted in its entirety and the following is substituted in lieu thereof:

"Repayment of the indebtedness evidenced by this Note shall be personally and unconditionally, jointly and severally guaranteed by I-90 Company, an Illinois limited partnership ("I-90 Company"), and Allen S. Musikantow ("Musikantow") (I-90 Company and Musikantow are hereinafter jointly referred to as the "Guarantors"), subject to the limitations set forth in the guaranty dated as of April 6, 1987 (the "Guaranty"). All references in this Note to the Guarantors shall be deemed to be subject to the limitations set forth in the Guaranty."

7. The Mortgage hereby is amended by deleting in lines eight through fifteen of the first Recital paragraph thereof the words "and Allen S. Musikantow ("Musikantow") and I-90 Company, an Illinois limited partnership ("I-90 Company") (Musikantow and I-90 Company are hereinafter jointly referred to as the "Guarantors") jointly and severally guarantee the payment of the said principal sum and interest up to a maximum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) plus

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all costs of collection, including reasonable attorneys' fees." and substituting in lieu thereof a period and the words "The Note is personally and unconditionally, jointly and severally guaranteed by the Guarantors (as defined in the Note) subject to the limitations set forth in the guaranty dated as of April 6, 1987."

8. The Assignment of Rents hereby is amended by deleting in lines nine through fifteen of paragraph (a) of the Recitals thereof the words "which Note is personally and unconditionally, jointly and severally guaranteed by Allen S. Musikantow and I-90 Company (the "Guarantors") up to a maximum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) plus costs of collection including reasonable attorneys' fees incurred or paid in collecting the Guarantors obligations under the Guaranty of even date herewith;" and substituting in lieu thereof a period and the words "The Note is personally and unconditionally, jointly and severally guaranteed by the Guarantors (as defined in the Note) subject to the limitations set forth in the guaranty dated as of April 6, 1987 (the "Guaranty")."

9. The Collateral ABI hereby is amended by deleting in lines ten through thirteen of paragraph 9 thereof the words "Debtor and Musikantow (Debtor and Musikantow are hereinafter jointly referred to as the "Guarantors") under a certain Guaranty (the "Guaranty") of even date herewith made by the Guarantors to and for the benefit of Secured Party" and substituting in lieu thereof the words "Guarantors (as defined in the Note) under the guaranty dated as of April 6, 1987 (the "Guaranty") subject to the limitations set forth in the Guaranty."

10. The Security Agreement hereby is amended by deleting in lines eleven through sixteen of paragraph 8(i) thereof the words "I-90 Company and Allen S. Musikantow ("Musikantow") (I-90 Company and Musikantow are hereinafter jointly referred to as the "Guarantors") under a certain Guaranty (the "Guaranty") of even date herewith made by the Guarantors to and for the benefit of the Secured Party" and substituting in lieu thereof the words "Guarantors (as defined in the Note) under the guaranty dated as of April 6, 1987 (the "Guaranty") subject to the limitations set forth in the Guaranty."

11. The Collateral Assignment of License hereby is amended by deleting in lines ten through fourteen of paragraph 11 thereof the words: "Allen S. Musikantow ("Musikantow") and the Beneficiary (Musikantow and the Beneficiary are hereinafter jointly referred to as the "Guarantors"), under a certain Guaranty of even date herewith from the Guarantors to and for the benefit of Assignee" and substituting in lieu thereof the words "the Guarantors (as defined in the Note) under the guaranty dated as of April 6, 1987 (the "Guaranty") subject to the limitations set forth in the Guaranty."

12. Paragraph 35 of the Mortgage hereby is deleted in its entirety and the following is substituted in lieu thereof:

"At the written request and direction of Mortgagor's beneficiary, Mortgagor hereby releases and waives any and all rights to retain possession of the Premises after the occurrence of an Event of Default and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Mortgagor, the trust estate of Mortgagor, all persons and entities

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interested beneficially in Mortgagor and each and every person acquiring any interest in, or title to, the premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of Chapter 110, Section 12-124 and Chapter 110, Section 12-125 of the Illinois Revised Statutes as in effect prior to July 1, 1987 and, Chapter 110, Section 15-1601 of the Illinois Revised Statutes as in effect after June 30, 1987 or other applicable law or replacement statutes."

13. The obligation of Lender to increase the principal amount of the Loan shall be subject to the Trust and Beneficiary having delivered or caused to be delivered to Lender (i) this First Modification in form and substance acceptable to Lender, (ii) a Guaranty dated as of April 6, 1987 from the Guarantors (as defined in the Note) to and for the benefit of Lender in form and substance acceptable to Lender in substitution of the Guaranty dated as of April 22, 1986 from the Guarantors to and for the benefit of Lender, and (iii) a loan fee of \$27,750 which is equal to one percent (1%) of the increased principal amount of the Loan.

14. The obligation of Lender to increase the principal amount of the Loan shall be subject to Beneficiary paying to Lender all expenses set forth in Paragraph 28 of the Mortgage, including, but not limited to all expenses, charges, costs and fees in connection with the negotiation, documentation, administration and enforcement of the agreements contained in this First Modification, all recording fees and charges, title insurance charges and premiums and all other costs, expenses, charges and fees referred to in or necessitated by the terms of this First Modification (collectively, the "Additional Loan Expenses"). The Additional Loan Expenses shall be paid by Borrower forthwith upon Lender's demand, or may be paid by Lender at any time by disbursement of proceeds of the Loan.

15. All references to the Note contained in the Mortgage and the other Loan Documents shall be deemed to refer to the Note, as modified by this First Modification.

16. All references to the Mortgage and the other Loan Documents contained in the Note, the Mortgage or the other Loan Documents shall be deemed to refer to the Mortgage and the other Loan Documents, as modified by this First Modification.

17. The Trust and Beneficiary hereby certify and confirm to Lender that each representation and warranty contained in the Note, the Mortgage and/or the other Loan Documents, as applicable, is true, complete and correct in all respects, except as may be modified by this First Modification.

18. The Trust and Beneficiary hereby certify and confirm that there is no default or event with which the passage of time, the giving of notice, or both would constitute a default under the Note, the Mortgage, or any of the other Loan Documents.

19. The Trust and Beneficiary hereby ratify and confirm the Note, the Mortgage and the other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that they have no defense or claim for set-off against the enforcement thereof by Lender.

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20. This First Modification shall be binding on the Trust, Beneficiary, and their respective heirs, legatees, legal representatives, successors and assigns and shall inure to the benefit of Lender, its successors and assigns.

21. Except as specifically provided herein, the Note, the Mortgage and the other Loan Documents shall remain in full force and effect in accordance with their respective terms.

22. The Trust represents and Beneficiary represents and warrants that no toxic materials, hazardous waste, pollutants or contaminants have been generated, released, stored or deposited over, beneath or on (or used in the construction of) the Property or on or in any structures located on the Property from any source whatsoever, nor has any part of the Property been used for or as a land fill, the result of which could impose any liability on Lender under applicable federal or state laws and regulations including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 USC Section 9601 et. seq.) and the Resource Conservation and Recovery Act (42 USC Section 6903 et. seq.). Anything contained hererin to the contrary notwithstanding, Beneficiary covenants that it will indemnify, hold harmless, and defend Lender from any and all claims, loss, damage, response costs and expenses arising out of or in any way relating to a breach of these environmental representations contained in this paragraph including, but not limited to: (a) claims of third parties (including governmental agencies) for damages, penalties, response costs, injunctive or other relief; (b) costs of removal and restoration, including fees of attorneys and experts, and costs of reporting the existence of hazardous substances or hazardous wastes to any governmental agency; and (c) any and all expenses or obligations, including reasonable attorney's fees, incurred at, before and after any trial or appeal thereof whether or not taxable as costs, including, without limitation, attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Beneficiary when incurred.

23. Nothing contained in this First Modification shall be deemed to cause Beneficiary or any partners of Beneficiary or any shareholder, officer or director of any partner, or any of their respective heirs, administrators, executors, personal representatives, successors or assigns to have any personal liability or other personal obligation or any liability for a deficiency for or with respect to any payment, performance or observance of any amount, obligation, liability or provisions to be paid, performed or observed under this First Modification except for the obligation and liability of the Guarantors (as defined in the Note) under the guaranty dated as of April 6, 1987 (the "Guaranty"), subject to the limitations set forth in the Guaranty, and Lender agrees not to seek or obtain any personal, deficiency or other judgment against Beneficiary or any partners of Beneficiary or any shareholder, officer or director of any partner, or any of their respective heirs, administrators, executors, personal representatives, successors or assigns, and the sole remedy of Lender shall be against the property secured by the Mortgage and certain other collateral securing the Note and the Loan Documents and the Guarantors in their capacity as such; provided, however, that Beneficiary or any partners of Beneficiary or any shareholder, officer or

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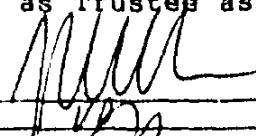
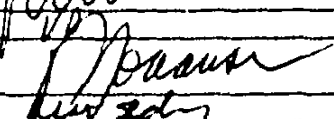
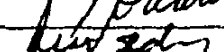
director of any partner, or any of their respective heirs, administrators, executors, personal representatives, successors or assigns shall be personally liable to Lender for: (A) any damages, expenses or costs (including reasonable attorneys' fees and expenses) suffered or incurred by Lender (i) as a result of any intentional or willful material misrepresentation or material breach of any certification, representation, warranty or covenant made by Beneficiary or any partners of Beneficiary or any shareholder, officer or director of any partner herein or in any other document or instrument heretofore, contemporaneously herewith or hereafter delivered to Lender in connection with the loan evidenced and secured thereby or otherwise made in connection with the delivery of the Note or in the performance of Beneficiary's obligations hereunder or under the other Loan Documents; or (ii) as a result of fraud or waste; and (B) the amount of any rents or other income arising with respect to the Property which is retained by Beneficiary other than for the payment of normal and customary expenses for the ownership and operation of the Property and not delivered to Lender after Lender has given notice that Beneficiary is in default under the Loan Documents; and (C) the Fair market value, as of the time of the giving of any notice referred to in clause (B) above, of any personal property removed or disposed of by Beneficiary other than in the ordinary course of business; and further provided that the foregoing shall not in any way affect any rights Lender may have (as a secured party or otherwise) hereunder or under any of the other Loan Documents, or any rights Lender may have to proceed against any entity or person whatsoever, including any of the above, with respect to the enforcement of the Guaranty.

24. This First Modification is executed by American National Bank and Trust Company of Chicago, not personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in said Trustee, and it is expressly understood and agreed that nothing in this First Modification shall be construed as creating any personal liability on said Trustee to perform any covenant, either express or implied herein, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder.

IN WITNESS WHEREOF, this First Modification has been entered into as of the date first above written.

TRUST:

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, not personally,  
but solely as Trustee as aforesaid

By:   
Title: \_\_\_\_\_  
Attest:   
Title: 

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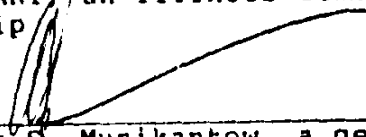
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BENEFICIARY:

I-90 COMPANY, an Illinois limited partnership

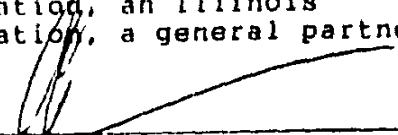
By:

  
Allen S. Musikantow, a general partner

By:

The Musikantow Equity Corporation, an Illinois corporation, a general partner

By:

  
Allen S. Musikantow,  
Its President

LENDER:

EXCHANGE NATIONAL BANK OF CHICAGO

By:

Title:

  
Asst. VP

Attest:

Title:

  
CONSTRUCTION LOAN ADMINISTRATION OFFICER

This instrument prepared by and after recording should be returned to:

Alan D. Lev, Esq.  
Greenberger, Krauss & Jacobs, Chartered  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601

Permanent Real Estate Index Nos.:

08-16-200-101  
08-16-200-044  
08-16-400-018  
08-16-400-020  
08-16-400-028

Property Address:

75 West Algonquin Road,  
Arlington Heights, Illinois

Property of Cook County Clerk's Office

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## TRUSTEE'S ENDORSEMENT

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee under Trust Agreement dated November 8, 1978 and known as Trust No. 45170, hereby acknowledges receipt of the foregoing First Modification of Note, Mortgage, Assignment and Security Agreement.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee as aforesaid

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

Date: 4/7/87

## MANAGER'S ACKNOWLEDGMENT

The undersigned acknowledges receipt of a copy of the foregoing First Modification of Note, Mortgage, Assignment and Security Agreement and consents to and agrees that the Senior Liabilities (as defined in the Subordination of Management Agreement) shall be deemed to include, without limitation, the principal amount of the Note as increased by this First Modification.

Dated: April 7, 1987

THE MUSIKANTOW CORPORATION, an  
Illinois corporation

By: \_\_\_\_\_  
Title: President

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## LEGAL DESCRIPTION

# 08-16-200-101 ALO

### PARCEL 1:

Lot 1 in Arlington Place Subdivision, being a Subdivision in Section 16, Township 41 North, Range 11 East of the Third Principal Meridian, according to the Plat recorded as Document Number 25261219 and Document Number LR 3133810 in Cook County, Illinois.

### PARCEL 2:

Reciprocal Easements for Ingress and Egress as created by that certain Agreement dated August 2, 1979 and recorded with the Recorder of Deeds of Cook County, Illinois on October 1, 1979 as Document Number 25171074 and filed with the Registrar of Titles on October 1, 1979 as Document Number LR 3121973, and amended by First Amendment to Reciprocal Easement Agreement dated January 27, 1981 and recorded with the Recorder of Deeds of Cook County, Illinois, on June 4, 1981, as Document Number 25893425 and filed with the Registrar of Titles on June 4, 1981 as Document Number LR 3218008, pertaining to the following Parcels of property:

**Parcel A:** Lot 1 in Arlington Place Subdivision, being a Subdivision in Section 16, Township 41 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois.

**PARCEL B:** Lot 2 in Arlington Place Subdivision, being a Subdivision in Section 16, Township 41 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois.

**PARCEL C:** Lot 3 in Arlington Place Subdivision, being a Subdivision in Section 16, Township 41 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois.

**PARCEL D:** Lot 2 in Carl M. Teutsch Subdivision of part of the East half of Section 16, Township 41 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois.

### PARCEL 3:

Easement for creation and maintenance of a detention/retention pond created by that certain Agreement dated December 1, 1979 and recorded with the Recorder of Deeds of Cook County, Illinois, on January 4, 1980 as Document Number 25306989 and filed with the Registrar of Titles on January 4, 1980 as Document Number LR 3139276 and amended by Document Number 26527048 and filed as Document Number LR 3296792 pertaining to Lots 1, 2 and 3 and described above as Easement Parcels A, B and C, in Arlington Place Subdivision, being a Subdivision in Section 16, Township 41 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois.

EXHIBIT A

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Property of Cook County Clerk's Office

*156-1565601*

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Submitted by \_\_\_\_\_

Address \_\_\_\_\_

Roomed \_\_\_\_\_

Receiver certified \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Duplicate Trans \_\_\_\_\_

Need to \_\_\_\_\_

Address \_\_\_\_\_

Notified \_\_\_\_\_

SAFECO TITLE INSURANCE CO.  
2 N. LA SALLE ST.  
SUITE 1100  
CHICAGO, IL 60602

86-1565601