



THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Doc#: 0329539109  
Eugene "Gene" Moore Fee: \$46.00  
Cook County Recorder of Deeds  
Date: 10/22/2003 11:55 AM Pg: 1 of 12

Much Shelist et al.  
191 N. Wacker, Suite 1800  
Chicago, Illinois 60606  
Attn: Lisa M. Spelhaug, Esq.

*This space reserved for Recorder's use only*

**LOAN MODIFICATION AGREEMENT (ACQUISITION LOAN)**

**THIS LOAN MODIFICATION AGREEMENT (ACQUISITION LOAN)** (this "Agreement") is made as of the 25<sup>th</sup> day of September, 2003, by and among Eleven South LaSalle Associates, L.L.C., a Delaware limited liability company ("Borrower"), European American Realty, Ltd., an Illinois corporation ("Guarantor") and Washington Mutual Bank, FA, a federal association ("Washington Mutual") (successor by merger to Bank United ("Bank United")), its successors and assigns ("Lender").

**RECITALS:**

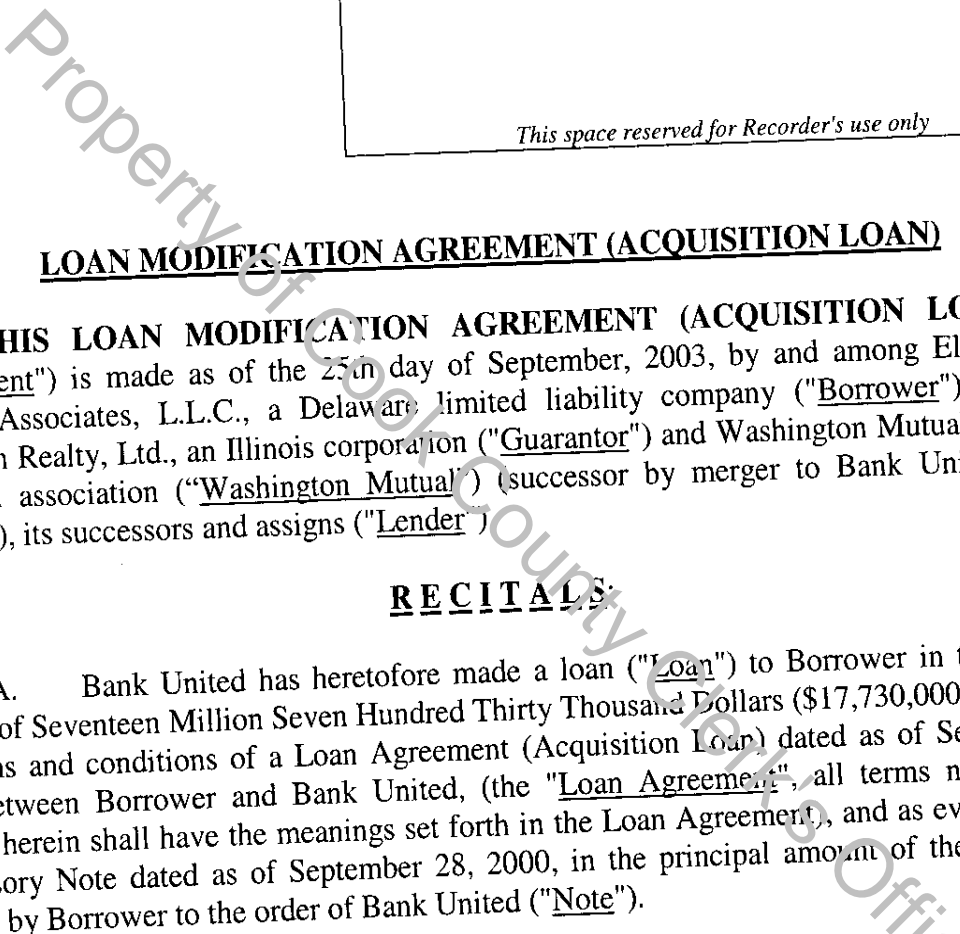
A. Bank United has heretofore made a loan ("Loan") to Borrower in the principal amount of Seventeen Million Seven Hundred Thirty Thousand Dollars (\$17,730,000) pursuant to the terms and conditions of a Loan Agreement (Acquisition Loan) dated as of September 28, 2000 between Borrower and Bank United, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated as of September 28, 2000, in the principal amount of the Loan made payable by Borrower to the order of Bank United ("Note").

B. The Note is secured by, among other things, (i) that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated September 28, 2000 from Borrower to Lender recorded with the Recorder of Deeds in Cook, County, Illinois (the "Recorder's Office") on September 29, 2000, as Document No. 99762172 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Leases and Rents dated September 28, 2000, from Borrower to Lender and recorded in the Recorder's Office on September 29, 2000, as Document No. 00762173 (the "Assignment of Leases"); (iii) Guaranty and Indemnity (Acquisition Loan) dated September 28, 2000 from Guarantor to Lender (the "Guaranty"); (iv) that certain Certificate and Indemnification regarding Hazardous Substances (the "Indemnity") dated September 28, 2000 from Borrower to Lender; (v) those certain UCC financing statements from Borrower to Lender filed with the Recorder's Office on September 29, 2000 as Document

03-049072

Box 45

METROPOLITAN TITLE CO.



# UNOFFICIAL COPY

Nos. 00U-10336, 00U-10337, 00U-10338, and 00U-10339, and filed with the Illinois Secretary of State on October 30, 2000 as Document No. 004290561 collectively the "UCCs"; and (vi) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Guaranty, the Indemnity, the UCCs and all of the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. Washington Mutual is a successor by merger to Bank United and, as such, is the owner and holder of the Note.

D. Borrower, pursuant to letter dated September 4, 2003, notified Lender of its intent to extend the term of the Loan, pursuant to Article 4 of the Loan Agreement, to the First Extended Maturity Date of September 30, 2004.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Exercise of Option/Extension of Maturity Date. Lender acknowledges that Borrower has properly exercised its option to extend the term of the Loan to the First Extended Maturity Date pursuant to Article 4.4 of the Loan Agreement ("Article 4.4"), and Borrower hereby represents to Lender, pursuant to Article 4.4, that the Debt Service Coverage for the 12 – month period ending 60 days prior to the Initial Maturity Date was not less than 1.3, and that Borrower has, or will have contemporaneously with the delivery of this Agreement to Lender, satisfied the conditions of Article 4.4. The Maturity Date of the Note is hereby extended to September 30, 2004. Any reference in the Note, the Loan Agreement or any other Loan Document to the Maturity Date shall mean September 30, 2004.

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

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof in all material respects.

(b) There is currently no Event of Default (as defined in the Loan Agreement) under the Note, the Mortgage or the other 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.

# UNOFFICIAL COPY

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this 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 asserts no, and has no knowledge of any 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 Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this 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 Agreement has been duly executed and delivered on behalf of Borrower.

3. **Conditions Precedent.** As conditions precedent to the agreements contained herein, Borrower shall:

(a) At its sole cost and expense, cause Metropolitan Title Insurance Company to issue an endorsement to Lender's title insurance policy no. CH-740130-C7 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

(b) Enter into that certain Loan Modification Agreement (Stabilization Loan) of even date herewith with Lender.

4. **Consent of Guarantor/Reaffirmation of Guaranty and Indemnity.** Guarantor hereby joins in and agrees and consents to the terms of this Agreement, and agrees to execute a Consent of Guarantor in the form of Exhibit B attached hereto (the "Consent"). Further, Guarantor ratifies and affirms the Guaranty and the Indemnity and agrees that the Guaranty and the Indemnity are in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty and Indemnity are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty and Indemnity continue to be the valid and binding obligations of Guarantor, enforceable in accordance with their respective terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as may be provided in the Guaranty or in the Indemnity.

5. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with

# UNOFFICIAL COPY

this Agreement, including, without limitation, title charges, recording fees, and attorneys' fees and expenses.

6. **Closing Deliveries.** Concurrent with the execution and delivery of this Agreement, Borrower shall deliver to Lender:

(a) The Consent; and

(b) Originals or certified copies of resolutions of Borrower (including Borrower's managing member and said managing member's general partner) and Guarantor, in forms acceptable to Lender, authorizing the execution and delivery of this Agreement and, in the case of Guarantor, the Consent.

7. **Post-Closing Deliveries.** Within sixty (60) days of the execution and delivery of this Agreement, Borrower shall furnish to Lender certified financial statements of Guarantor for the period ended June 30, 2003, in form and substance reasonably acceptable to Lender.

8. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This 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 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 Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this 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 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.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in

# UNOFFICIAL COPY

this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

(i) Any notice or communication to Lender required or permitted hereunder or under the other Loan Documents shall be given in writing, in the manner set forth in the Loan Agreement, addressed as follows:

Washington Mutual Bank, FA  
8725 Higgins Road, Suite 800  
Chicago, Illinois 60631  
Attention: Dennis Gallagher  
Loan No. 2116

Washington Mutual Bank, FA  
National Operations Center  
555 Dividend Operations Center  
Suite 150  
Coppell, TX 75019  
Attention: Portfolio Administration  
Loan No. 2116

Or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance with the terms of the Loan Agreement.

[SIGNATURE BLOCKS ON FOLLOWING PAGE]

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

**LENDER:**

**WASHINGTON MUTUAL BANK, FA,  
a federal association**

By: [Signature]  
Name: Dennis Owen Gallagher  
Title: SVP

**BORROWER:**

**ELEVEN SOUTH LASALLE ASSOCIATES,  
L.L.C., a Delaware limited liability company**

By: **Mouton Limited Partnership, an  
Illinois limited liability partnership, its  
managing member**

By: **E.A.R. LaSalle Inc., an Illinois  
corporation, its general partner**

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

**GUARANTOR:**

**EUROPEAN AMERICAN REALTY, LTD.,  
an Illinois corporation**

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

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

**LENDER:**

**WASHINGTON MUTUAL BANK, FA,  
a federal association**


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

**BORROWER:**

**ELEVEN SOUTH LASALLE ASSOCIATES,  
L.L.C., a Delaware limited liability company**


**By: Mouton Limited Partnership, an  
Illinois limited liability partnership, its  
managing member**

**By: E.A.R. LaSalle Inc., an Illinois  
corporation, its general partner**

By:  \_\_\_\_\_  
Name: Scott K. Toberman  
Title: President

**GUARANTOR:**

**EUROPEAN AMERICAN REALTY, LTD.,  
an Illinois corporation**

By:  \_\_\_\_\_  
Name: Scott K. Toberman  
Title: President

# UNOFFICIAL COPY

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 Dennis Owen O'Flaherty SVP of Washington Mutual Bank, FA, a federal association (successor by merger to Bank United), is 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 and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25<sup>th</sup> day of September, 2003.



Delna M Karlovitz  
Notary Public

My Commission Expires: 10/23/2005

STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF \_\_\_\_\_ )

I \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, President of E.A.R. LaSalle, Inc., an Illinois general corporation, the general partner of Mouton Limited partnership, an Illinois limited liability partnership, the managing member of Eleven South LaSalle Associates, L.L.C., a Delaware limited liability company is 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 and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

My Commission Expires: \_\_\_\_\_





## UNOFFICIAL COPY

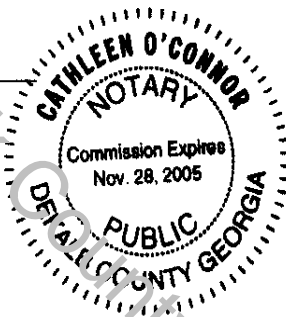
STATE OF GEORGIA    )  
                                   ) .ss  
 COUNTY OF COBB    )

I Cathleen O'Connor, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Scott K. Toberman, President of European American Realty, Ltd., an Illinois corporation is 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 and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25<sup>th</sup> day of September, 2003.

Cathleen O'Connor  
 Notary Public

My Commission Expires: 11-28-05



# UNOFFICIAL COPY

## EXHIBIT A

### THE PROPERTY

PARCEL 1: THE NORTH 90 FEET OF LOT 1 AND THAT PART OF THE NORTH 90 FEET OF LOT 2 IN SUBDIVISION (BY CHICAGO HYDRAULIC COMPANY) OF LOTS 1 AND 2 IN BLOCK 118 OF SCHOOL SECTION ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH LIES EAST OF A LINE EXTENDING SOUTH FROM A POINT ON THE NORTH LINE OF SAID LOT 2 WHICH IS 15.24 FEET WEST FROM THE NORTHEAST CORNER THEREOF TO A POINT ON THE SOUTH LINE OF SAID LOT 2 WHICH IS 14.90 FEET WEST FROM THE SOUTHEAST CORNER THEREOF.

PARCEL 2: LOT 3 AND THAT PART OF LOT 2 IN SUBDIVISION (BY CHICAGO HYDRAULIC COMPANY) OF LOTS 1 AND 2 IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH LIES WEST OF A LINE EXTENDING SOUTH FROM A POINT ON THE NORTH LINE OF SAID LOT 2 WHICH IS 15.24 FEET WEST FROM THE NORTHEAST CORNER THEREOF TO A POINT ON THE SOUTH LINE OF SAID LOT 2 WHICH IS 14.90 FEET WEST FROM THE SOUTHEAST CORNER THEREOF EXCEPTING FROM THE AFOREMENTIONED PART OF LOT 2 THAT PORTION OF SAID PART LYING SOUTH OF THE NORTH 90 FEET OF LOT 2 AND FALLING WITHIN THE EAST 15 FEET OF LOT 2.

PARCEL 3: LOT 1 (EXCEPT THE SOUTH 2 FEET THEREOF) IN MAJOR'S SUBDIVISION OF SUB-LOTS 4, 5, 6 AND 8 AND THE WEST 15 FEET OF LOT 9 (EXCEPTING THEREFROM THAT PART OF SAID LOTS 6 AND 8 TAKEN FOR LASALLE STREET) IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

PINS: 17-16-204-001-0000 AND 17-16-204-003-0000

COMMONLY KNOWN AS: 11 S. LASALLE STREET, CHICAGO, ILLINOIS

# UNOFFICIAL COPY

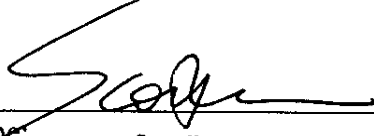
## EXHIBIT B

### CONSENT OF GUARANTOR

The undersigned, being the Guarantor referred to in the Loan Agreement (Acquisition Loan) by and between Eleven South LaSalle Associates, L.L.C., a Delaware limited liability company and Bank United (the "Loan Agreement") hereby joins in and agrees and consents to the foregoing Loan Modification Agreement (Acquisition Loan) dated as of September 25, 2003, and the changes in the terms set forth therein.

Dated: September \_\_, 2003

EUROPEAN AMERICAN REALTY, LTD.,  
an Illinois corporation

By:   
Name: Scott K. Toberman  
Title: President

Property of Cook County Clerk's Office