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Doc#: 1120122044 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/20/2011 12:00 PM Pg: 1 of 12

**THIS DOCUMENT
PREPARED BY AND
AFTER RECORDING
RETURN TO:**

Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, Illinois 60606
Attn: Scott M. Lapins

84523140 Jdk

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 14 day of June, 2011 by and among **11 EAST ADAMS L.L.C.**, an Illinois limited liability company ("Borrower"), **LAURENCE H. WEINER**, an individual ("Weiner"), **GERALD L. NUDO**, an individual ("Nudo"; Weiner and Nudo being collectively referred to as "Guarantors") and **REGION'S BANK**, an Alabama banking corporation, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan (the "Initial Loan") to Borrower in the original principal amount of \$10,000,000.00 as evidenced by a Promissory Note dated August 27, 2008 in the principal amount of the Initial Loan made payable by Borrower to the order of Lender ("Initial Note").

B. The Initial Loan is secured by: (i) a Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated August 27, 2008 from Borrower to Lender recorded with the Cook County Recorder of Deeds (the "Recorder's Office") on September 5, 2008 as Document No. 0824933070 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A** hereto ("Property"), (ii) that certain Assignment Leases and Rents dated August 27, 2008 from Borrower to Lender and recorded in the Recorder's Office on September 5, 2008 as Document No. 0824933071 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated August 27, 2008 from Borrower and Guarantors to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Initial Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the Guaranty, as defined below, and the other documents evidencing, securing and guarantying the Initial Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Initial Loan is further secured by a Guaranty of Payment dated August 27, 2008 from Guarantors to Lender (the "Guaranty").

D. The current outstanding principal balance of the Initial Loan is \$9,999,000.00

Box 400-CTCC

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E. Borrower desires to amend the Loan Documents in order to increase the Initial Loan by an additional \$2,500,000.00, and, subject to the terms and conditions hereinafter set forth, Lender is willing to make such additional loan.

F. Borrower has executed and delivered to Lender a Promissory Note of even date herewith in the full principal amount of \$2,500,000.00 (the "\$2,500,000.00 Note").

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 Borrower and 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. **Increase in Loan Amount.** The principal amount of the Initial Loan is hereby increased by \$2,500,000.00 (the "Additional Proceeds"), from \$9,999,000.00 to \$12,499,000.00. Any reference to the "Loan", the "Loan Amount" or in the Loan Documents shall hereafter mean \$12,499,000.00. Any reference in the Mortgage or in the other Loan Documents to the Note shall hereafter mean "the Promissory Note dated as of August 27, 2008 in the original principal amount of \$10,000,000.00 and the Promissory Note dated as of June __, 2011 in the principal amount of \$2,500,000.00 each made payable by Borrower to the order of Lender."

2. **Promissory Note.** The Initial Note is hereby revised as follows:

(a) Section 10(D) is hereby revised to substitute "1.20 to 1.00" in place of "1.60 to 1.00".

(b) Section 10 of the Note is hereby revised by replacing the following: "(iv) Debt Service Payable on the Loan" with "(iv) Debt Service Payable on the Loan and payable on the Promissory Note dated June __, 2011 in the principal amount of \$2,500,000.00 from Borrower to Lender (collectively, the "Aggregate Loan")".

(c) The definition of Debt Service contained in Section 10 of the Note is hereby revised by substituting "Aggregate Loan" in place of "Loan".

(d) The last sentence of paragraph 10 of the Note is hereby revised by substituting "1.20 to 1.00" in place of "1.60 to 1.00" and by substituting "Aggregate Loan" in place of "Loan".

3. **Mortgage.**

(a) The first sentence of the second paragraph of the Mortgage is hereby replaced by the following:

"Lender is making a Loan to Borrower (the "Loan") in an amount not to exceed \$12,499,000.00. The Loan is evidenced by that

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certain Promissory Note dated as of August 27, 2008 in the original principal amount of \$10,000,000.00 from Borrower to Lender and that certain Promissory Note dated as of June ____, 2011 in the principal amount of \$2,500,000.00 from Borrower to Lender (collectively, the "Note")."

(b) Section 7(d)(v) of the Mortgage is hereby revised to read as follows:

"(v) The Mortgaged Property continues to maintain a Debt Service Coverage Ratio (as that term is defined in Paragraph 10 of the Note) of not less than 1.20 to 1.00."

(c) Section 29 of the Mortgage is hereby revised to add the following:

"In addition, at the request of Lender, Borrower will provide quarterly financial statements for the Mortgaged Property including a balance sheet, a statement of income and rent roll for the Premises no later than thirty (30) days after the end of each calendar quarter."

(d) The following Section 40 is hereby added to the Mortgage:

"40. Security of Note. Each Note shall be secured, pari passu, by the lien of this Mortgage."

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

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

(b) There is currently no Event of Default (as defined in the Mortgage) 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.

(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, any of the Guarantors 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.

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(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 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.

5. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's Title Insurance Policy No. 1401 008452314 D2 (the "Title Policy"), as of the date this Agreement is recorded, (i) increase the amount of coverage to \$12,499,000.00, (ii) reflecting the recording of this Agreement, and (iii) and showing no other matters not acceptable to Lender.

6. **Mezzanine Financing.** As a condition precedent to the agreement contained herein, Borrower shall deliver to Lender evidence that the loan from FT-Marc Loan LLC to Marc 11 East Adams LLC will be repaid in full out of the Additional Proceeds.

7. **Reaffirmation and Modification of Guaranty.**

(a) The second paragraph of the Guaranty is hereby revised to read as follows:

"Whereas, Lender has agreed to make a Loan to 11 East Adams L.L.C., an Illinois limited liability company (the "Borrower") in the maximum amount of \$12,499,000.00 (the "Loan"). The Loan is evidenced by that certain Promissory Note dated as of August 27, 2008 in the original principal amount of \$10,000,000 from Borrower payable to the order of Lender and that certain Promissory Note dated as of June __, 2011 in the principal amount of \$2,500,000.00 from Borrower payable to the order of Lender (collectively, the "Note").

(b) Guarantors ratify and affirm the Guaranty and agree that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantors in the Guaranty are, as of the date hereof, true and correct and Guarantors do not know of any default thereunder. The Guaranty, as amended, continues to be the valid and binding obligation of Guarantors, enforceable in accordance with its terms and Guarantors have no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

8. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay: (i) a \$10,000.00 commitment fee due at closing, and (ii) all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, and attorneys' fees and expenses.

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9. 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 Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantors and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantors and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the others 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 Guarantors nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantors 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, Guarantors and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in 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.

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(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.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

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

LENDER:

REGIONS BANK, an Atlanta banking corporation

By: Brian E. Carroll, SVP
Name: BRIAN E. CARROLL
Title: SENIOR VICE PRESIDENT

GUARANTORS:

LAURENCE H. WEINER, personally

GERALD L. NUDO, personally

BORROWER:

11 EAST ADAMS L.L.C., an Illinois limited liability company

By: Eleven East Adams, Inc., an Illinois corporation, its manager

By: _____
Laurence H. Weiner, President

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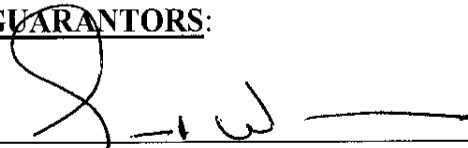
IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

LENDER:

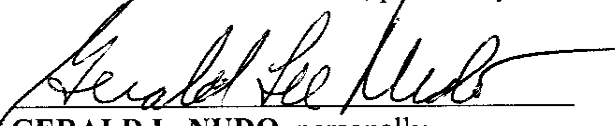
REGIONS BANK, an Atlanta banking corporation

By: _____
Name: _____
Title: _____

GUARANTORS:



LAURENCE H. WEINER, personally



GERALD L. NUDO, personally

BORROWER:

11 EAST ADAMS L.L.C., an Illinois limited liability company

By: Eleven East Adams, Inc., an Illinois corporation, its manager

By: 

Laurence H. Weiner, President

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STATE OF MISSOURI)
) .ss
COUNTY OF ST LOUIS)

I BRENDA L. WAGNER, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that BRIAN E. CARROLL, SR. VICE PRESIDENT of **REGIONS BANK**, an Alabama banking 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/she signed and delivered said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14 day of June, 2011.

Brenda L. Wagner
Notary Public

BRENDA L. WAGNER
Notary Public - Notary Seal
State of Missouri
St. Charles County
My Commission Expires 03-15-2014
Commission # 10436417

My Commission Expires:

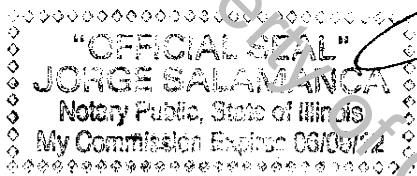
3-15-2014

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STATE OF IL)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **LAURENCE H. WEINER**, who 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 the 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 12 day of June, 2011.



[Signature]

Notary Public

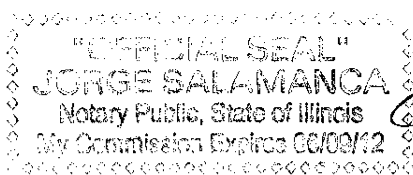
My Commission Expires:

06-09-12

STATE OF IL)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **GERALD L. NUDO**, who 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 the 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 12 day of June, 2011.



[Signature]

Notary Public

My Commission Expires:

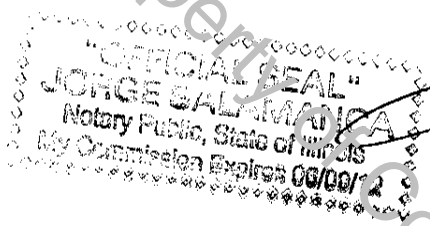
06-09-12

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STATE OF IL)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Laurence H. Weiner, President of Eleven East Adams, Inc., an Illinois corporation, the manager of **11 EAST ADAMS L.L.C.**, an Illinois limited liability company, who 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 12 day of June, 2011.



[Handwritten Signature]
Notary Public

My Commission Expires:

06-09-12

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOT 2 AND THE NORTH 20 FEET OF LOT 3 (EXCEPT THAT PART TAKEN FOR STATE STREET) IN BLOCK 6 IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 11 East Adams
Chicago, Illinois

PIN: 17-15-104-001-0000