

# UNOFFICIAL COPY

Doc#: 2404433018 Fee: \$107.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 02/13/2024 09:14 AM Pg: 1 of 10

THIS INSTRUMENT PREPARED BY:  
AND AFTER RECORDING MAIL TO:

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

## ASSUMPTION AND MODIFICATION AGREEMENT

**THIS ASSUMPTION AND MODIFICATION AGREEMENT** (hereinafter referred to as "Modification Agreement") is dated as of the 31<sup>st</sup> day of January, 2024, by and among 1855 Dayton LLC, an Illinois limited liability company (the "Original Borrower"), William E. Murphy (the "Guarantor"), William E. Murphy and Alexandra P. Murphy, (collectively the "New Borrower") and First Eagle Bank ("Lender").

### WITNESSETH:

**WHEREAS**, on March 4, 2020, the Original Borrower secured a loan from Lender (the "Loan") and executed and delivered to Lender that certain Promissory Note dated March 4, 2020 in the original principal sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00), (the "Note"), which Note is secured by, among other things, the following documents (the Note, together with all other documents executed by any Original Borrower in connection with the Note, collectively the "Loan Documents");

- (i) Mortgage of even date with the Note made by Original Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 2006510108 (the "Mortgage") on Premises commonly known as 1855 N Dayton Street, Chicago, IL 60614 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 Original Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 2006510109 (the "Assignment") on the Premises; and
- (iii) Business Loan Agreement of even date with the Note between Original Borrower and Lender (the "Loan Agreement".)

Prepared by: JMC

Officer Review  
Initial Review *[Signature]* Date 1/22/24  
Final Review *[Signature]* Date 2/7/24

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- (iv) Commercial Guaranty of even date with the Note between Guarantor and Lender (the "Guaranty")

**WHEREAS**, the Original Borrower desires to transfer and convey (the "Transfer") title to the Premises to New Borrower, and New Borrower desires to acquire title to the Premises from the Original Borrower and to assume all of Original Borrower's obligations to Lender under and in connection with the Note and other Loan Documents (the "Assumption"). Lender has agreed and consented to the Transfer and Assumption upon and subject to the terms and conditions set forth herein.

**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, second 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.** From and after the date hereof, New Borrower does hereby specifically assume and agrees to timely pay the indebtedness evidenced by the Note in accordance with the terms of the Note, and agrees and accepts all representations, terms and provisions of the Note and Loan Documents to keep, observe and perform all of the obligations, covenants and agreements of Original Borrower under the Note and Loan Documents, in the manner, at the times and in the other respects as therein provided. By executing this Modification Agreement, New Borrower acknowledges it has received a true and correct copy of the Note and other Loan Documents, has read the same is fully cognizant of all of their terms and conditions, and further acknowledges and agrees that it hereby assumes the principal balance of the Note and agrees to pay to the order of Lender the unpaid principal sum in the amount of Two Hundred Thousand and 00/100 U.S. DOLLARS (\$200,000.00), with interest on the outstanding principal until paid at the rate and upon such dates as is set forth in the Note. Lender has no further obligations to advance additional sums under the Note.

3. **Conditions Precedent to Acceptance by Lender.** This Agreement is executed by Original Borrower and New Borrower and is accepted by Lender on the following express conditions:

a. The consent of Lender to the transfer of the Premises to New Borrower as contemplated by this Agreement shall not be deemed to be a consent to any other or subsequent conveyances of the Premises, or any part thereof, or any interest therein, and all rights and privileges of Lender to approve conveyances pursuant to the provisions of the Mortgage are hereby expressly reserved and retained by Lender; and

b. Lender is neither a party to nor bound or otherwise affected by the terms and provisions of any document executed by and between or understanding or agreement among Original Borrower, New Borrower, or any of them, as well as any document or instrument executed or delivered pursuant to the terms of any such document, understanding or agreement; and

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c. With New Borrower's execution and delivery of this Modification Agreement to Lender, New Borrower shall provide Lender with proof of fire and casualty insurance coverage on the Premises in the minimum amount of the outstanding balance of the Note and a certificate of insurance designating Lender as the Mortgagee Loss Payee on said insurance policy.

d. New Borrower hereby agrees to pay all costs and expenses, including the reasonable fees and out of cost expenses of Lender's legal counsel, incurred by Lender in connection with the negotiation, preparation, execution and recording of this Modification Agreement, and any other documents executed in connection therewith.

4. **Lien of Mortgage.** 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.

5. **Restatement of Representations.** Each Original Borrower hereby ratifies and confirm their respective obligations and liabilities under the Note, Mortgage, 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, and other Loan Documents, as so amended.

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

7. **Documents Unmodified.** Except as modified hereby the Note, Mortgage, 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 Five Hundred and 00/100 Dollars (\$500.00) 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 the Original Borrower.** Original Borrower hereby represent, covenant and warrant 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 Original Borrower do 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, 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,

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valid and binding obligations of Original 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 Original Borrower, 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, Original Borrower have no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

10. **Binding Agreement.** This Modification Agreement shall not be construed more strictly against Lender than against Borrowers merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrowers and Lender have contributed substantially and materially to the preparation of this Modification Agreement, and Borrowers, and Lender each acknowledge 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.

11. **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.

12. **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 Borrowers 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 Borrowers 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 each Original Borrower and New Borrower.

Any forbearance by Lender in exercising any right or remedy under the Note or any of the other loan documents or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any of its rights or remedies under any of the loan documents with respect to Borrower's obligations under the Amended Note shall not constitute an election by Lender of remedies so as to preclude

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the exercise of any other right or remedy available to Lender.

At no time shall the principal amount of indebtedness secured by the Mortgage, not including sums advanced to protect the security of the Mortgage, exceed \$6,200,000.00.

**Grant of Security Interest.** To secure all obligations of Borrowers, each Borrower hereby pledges and grants to Lender a lien upon and security interest in (and may, without demand or notice of any kind, when any amount shall be due and payable by the undersigned hereunder, appropriate and apply toward the payment of such amount, in such order of application as Lender may elect) any and all balances, credits, deposits, accounts or monies of or in the name of any Borrower now or hereinafter in the possession of Lender and any and all Premises of every kind or description of or in the name of Borrower now or hereafter, for any reason or purpose whatsoever, in the possession or control of, or in transit to, Lender or any agent or bailee for Lender. Lender shall have the rights and remedies of a secured party under the Uniform Commercial Code of the State of Illinois in respect to such Premises, including, without limitation, the right to sell or otherwise dispose of any or all of such Premises.

This Modification Agreement shall extend to and be binding upon Borrowers 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 thereto.

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.

Borrowers 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

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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 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.

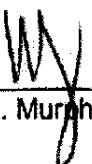
TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH ORIGINAL BORROWER AND NEW BORROWER (EACH AN "OBLIGOR") HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE 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.


**ORIGINAL BORROWER:**

**1855 Dayton LLC, an Illinois limited liability company**


  
 By: William E. Murphy, Manager

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**ORIGINAL GUARANTOR:**

  
\_\_\_\_\_  
William E. Murphy, Individually

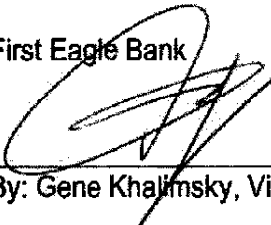
**NEW BORROWER:**

  
\_\_\_\_\_  
William E. Murphy, Individually

  
\_\_\_\_\_  
Alexandra P. Murphy, Individually

**LENDER:**

First Eagle Bank

  
\_\_\_\_\_  
By: Gene Khalimsky, Vice President

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## ACKNOWLEDGMENTS

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 **William E. Murphy**, Manager of 1855 N Dayton LLC, an Illinois limited liability company, known to me to be the same person 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 2nd day of February, 2024.

Troy Thompson  
Notary Public

My Commission Expires: 2/6/27



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 **William E. Murphy**, personally appeared before me this day and subscribed her name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 2nd day of February, 2024.

Troy Thompson  
Notary Public

My Commission Expires: 2/6/27





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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 **William E. Murphy** and **Alexandra P. Murphy**, personally appeared before me this day and subscribed their names to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 2nd day of February, 2024.

Troy Thompson  
Notary Public



My Commission Expires: 2/6/27

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 he signed and delivered the said instrument as his 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 2nd day of February, 2024.

Troy Thompson  
Notary Public



My Commission Expires: 2/6/27

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## EXHIBIT A

LOT 32 IN SUB BLOCK 1 OF BLOCK 5 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Number(s): 14-32-414-009-0000

Address(es) of Real Estate: 1855 N Dayton Street, Chicago, IL 60614

Property of Cook County Clerk's Office