

# UNOFFICIAL COPY

Doc#: 2109634134 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 04/06/2021 03:50 PM Pg: 1 of 11

This Document was prepared  
by and should be returned to:  
First Eagle Bank  
1040 E. Lake St.  
Hanover Park, IL. 60133

## FIFTH AMENDMENT TO LOAN DOCUMENTS

This Fifth Amendment to Loan Documents ("Fifth Amendment") is dated as of the 3rd day of February 2021 and made by and among DSSG 12, LLC, an Illinois limited liability company ("Borrower"); Phillip Ciaccio, Steven Ciaccio, and Boris Genken *Genkin* (individually and collectively referred to herein as "Guarantor"); and First Eagle Bank ("Lender").

A. On May 3, 2016 Lender made a loan (the "Loan") to Borrower in the amount of One Million Eight Hundred Thousand and 00/100 (\$1,800,000.00). The Loan is evidenced by the Promissory Note of Borrower dated May 3, 2016 in the principal amount of \$1,800,000.00 as amended by the First Amendment to Loan Documents dated November 3, 2017, the Second Amendment to Loan Documents dated November 3, 2018, the Third Amendment to Loan Documents dated November 3, 2019, and the Fourth Amendment to Loan Documents dated February 3, 2020 ("Note").

B. The Note is secured by a Mortgage and Assignment of Rents (collectively referred to herein as "Mortgage") dated May 3, 2016, and recorded as Document Nos. 1616004006 and 1616004007 with the Recorder of Deeds of Cook County, Illinois which was executed by DSSG 12 LLC in favor of Lender and which created a first lien on the property ("Property") known as 847 N Larrabee Street, Chicago, IL, 60610 which is legally described on Exhibit "A" attached hereto and made a part hereof.

C. The Note is further secured by the Commercial Guaranty ("Guaranty") of Guarantor dated May 3, 2016. The Note, Mortgage, Assignment, and any and all other documents executed pursuant to or in connection with the Loan by Borrower, Guarantor, or Guarantor, as amended, modified, assumed or replaced from time to time are hereinafter collectively referred to as the "Loan Documents".

D. The First Amendment to Loan Documents extended the Maturity Date of the Loan to November 3, 2018 and increased the Loan Amount to \$1,880,000.00.

Prepared by: AP  
Officer Review  
Initial Review *AP* Date 2/19/21  
Final Review *AP* Date \_\_\_\_\_

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E. The Second Amendment to Loan Documents extended the Maturity Date of the Loan to November 3, 2019 and increased the Loan Amount to \$1,925,000.00.

F. The Third Amendment to Loan Documents extended the Maturity Date of the Loan to February 3, 2020.

G. The Fourth Amendment to Loan Documents extended the Maturity Date of the Loan to February 3, 2021.

H. Borrower and Guarantor wish to (i) decrease the rate of the Loan from the rate equal to one half percent (0.50%) above the Index per annum with a floor of five-and half percent (5.50%) to the rate equal to one half percent (0.50%) above the Index per annum with a floor of four-and half percent (4.50%), (ii) re-amortize the Loan based on a 25-year amortization, and (iii) extend the Maturity Date of the Loan February 3, 2022. Lender has agreed to the request as previously stated, subject to the following covenants, agreements, representations and warranties.

**NOW THEREFORE**, for and in consideration of the covenants, agreements, representations and warranties set forth herein, the parties hereto agree as follows:

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

2. **Maturity Date, Interest Rate and Schedule of Payment.** The Note is hereby amended by extending the Maturity Date to February 3, 2022. Effective as of the date hereof, Borrower will pay the Loan, which has a current principal balance of \$1,924,999.99, with interest from the date hereof until paid in full, on the principal amount remaining, at the rate equal to one half percent (0.50%) above the Index per annum with a floor of four and a half percent (4.50%), pursuant to the following schedule:

1 interest payment at or prior to the execution of this Amendment in the amount of \$9,117.01;

11 consecutive monthly principal payments of \$6,416.67 plus all accrued unpaid interest as of each payment date, beginning March 3, 2021, with all subsequent principal and interest payments to be due on the same day of each month after that; and

1 final principal and interest payment at Maturity on February 3, 2022 estimated at \$1,861,602.48. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled; the actual payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this Loan.

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Payments will be applied first to any unpaid collection costs; then to any late charges; then to any accrued unpaid interest, and then to principal.

3. **Modification of Documents.** The Mortgage, Guaranty, and other Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Note, as hereby modified and amended. Each reference in the Mortgage and other Loan Documents to "maturity" or "Maturity Date" shall hereafter be deemed a reference to February 3, 2022.

4. **Guarantor Not Released.** Guarantor acknowledges and consents to the amendments and modifications set forth in this Amendment.

5. **Restatement of Representations.** Borrower and Guarantor hereby restate and reaffirm each and every representation, warranty, covenant and agreement made by them in the Amended Note, Mortgage, Assignment, Amended Guaranty, and other Loan Documents.

6. **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.

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

8. **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 Nine Thousand Six Hundred Twenty-Five and 00/100 Dollars (\$9,625.00) 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.

9. **Representations and Warranties of 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, the Mortgage or the other Loan Documents.
- (c) The Loan Documents are in full force and effect and, following the execution and delivery of this Amendment, they continue to be the

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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(s) 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 validly exists under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Amendment and to perform the Loan Documents as modified herein. The execution and delivery of this Amendment 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 Amendment has been duly executed and delivered on behalf of Borrower.

10. **Binding Agreement.** This Amendment shall not be construed more strictly against Lender than against Borrower or Guarantor(s) merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor(s) and Lender have contributed substantially and materially to the preparation of this Amendment, and Borrower, Guarantor(s) 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 Amendment. Each of the parties to this Amendment represents that it has been advised by its respective counsel of the legal and practical effect of this Amendment and recognizes that it is executing and delivering this Amendment, 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 Amendment, 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.

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 the 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,

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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.

A sale or transfer referred to in the Mortgage shall also mean and include the granting of any mortgage, deed of trust or other encumbrance of any kind on all or any portion of the Real Property, whether or not it is junior to the lien of this Mortgage.

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

This Amendment 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 Amendment 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 thereto.

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

Borrower, Grantor 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 Amendment 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 Amendment, 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

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omissions of the Mortgagee Parties occurring on or before the date of this Amendment. 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 Amendment. 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 set forth in this section (the "Release Provision"), and understands all of the terms and conditions hereof, and (ii) executes this Amendment 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 Amendment.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH BORROWER, EACH GRANTOR, AND EACH GUARANTOR (EACH AN "OBLIGOR") HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AMENDMENT 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 AMENDMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS AMENDMENT, 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 AMENDMENT 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.

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

**BORROWER:**


**DSSG 12, LLC, an Illinois Limited Liability Company**

Larrabee Holdings LLC, an Illinois Limited Liability Company,  
Manager of DSSG 12 LLC

  
\_\_\_\_\_  
By: Steven E. Ciaccio, Manager

  
\_\_\_\_\_  
By: Phillip J. Ciaccio, Manager


YMTB Holdings LLC, an Illinois Limited Liability Company,  
Manager of DSSG 12 LLC

  
\_\_\_\_\_  
By: Boris Genken, Manager  
Genkin BB

**GUARANTOR:**


  
\_\_\_\_\_  
Steven E. Ciaccio

  
\_\_\_\_\_  
Phillip J. Ciaccio

  
\_\_\_\_\_  
Boris Genken  
GENKIN BB

**LENDER:**

First Eagle Bank

  
\_\_\_\_\_  
By: Zachary A. Braun, Senior Vice President

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## BORROWER'S ACKNOWLEDGMENT

STATE OF ILLINOIS) SS.  
COUNTY OF )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Steven E. Ciaccio and Phillip J. Ciaccio, Managers of Larrabee Holdings LLC, Manager of DSSG 12 LLC, an Illinois limited liability company, 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 he signed, sealed and delivered said instrument as his free and voluntary act and deed as well as that of the company he represents, for the uses and purposes therein set forth.

Given under my hand and Official Seal this 22 day of March, 2021.

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



## BORROWER'S ACKNOWLEDGMENT

STATE OF ILLINOIS) SS.  
COUNTY OF )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Boris Genken, Manager of YMTB Holdings LLC, Manager of DSSG 12 LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act and deed as well as that of the company he represents, for the uses and purposes therein set forth.

Given under my hand and Official Seal this 22 day of March, 2021.

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






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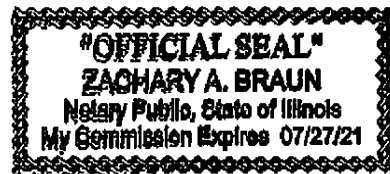
## GUARANTOR'S ACKNOWLEDGMENT

STATE OF ILLINOIS) SS.  
COUNTY OF )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Boris Genken, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and Official Seal this 22 day of March, 2021.

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




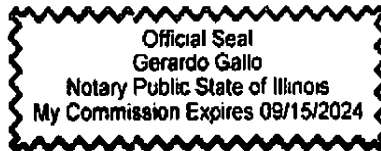
## LENDER'S ACKNOWLEDGMENT

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 Zachary A. Braun, Senior Vice President of FIRST EAGLE BANK, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument as his/her free and voluntary act and deed as well as that of the bank she represents, for the uses and purposes therein set forth.

Given under my hand and Official Seal this 22<sup>nd</sup> day of MARCH, 2021.

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



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## GUARANTOR'S ACKNOWLEDGMENT

STATE OF ILLINOIS) SS.  
COUNTY OF )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Steven E. Ciaccio, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and Official Seal this 22 day of March, 2021.

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



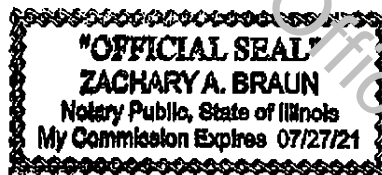
## GUARANTOR'S ACKNOWLEDGMENT

STATE OF ILLINOIS) SS.  
COUNTY OF )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Phillip J. Ciaccio, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and Official Seal this 22 day of March, 2021.

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



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## EXHIBIT "A"

THE SOUTH 25 FEET OF LOT 14 (EXCEPT THAT PART OF SAID LOT TAKEN AND USED FOR ALLEY) IN THE SUBDIVISION OF PETER HUGEL AND OTHERS OF PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 847 N. LARRABEE STREET, CHICAGO IL 60610

P.I.N.: 17-04-324-028-0000

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