

# UNOFFICIAL COPY

Doc#: 1925945016 Fee: \$98.00  
Edward M. Moody  
Cook County Recorder of Deeds  
Date: 09/16/2019 09:56 AM Pg: 1 of 9

THIS INSTRUMENT PREPARED BY:  
Christyl Marsh  
Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062

AND AFTER RECORDING MAIL TO:  
Steve Frank  
Oxford Bank & Trust  
1111 W. 22<sup>nd</sup> Street, Suite 800  
Oak Brook, Illinois 60523

## SECOND MODIFICATION AGREEMENT

**THIS SECOND MODIFICATION AGREEMENT** (hereinafter referred to as this "Modification Agreement") made as of this 1st day of August, 2019, by and among **GN Builders & Developers, Inc.**, an Illinois corporation ("Borrower"), **Dariusz Borysiewicz, Golden Nail Builders, Inc.**, an Illinois corporation (each of the foregoing, except Borrower are individually referred to as a "Guarantor" and collectively referred to as the "Guarantors") (Borrower and Guarantors are hereinafter each sometimes individually referred to as an "Obligor" and are collectively referred to as the "Obligors"), and **Oxford Bank & Trust** ("Lender").

### WITNESSETH:

**WHEREAS**, Borrower has executed and delivered to Lender that certain promissory note dated April 13, 2016 in the original principal sum of Two Million Seven Hundred Thousand and 00/100 Dollars (\$2,700,000.00) (as modified, restated or replaced from time to time, the "Note"), to evidence a construction loan (as modified, the "Loan") extended by Lender to Borrower, which Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor, as modified from time to time, are hereinafter collectively referred to as the "Loan Documents"):

- (i) mortgage, security agreement, assignment of leases and rents and fixture filing dated as of April 13, 2016, recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office"), as Document No. 1611001025 (the "Mortgage") on property commonly known as 1815 N. Cleveland Avenue, Chicago, Illinois and legally described on Exhibit A attached hereto and made a part hereof (the "Premises");
- (ii) assignment of rents and leases dated as of April 13, 2016 made by Borrower in favor of Lender, recorded in the Recorder's Office, as Document No. 1611001026 (the "Assignment of Rents");
- (iii) guaranty of payment and completion dated as of April 13, 2016 made by Guarantors in favor of Lender (the "Guaranty");

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- (iv) environmental indemnity agreement dated as of April 13, 2016 made by Obligors in favor of Lender;
- (v) construction loan agreement dated as of April 13, 2016 between Borrower and Lender (the "Loan Agreement");
- (vi) assignment of plans, specifications, construction and service contracts, licenses and permits dated as of April 13, 2016 made by Borrower in favor of Lender; and
- (vii) assignment of sales contracts and security agreement dated as of April 13, 2016 made by Borrower in favor of Lender.

WHEREAS, the Note and Loan Documents were modified pursuant to that certain modification agreement dated as of April 30, 2018 by and among Borrower, Guarantors and Lender, recorded in the Recorder's Office as Document No. 1833746049, whereby, among other modifications, the maturity date of the Note was extended to August 1, 2019.

WHEREAS, Obligors are desirous of (i) increasing the principal sum of the Note by \$157,615.00 to make additional improvements to the Premises and to replenish the interest reserve, (ii) extending the maturity date of the Note to February 1, 2020, to allow for additional time to sell the home, and (iii) making certain other changes thereto, and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, first and subsisting lien on the Premises (as defined in the Mortgage) and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there is no existing second 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. The parties represent and agree that the foregoing recitals are true and correct.
2. As of August 1, 2019, the total outstanding principal balance of the Note is \$2,691,885.00. Concurrent with the execution of this Modification Agreement, the Borrower shall execute and deliver to Lender an amended and restated promissory note of even date herewith in the principal amount of Two Million Eight Hundred Forty-Nine Thousand Eight Hundred Eighty-Five and 00/100 Dollars (\$2,849,885.00), payable to the order of Lender (the "Amended Note") on February 1, 2020.
3. Each reference in the Loan Documents to the term "Note" shall hereafter be deemed to be a reference to the Amended Note. Each reference in the Loan Documents to the term "Loan" shall hereafter mean that certain \$2,849,885.00 construction loan made by Lender to Borrower and evidenced by the Amended Note. Each reference in the Loan Documents to the "Maturity" or the "Maturity Date" shall hereafter mean February 1, 2020.
4. Obligors and Lender hereby agree that the Project Budget (as such term is defined in the Loan Agreement) is hereby modified as follows:

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- a. The line item for construction costs is increased by \$45,000.00, to cover the cost of constructing a pergola on the garage rooftop deck.
  - b. The line item for the interest reserve is increased by \$105,000.00, to replenish the interest reserve.
5. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Note, as hereby modified and replaced with the Amended Note.
6. Except for the modifications stated herein, the Amended Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Amended Note and other Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the loan evidenced by the Amended Note shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Amended Note and other Loan Documents, to forgive or waive any violation, default or breach under the Amended Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.
7. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender a non-refundable modification fee in the amount of \$7,125.00, plus all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees"). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by Lender, such Additional Fees shall be paid by Obligors within five days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Amended Note).
8. 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 Amended Note, the Mortgage and/or the other Loan Documents, 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.
9. This Modification Agreement shall extend to and be binding upon each of the Obligors and their respective heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.
10. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Amended Note, the Guaranty and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Amended Note, the Guaranty and other Loan Documents, as so amended.

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Without limiting the generality of the foregoing paragraph, each Guarantor hereby further represents and warrants to the Lender with the intent that the Lender rely thereon, as follows with regard to the Guaranty, as hereby modified: (a) the Guaranty is in full force and effect and is binding and enforceable against the Guarantor in accordance with its terms; (b) the Guarantor irrevocably consents and agrees to the Borrower's execution and delivery of this Modification Agreement and the Amended Note; (c) the liability of the Guarantor to the Lender under the Guaranty shall in no way be affected, modified, altered, or discharged in any fashion by the Borrower's execution, delivery or performance of this Modification Agreement and the Amended Note; (d) the Guarantor hereby restates and reaffirms to Lender all terms and provisions of the Guaranty as if set forth in full herein; and (e) the Guarantor does not possess any claims, defenses, offsets, or counterclaims against the enforcement of the Guaranty as of the date hereof, and any and all such claims, defenses, offsets and counterclaims, whether known or unknown, are forever waived and released, and the Guarantor is unconditionally liable under the Guaranty, for the payment and performance of all present and future indebtedness and all other obligations described therein.

11. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois (exclusive of choice of law principles), including all matters of construction, validity and performance.

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

13. 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.

14. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH 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

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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.


**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]**

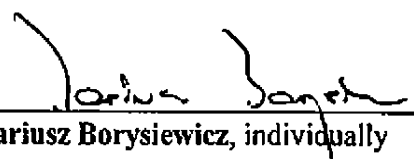
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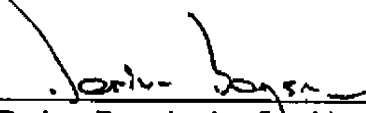
IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

**GN Builders & Developers, Inc., an Illinois corporation**

By:   
Dariusz Borysiewicz, President

  
Dariusz Borysiewicz, individually

**Golden Nail Builders, Inc., an Illinois corporation**

By:   
Dariusz Borysiewicz, President

**Oxford Bank & Trust**

By:   
Steve Frank  
Title: Vice President, Commercial Real Estate

Property of Cook County Clerk's Office

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STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Dariusz Borysiewicz, the President of GN Builders & Developers, Inc., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1<sup>st</sup> day of August, 2019.

Diana Palicka  
Notary Public

My Commission Expires: 1-21-23

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 Dariusz Borysiewicz personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 1<sup>st</sup> day of August, 2019.

Diana Palicka  
Notary Public

My Commission Expires: 1-21-23

STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF COOK     )





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STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Dariusz Borysiewicz, the President of Golden Nail Builders, Inc., an Illinois corporation, who is known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1<sup>st</sup> day of August, 2019.

*Diana Palicka*

Notary Public

My Commission Expires: 1-21-23



STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF DUPAGE    )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Steve Frank, Vice President of Commercial Real Estate for Oxford Bank & Trust, known to me to be the same person whose name is subscribed to the foregoing instrument as such officer appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said bank.

Given under my hand and notarial seal this 1<sup>st</sup> day of August, 2019.

*Diana Palicka*

Notary Public

My Commission Expires: 1-21-23





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## EXHIBIT A

[current legal description]

**PIN:** 14-33-310-080-0000

**Property Address:** 1815 North Cleveland Avenue, Chicago, IL 60614

Lot 82 in Hambleton's Subdivision of Block 43 in Canal Trustee's Subdivision in Section 33, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

[prior legal description]

**Property addresses:** 1815 North Cleveland Avenue #A, Chicago, IL 60614  
1815 North Cleveland Avenue #B, Chicago, IL 60614  
1815 North Cleveland Avenue #C, Chicago, IL 60614

**PINs:** 14-33-310-068-0000 (Unit A)  
14-33-310-069-0000 (Unit B)  
14-33-310-070-0000 (Unit C)

### Unit A:

**Parcel 1:** The West 38.75 feet of Lot 82, together with the South 8 feet of the East 19 feet of Lot 82 in Hambleton's Subdivision of Block 43 in Canal Trustee's Subdivision in Section 33, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

**Parcel 2:** Easement for the benefit of Parcel 1 for Ingress and Egress contained in Declaration of Easement recorded as document 22492308 and as created by Deed recorded as document 22516751.

### Unit B:

**Parcel 1:** The East 30.70 feet of the West 69.45 feet of Lot 82, together with the North 8.0 feet of the South 16.0 feet of the East 19.00 feet of Lot 82, all being in Hambleton's Subdivision of Block 43 in the Canal Trustee's Subdivision in Section 33, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

**Parcel 2:** Easement for the benefit of Parcel 1 for Ingress and Egress contained in Declaration of Easement recorded as document 22492308 and as created by Deed recorded as document 22516751.

### Unit C:

**Parcel 1:** Lot 82 (except the West 69.45 feet and except the East 19 feet) together with the East 19 feet (except the South 16 feet thereof) of Lot 82 in Hambleton's Subdivision of Block 43 in Canal Trustee's Subdivision in Section 33, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

**Parcel 2:** Easement for the benefit of Parcel 1 for Ingress and Egress contained in Declaration of Easement recorded as document 22492308 and as created by Deed recorded as document 22516751.