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Doc#: 0927234090 Fee: \$50.00  
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Cook County Recorder of Deeds  
Date: 09/29/2009 03:15 PM Pg: 1 of 8

**THIS INSTRUMENT PREPARED BY:**

Janice Tucker  
**GE CAPITAL FRANCHISE FINANCE CORPORATION**  
8377 East Hartford Drive, Suite 200  
Scottsdale, Arizona 85255  
Attention: Portfolio Management

Borrower: Marie A. Allegro  
Borrower's Entity: an individual  
State of Organization of Borrower: n/a  
Organization I.D. of Borrower: none

**MODIFICATION OF  
COMMERCIAL MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT  
OF LEASES AND RENTS, AND FIXTURE FILING**

This **MODIFICATION OF COMMERCIAL MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING** (the "**Modification**") is made as of Sept. 18, 2009, by MARIO A. ALLEGRO, an individual ("**Mortgagor**"), whose mailing address is 389 William R. Latham Sr. Dr. Ste 2, Bourbonnais, IL 60914-2084; and GEF FUNDING IV, LLC, a Delaware limited liability company, successor to GE Commercial Finance Business Property Corporation (fka General Electric Capital Business Asset Funding Corporation), a Delaware corporation ("**GE CAPITAL**"), as mortgagee, whose mailing address is 8377 East Hartford Drive, Suite 200, Scottsdale, Arizona 85255.

**RECITALS**

A. GE Capital has made a loan to Mortgagor ("**Borrower**") in the maximum principal amount of \$751,000.00 (the "**Loan**") pursuant to the Security Agreement by Borrower, dated December 31, 2002 (as amended, the "**Loan Document**"), the Loan being evidenced by that certain promissory note dated December 21, 2002 made by Borrower and payable to the order of GE Capital (the "**Note**").

B. The obligations pursuant to the Loan Document and the Note are secured by the **COMMERCIAL MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING**, dated December 31, 2002 (the "**Security Instrument**") and recorded on February 4, 2003 in the office of the Recorder of Cook County, Illinois, in File # 0030168281. The Security Instrument encumbers, among other property, the real property described on **Exhibit A** hereto.

C. Borrower and GE Capital have, concurrently herewith, amended the Loan Document and the Note pursuant to that certain Loan Modification Agreement dated of even date herewith (the "**Modification Agreement**").

D. Mortgagor and GE Capital desire to give notice that the Loan Document and other related loan documents have been amended pursuant to the Modification Agreement.

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## AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor and GE Capital agree as follows:

1. Accuracy of Recitals. Mortgagor acknowledges the accuracy of the Recitals and agrees that the Recitals are a part of this Modification.

2. Modification. The Security Instrument is hereby modified as follows:

A. Section 10 of the Security Instrument is deleted in its entirety and the following is substituted therefore:

(A) Financial Statements. Within 120 days after the end of each fiscal year of Borrower, Borrower shall deliver to Lender a personal financial statement on the Lender's standard form. In addition, within 45 days after the end of each fiscal quarter of any Guarantor (other than the last fiscal quarter in each fiscal year of Guarantor), Borrower will deliver the following to Lender: (a) complete fiscal year end Financial Statements for Guarantor; and (b) quarterly financial statements for Guarantor and c) such other information (financial or otherwise) as Lender may reasonably request. All such Financial Statements shall be prepared in accordance with GAAP from period to period and shall be certified to be accurate and complete by Borrower's treasurer, chief financial officer, or other appropriate officer, in the case of Borrower Financial Statements, and by Guarantor's treasurer, chief financial officer, or other appropriate officer, in the case of Guarantor Financial Statements. The Financial Statements need not be audited, but Borrower shall deliver to Lender copies of any audited Financial Statements of Borrower, which may be prepared, as soon as they are available. Lender may also request Financial Statements of Borrower and Guarantor from time to time to verify that Borrower is in compliance with the terms and conditions of this Agreement, including with any financial covenants and at any time following the occurrence and during the continuance of a Default.

The following definitions shall apply for purposes of this Section 10:

"Financial Statements" means a balance sheet as of the end of the relevant fiscal period and the related statements of income, retained earnings, profit and loss, cash flows, and all related schedules for the fiscal period then ended. If the property and business at the Site are ordinarily consolidated with another business for financial statement purposes, such Financial Statements shall be prepared on a consolidated basis showing separately the sales, profits and losses, assets and liabilities pertaining to the Site, with the basis for allocation of overhead or other charges being clearly set forth.

"Site" means all buildings and other improvements thereon and all rights and privileges appurtenant thereto owned by Borrower and/or guarantor and financed by GE Capital.

(a) Compliance Certificate. Together with each delivery of any Financial Statement, Borrower will deliver to GE Capital a compliance certificate (a "Compliance Certificate") in the form of Exhibit B to the Modification Agreement, duly executed by the treasurer, chief financial officer, or other appropriate officer of Borrower, in the case of Borrower Financial Statements, or of guarantor, in the case of guarantor Financial Statements, that, among other things (a) demonstrates compliance with each of the financial covenants contained in this Agreement; and (b) states that no Default is continuing as of the date of delivery of such Compliance Certificate or, if a Default is continuing, states the nature thereof and the action that Borrower proposes to take with respect thereto.

(b) Financial Covenants. The following financial covenants shall be deemed incorporated into the Security Instrument as of the Effective Date, and shall supersede any other financial covenants of Borrower in conflict therewith:

(1) Pre-Compensation Consolidated FCCR. As measured for WAM Holdings, Inc. and its consolidated subsidiaries and affiliates (together the "WAM Entities" on the last day

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of each of Borrower's fiscal quarters, WAM Entities must have a Pre-Compensation Consolidated FCCR equal to or greater than the following:

a. As measured for WAM Entities on September 30, 2009, WAM Entities must maintain a Pre-Compensation FCCR that equals or exceeds 1.15:1;

b. As measured for WAM Entities on December 31, 2009, WAM Entities must maintain a Pre-Compensation FCCR that equals or exceeds 1.25:1 and continuing thereafter for the remaining term of the Loan, WAM Entities must maintain a Pre-Compensation FCCR that equals or exceeds 1.25:1.

The following definitions shall apply for purposes of this *Section 10 (c)*:

**"Pre-Compensation Consolidated FCCR"** means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for WAM Entities for such time period, each as determined in accordance with GAAP, of: (a) the sum of net income, interest expense, income taxes, depreciation, amortization, and Operating Lease Expenses, and officers' salaries expensed on the Income Statement, plus or minus other non-cash adjustments or non-recurring items (as allowed by GE Capital), plus rent paid by WAM Entities to Mario A. Allegro; to (b) the sum of Operating Lease Expenses, principal payments on long term debt (include real estate debt payment where Sites are leased to WAM Entities, the current portion of all Capital Leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**"Operating Lease Expenses"** means all payments and expenses incurred by WAM Entities with respect to each Lease and with respect to any and all other operating leases during the period of determination, and reduced by lease expenses paid to Mario A. Allegro, all determined in accordance with GAAP.

**"Capital Lease"** means, with respect to any Person, any lease of, or other arrangement conveying the right to use, any property (whether real, personal or mixed) by such Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with GAAP.

**"GAAP"** means generally accepted accounting principles in the United States, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination.

**"Person"** means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or governmental authority.

(2) **Post-Compensation Consolidated FCCR** As measured for WAM Entities on the last day of each of Borrower's fiscal quarters, WAM Entities must have a Post-Compensation Consolidated FCCR equal to or greater than the following:

a. As measured for WAM Entities on September 30, 2009, WAM Entities must maintain a Post-Compensation FCCR that equals or exceeds 1.05:1;

b. As measured for WAM Entities on December 31, 2009, WAM Entities must maintain a Post-Compensation FCCR that equals or exceeds 1.15:1 and continuing thereafter for the remaining term of the Loan, WAM Entities must maintain a Post-Compensation FCCR that equals or exceeds 1.15:1.

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(3) Aggregate Site Level FCCR. Borrower must maintain an Aggregate Site Level FCCR for all of the Sites as measured as of the end of each of Borrower's fiscal quarters equal to or greater than the following:

a. As measured for Borrower on September 30, 2009, Borrower must maintain an Aggregate Site level FCCR that equals or exceeds 1.05:1;

b. As measured for Borrower on December 31, 2009, Borrower must maintain an Aggregate Site level FCCR that equals or exceeds 1.15:1 and continuing thereafter for the remaining term of the Loan an Aggregate Site Level FCCR equal or exceeds 1.15:1.

The following definitions shall apply for purposes of this *Section 10 (c)*:

"Aggregate Site Level FCCR" means with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for such period of time, each as determined in accordance with GAAP, of (a) the sum of net income of the subject Sites, interest expense, income taxes, depreciation, amortization, Operating Lease Expenses, plus or minus other non-cash adjustments or non-recurring items (as allowed by GE Capital), , plus rent paid by WAM Entities to Mario A. Allegro to (b) the sum of Operating Lease Expenses, principal payments of long term debt (include real estate debt payment where Sites are leased to WAM Entities), the current portion of all Capital Leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses) (all of which are related to the subject Sites).

"Post-Compensation Consolidated FCCR" means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for WAM Entities for such time period, each as determined in accordance with GAAP, of: (a) the sum of net income, interest expense, income taxes, depreciation, amortization, and Operating Lease Expenses, plus or minus other non-cash adjustments or non-recurring items (as allowed by GE Capital), minus increases in officer or shareholder loan receivables and minus dividends or distributions not otherwise expensed on the applicable income statement(s), plus rent paid by WAM Entities to Mario A. Allegro; to (b) the sum of Operating Lease Expenses, principal payments on long term debt (include real estate debt payment where Sites are leased to WAM Entities), the current portion of all Capital Leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

(4) Consolidated Effective Funded Debt to EBITDAR. As measured for WAM Entities on the last day of each fiscal quarter and for the 12-month period then ended, WAM Entities must have a Consolidated Effective Funded Debt to Consolidated EBITDAR ratio of not more than 6.5:1.

(5) Consolidated Funded Debt to EBITDA. WAM Entities must maintain a Consolidated Funded Debt to Consolidated EBITDA on the last day of each of Borrower's fiscal quarters and for the 12 month period then ended equal to or greater then the following:

(a) As measured for WAM Entities on September 30, 2009, WAM Entities must maintain a Consolidated Funded Debt to Consolidated EBITDA equal to or less than 5.5:1. ;

(b) As measured for WAM Entities on December 31, 2009, WAM Entities must maintain a Consolidated Funded Debt to Consolidated EBITDA equal to or less than 5.0:1. ;

(c) As measured for WAM Entities on March 31, 2010, WAM Entities must maintain a Consolidated Funded Debt to Consolidated EBITDA equal to or less than 4.5:1 and continuing thereafter for the remaining term of the Loan a Consolidated Funded Debt to Consolidated EBITDA equal to or less than 4.5:1.

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The following definitions shall apply for purposes of this *Section 10 (c)* :

“*Consolidated Effective Funded Debt*” means the aggregate sum, for Borrower and its consolidated affiliates, of (a) the outstanding principal balance, as at the end of the fiscal quarter, of all indebtedness, including Capital Leases and the outstanding balances of any revolving lines of credit; and (b) all Operating Lease Expenses, including rent payments, for such 12-month period, multiplied by 8.00.

“*Consolidated EBITDAR*” means, the aggregate sum, for such 12-month period, for Borrower and its consolidated affiliates, of all net income, interest expense, income taxes, depreciation, amortization, and Operating Lease Expenses, but less non-recurring miscellaneous income and plus non-recurring miscellaneous expenses (as allowed by GE Capital), each as determined in accordance with GAAP.

“*Consolidated Funded Debt*” is defined as the outstanding principal balance of all indebtedness of Borrower and its consolidated affiliates, including Capital Leases and the outstanding balances of any revolving lines of credit, as at the last day of the fiscal period being measured.

“*Consolidated EBITDA*” is defined as the aggregate sum, for the 12-month period of time immediately preceding the last day of the fiscal period being measured, for Borrower and its consolidated affiliates, of all net income, interest expense, income taxes, depreciation, and amortization, but less non-recurring miscellaneous income and plus non-recurring miscellaneous expenses (as allowed by GE Capital), each as determined in accordance with GAAP.

3. Entire Agreement. The Security Instrument, as modified by this Modification, remains in full force and effect and contains the entire understanding and agreement of the parties in respect of the Security Instrument and supersedes all prior representations, warranties, agreements and understandings. No provision of this Modification may be changed, discharged, supplemented, terminated or waived except in a writing signed by GE Capital. The execution, delivery, recordation, terms and conditions of this Modification shall not subordinate or otherwise adversely affect the lien, encumbrance and priority of the Security Instrument.

4. Binding Effect. The Security Instrument, as modified by this Modification, shall be binding upon, and inure to the benefit of, Mortgagor and GE Capital and their respective successors and assigns.

5. Further Assurances. Mortgagor shall execute, acknowledge (as appropriate) and deliver to GE Capital such additional agreements, documents and instruments as are reasonably required by GE Capital to carry out the intent of this Modification.

6. Counterpart Execution. This Modification may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Modification to physically form one document.

7. Governing Law. This Modification shall be governed by and construed in accordance with the same law as that governing the Security Instrument.

[SIGNATURE PAGE FOLLOWS]

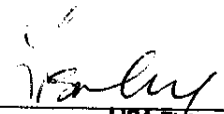
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Executed and effective as of the date first set forth above.

**GE CAPITAL:**

**CEF FUNDING IV, LLC**, a Delaware limited liability company

By: **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation,  
Sub-servicer

By:   
Printed Name: LISA EVERROAD  
Its AUTHORIZED SIGNATORY

**MORTGAGOR:**



**MARIO A. ALLEGRO**, an individual

Property of Cook County Clerk's Office

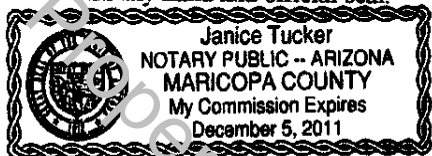
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STATE OF AZ )

COUNTY OF MARICOPA ) SS )

On 9-18, 2009, before me, the undersigned, a Notary Public in and for said State personally appeared LISA EVERHARD known to me to be the Authorized Signatory of **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation, on behalf of said corporation

WITNESS my hand and official seal.

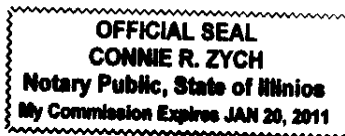


[SEAL]

Janice Tucker  
Notary Public in and for said County and State

STATE OF IL )

COUNTY OF Kankakee ) SS )



On September 18, 2009, before me, the undersigned, a Notary Public in and for said State personally appeared **MARIO A. ALLEGRO**, an individual.

WITNESS my hand and official seal.

Connie R Zych  
Notary Public in and for said County and State

[SEAL]

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## EXHIBIT A LEGAL DESCRIPTION

TRACT III: Lot 33 (EXCEPT the North 13.00 feet thereof) in the Hilltop Land Company's Subdivision of the North Half of the Southwest Quarter and of the West 25.00 acres of the North Half of the Southeast Quarter of Section 19, Township 35 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Code Number 32-19-301-004

Address: 634 W. 14<sup>th</sup> Pl. Chicago Heights, IL 60411

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