

# UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY:  
AND AFTER RECORDING MAIL TO:

First Eagle Bank  
1040 E. Lake Street  
Hanover Park, IL. 60133



Doc# 1722110043 Fee \$50.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 08/09/2017 11:56 AM PG: 1 OF 7

## ASSUMPTION AND MODIFICATION AGREEMENT

**THIS ASSUMPTION AND MODIFICATION AGREEMENT** (hereinafter referred to as "Modification Agreement") is dated as of the 21<sup>ST</sup> day of May, 2017, by and among 1655 W Irving Park LLC, an Illinois limited liability company (alternatively referred to herein as the "LLC" or "Borrower"); David Litvinov and Nikhil J. Hira (collectively "Guarantor"); and First Eagle Bank ("Lender").

### WITNESSETH:

**WHEREAS**, on May 21, 2015, Urban Real Estate Partners II LLC, an Illinois liability company ("Borrower") executed and delivered to Lender that certain Promissory Note dated May 21, 2015 in the original principal sum of Four Hundred Seventy Two Thousand and 00/100 (\$472,000.00) Dollars, (the "Note") which Note is secured by the following documents:

- (i) Mortgage of even date with the Note made by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 1517719064 (the "Mortgage") on property commonly known as 1655 W. Irving Park Road, Chicago, IL. 60613 and legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises");
- (ii) Assignment of Rents of even date with the Note made by Borrower, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 1517719065 (the "Assignment") on the Premises;
- (iii) Commercial Guarantees of even date with the Note made by each Guarantor in favor of Lender ("Guarantees"). The Note, Mortgage, Guarantees, and any and all other documents executed pursuant to or in connection with the Loan by Borrower or Guarantor, as amended, modified, assumed or replaced from time to time are hereinafter collectively referred to as the "Loan Documents"

**FIRST AMERICAN TITLE**  
**FILE # 28166236**

Prepared by LMH  
Officer Review  
Initial Review          Date 6/15/17  
Final Review          Date           
File # 101536

S ✓  
P ✓  
S ✓  
SC ✓  
INT ✓

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**WHEREAS**, the LLC and Guarantor request that Lender consent to the assumption of the Note, Mortgage, and other Loan Documents by the LLC.

**WHEREAS**, Lender has consented to such request, provided the parties hereto execute and deliver this Modification Agreement to Lender;

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

1. **Recitals.** The recitals set forth above shall be incorporated herein, as if set forth in their entirety.

2. **Assumption.** 1655 W Irving Park LLC, an Illinois limited liability company hereby assumes all of the indebtedness, liabilities, and obligations of LLC under the Note, Mortgage, and other Loan Documents as if 1655 W Irving Park LLC were the original maker or grantor of such documents, and covenants and agrees to pay, perform and observe all of the indebtedness, liabilities, and obligations (including, without limitation, all covenants, agreements and undertakings) under the Note, Mortgage, and other Loan Documents.

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

4. **Restatement of Representations.** Borrower and Guarantor hereby ratify and confirm their respective obligations and liabilities under the Note, Mortgage, Guaranty, and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that they have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Note, Mortgage, Guaranty, and other Loan Documents, as so amended.

5. **Defined Terms.** All capitalized terms which are not defined herein shall have the definitions ascribed to them in the Note, Mortgage, Guaranty, and other Loan Documents.

6. **Documents Unmodified.** Except as modified hereby the Note, Guaranty, Mortgage, and other Loan Documents shall remain unmodified and in full force and effect.

7. **Fee.** In consideration of Lender's agreement to amend the Loan, as aforesaid, Borrower has agreed and shall pay Lender upon execution hereof, a fee in the amount of One and 00/100 Dollar (\$1.00) plus all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

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8. **Representations and Warranties of the Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

- (a) The representations and warranties in the Loan Documents are true and correct as of the date hereof.
- (b) There is currently no Event of Default (as defined in the Loan Documents) and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, Mortgage, Assignment, Guaranty, or the other Loan Documents.
- (c) The Loan Documents are in full force and effect and, following the execution and delivery of this Modification Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.
- (d) There has been no material adverse change in the financial condition of Borrower, Guarantor, or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.
- (e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.
- (f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Modification Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Modification Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Modification Agreement has been duly executed and delivered on behalf of Borrower.

9. **Binding Agreement.** This Modification Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor, and Lender have contributed substantially and materially to the preparation of this Modification Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Modification Agreement. Each of the parties to this Modification Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Modification Agreement, and recognizes that it is executing and delivering this Modification Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Modification Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

10. **Severability.** In the event any provision of this Modification Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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11. **Other Modifications.** Anything contained in the Mortgage to the contrary notwithstanding, the Mortgage also secures all loans, advances, debts, liabilities, obligations, covenants and duties owing to the Lender by Borrower and/or any Related Party (as hereinafter defined), whether now existing, or hereafter created or arising, including, without limitation: (i) the Note, (ii) the Indebtedness, and (iii) any and all other loans, advances, overdrafts, indebtedness, liabilities and obligations now or hereafter owed by Borrower or any Related Party to Lender, of every kind and nature, howsoever created, arising or evidenced, and howsoever owned, held or acquired, whether now due or to become due, whether direct or indirect, or absolute or contingent, whether several, joint or joint and several, whether liquidated or unliquidated, whether legal or equitable, whether disputed or undisputed, whether secured or unsecured, or whether arising under the Mortgage or any other document or instrument. For purposes of this paragraph, "Related Party" shall mean (i) Grantor, (ii) each beneficiary of Grantor, if Grantor is a land trust, (iii) the maker of the Note, if other than Grantor, and if more than one maker, each co-borrower of the Note other than Grantor, and (iv) each guarantor of the Note.

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

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

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

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

Borrower and Guarantor and any other obligor under the Loan, on behalf of themselves and their respective successors and assigns (collectively and individually, the "Mortgagor Parties"), hereby fully, finally and completely release, remise, acquit and forever discharge, and agree to hold harmless Lender and its respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, fiduciaries, attorneys, agents and properties, past, present and future, and their respective heirs, successors and assigns (collectively and individually, the "Mortgagee Parties"), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, debts, liens, actions, and causes of action of any and every nature whatsoever, known or unknown, direct or indirect, whether at law, by statute or in equity, in contract or in tort, under state or federal jurisdiction, and whether or not the economic effects of such alleged matters arise or are discovered in the future (collectively, the "claims"), which the Mortgagor Parties have as of the date of this Modification Agreement or may claim to have against the Mortgagee Parties, including but not limited to, any claims arising out of or with respect to any and all transactions relating to the Loan or the Loan Documents occurring on or before the date of this Modification Agreement, including but not limited to, any loss, cost or damage of any kind or character arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of the Mortgagee Parties occurring on or before the date of this Modification Agreement. The foregoing release is intended to be, and is, a full, complete and general release in favor of the Mortgagee Parties with respect to all claims, demands, actions, causes of action and other matters described therein, or any other theory, cause of action, occurrence, matter or thing which might result in liability upon the Mortgagee Parties arising or occurring on or before the date of this Modification Agreement. The Mortgagor Parties understand and agree that the foregoing general release is in consideration for the agreements of Lender contained herein and that they will receive no further consideration for such release. Furthermore, each of the Mortgagor Parties represents and warrants to Lender that she, he or it: (i) read this agreement, including without limitation, the release

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set forth in this section (the "Release Provision"), and understands all of the terms and conditions hereof, and (ii) executes this Modification Agreement voluntarily with full knowledge of the significance of the Release Provision and the releases contained herein and execution hereof. The Mortgagor Parties agree to assume the risk of any and all unknown, unanticipated, or misunderstood claims that are released by this Modification Agreement.

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

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

**IN WITNESS WHEREOF**, this Modification Agreement was executed by the undersigned as of the date and year first set forth above.

**IN WITNESS WHEREOF**, the undersigned have executed this Modification Agreement as of the date and year first set forth above.

## **BORROWER:**

1655 W Irving Park LLC, an Illinois limited liability company

Dome Investments, LLC, an Illinois limited liability company

By: 

David Litvinov, Manager

NJH Realty Inc, an Illinois corporation

By: 

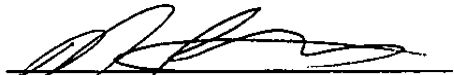
Nihil Hira, President

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**GUARANTOR**



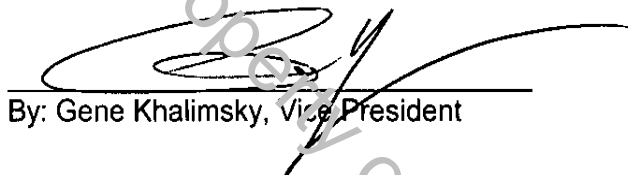
David Litvinov



Nikhil Hira

**LENDER:**

First Eagle Bank



By: Gene Khalimsky, Vice President

**ACKNOWLEDGMENT**

STATE OF ILLINOIS ) SS.  
COUNTY OF COOK )

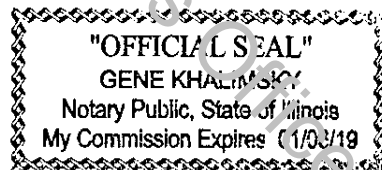
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that David Litvinov, Manager of Dome Investments LLC, an Illinois limited liability company and Nikhil Hira, President of NJH Realty Inc., an Illinois corporation both Members of 1655 W Irving Park LLC, an Illinois limited liability company, known to me to be the same persons whose name is subscribed to the foregoing instrument, personally appeared before me this day and of her own free will and that of the trusts and the company she represent, subscribed her name to the foregoing instrument for the uses and purposes therein contained.

Given under my hand and notarial seal this 15 day of June, 2017.



Notary Public

My Commission Expires: 01/06/2019



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## ACKNOWLEDGMENT

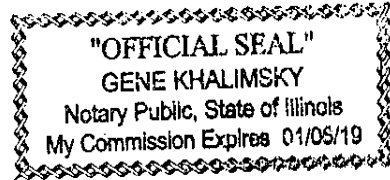
STATE OF ILLINOIS ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that David Litvinov and Nikhil Hira, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and deed for the uses and purposes therein set forth;

Given under my hand and notarial seal this 15 day of June, 2017..

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 01/06/2019

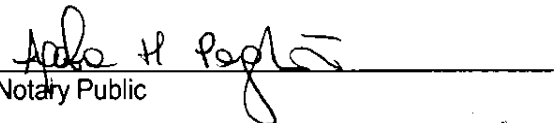


## ACKNOWLEDGMENT

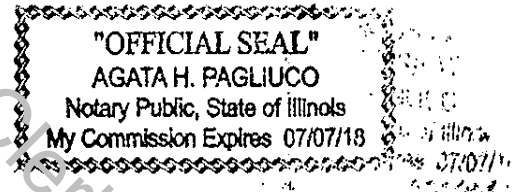
STATE OF ILLINOIS ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Gene Khalimsky, Vice President of First Eagle Bank personally known to me to be the same person whose name is subscribed to the foregoing instrument and appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said banking association, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15<sup>th</sup> day of June, 2017

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 07/07/18



## EXHIBIT "A"

**LOT 8 IN BLOCK 2 IN H.C. BUECHNER'S SUBDIVISION OF BLOCK 1 OF EXECUTOR'S OF W.E. JONE'S SUBDIVISION OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTHWEST ¼ OF THE NORTHEAST ¼ AND THE SOUTHEAST ¼ OF THE NORTHWEST ¼ AND EXCEPT THE EAST ½ OF THE SOUTHEAST ¼ THEREOF) IN COOK COUNTY, ILLINOIS.**

ADDRESS: 1655 W. IRVING PARK, CHICAGO, IL. 60631

REAL PROPERTY TAX IDENTIFICATION NO: 14-19-207-002-0000