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## SECOND LOAN MODIFICATION AGREEMENT

THIS SECOND LOAN MODIFICATION AGREEMENT ("Agreement") is made and entered into as of this 31st day of July, 1997 by and between General Electric Capital Corporation, a New York corporation ("GECC"), and 105 West Madison L.L.C., a Delaware limited liability company ("Borrower").

### RECITALS

A. GECC has heretofore made a loan in the original principal amount of \$60,460,450 (the "Loan") to Montgomery/Madison Associates Limited Partnership, a Delaware limited partnership ("M/M Associates"). The Loan was originally evidenced by a Promissory Note (the "Original Note") dated June 23, 1993 executed by M/M Associates in the original principal amount of \$60,460,450 and secured by, among other things, (i) a First Mortgage and Security Agreement dated June 23, 1993 executed by M/M Associates encumbering the real property and improvements known as Montgomery Mall, Montgomery, Alabama (the "Montgomery Mall Mortgage"), (ii) a Second Mortgage and Security Agreement dated June 23, 1993 executed by M/M Associates and recorded with the Recorder of Deeds of Cook County, Illinois on June 25, 1993 as Document No. 93490278 (as amended from time to time, the "Mortgage") encumbering the real property and improvements known as 105 West Madison, Chicago, Illinois and legally described on Exhibit "A" attached hereto (the "Project"), (iii) an Assignment of Leases and Rents dated June 23, 1993 and recorded with the Recorder of Deeds of Cook County, Illinois on June 25, 1993 as Document No. 93490279 (the "Assignment"), (iv) a Holdback Agreement dated June 23, 1993 executed by M/M Associates and GECC (the "Existing Holdback Agreement"), and (v) an Indemnity Agreement dated June 23, 1993 (the "Indemnity Agreement") executed by Stuart Isen. The Original Note, the Montgomery Mall Mortgage, the Mortgage, the Assignment, the Holdback Agreement, the Indemnity Agreement and the other documents and instruments originally executed in connection with the Loan are referred to herein as the "Original Loan Documents").

B. M/M Associates and GECC entered into a First Loan Modification Agreement dated as of December 30, 1994 pursuant to which, among other things, (i) the Original Note was amended and restated in its entirety by two promissory notes in the amounts of \$45,000,000 and \$16,397,950, respectively ("Existing Note I" and "Existing Note II", respectively, and collectively, "the Existing Notes"), and (ii) M/M Associates acquired from GECC all rights of GECC to receive Participation Interest (as such term was defined in the

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Original Note). Such First Loan Modification Agreement and the Existing Notes replaced a document dated December 1, 1994 and entitled "First Modification Agreement" and two promissory notes in the face amounts of \$45,000,000 and \$15,465,450 executed in connection therewith. The Existing Notes and the Original Loan Documents, as amended by the First Loan Modification Agreement, are collectively referred to herein as the "Present Loan Documents."

C. M/M Associates has repaid that portion of the Loan allocated to the property covered by the Montgomery Mall Mortgage and all other sums required to be paid in connection with a release of the Montgomery Mall Mortgage, and the Montgomery Mall Mortgage has been released.

D. All of the interest of M/M Associates in and to the Project, the Loan and the Present Loan Documents has been transferred to Borrower, and Borrower has assumed all obligations of M/M Associates under the Present Loan Documents pursuant to Assignment and Assumption Agreement dated as of December 17, 1996 among M/M Associates, Borrower and GECC (the "Assumption Agreement").

E. Borrower and GECC now desire to amend the Present Loan Documents to, among other things, (i) amend and restate the Existing Notes, (ii) adjust the pay rate for the Loan, (iii) increase GECC's commitment under the Loan by an additional \$925,000, (iv) provide for GECC to receive Participation Interest (as defined in the Notes, as hereinafter defined) and (v) remove references to the Montgomery Mall Mortgage and the property covered thereby.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated by reference herein.
2. Loan Amount. Borrower and GECC agree that, as of July 1, 1997:
  - (a) the outstanding principal amount of the Loan is \$11,017,065.54;
  - (b) the outstanding principal amount of Note I is \$5,029,916.99;
  - (c) the Deferred Interest on Note I (calculated giving effect to the provisions hereof and of Note I) is \$176,402.84.
  - (d) the outstanding principal amount of Note II is \$5,987,148.55; and
  - (e) the Deferred Interest on Note II (calculated giving effect to the provisions hereof and of Note II) is \$145,159.95.

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The maximum principal amount of the Loan is hereby increased by the amount of \$925,000, from \$11,017,065.54 to \$11,942,065.54 (the "Loan Amount").

3. Additional Disbursements. Up to \$25,000 of the additional amount to be disbursed under the Loan shall be disbursed to pay legal fees of GECC's counsel and other closing costs (including legal fees of Borrower's counsel) incurred in connection with the modification of the Loan pursuant to this Agreement. The remaining \$900,000.00 shall be disbursed in accordance with the provisions of the Holdback Agreement (as defined below).

4. Promissory Notes.

(a) The Existing Notes shall be amended and restated in their entirety and replaced by (i) the Amended and Restated Promissory Note (Note I) dated as of the date hereof in the face principal amount of \$5,029,916.99 executed by Borrower in favor of GECC ("Note I"), and (ii) the Amended and Restated Promissory Note (Note II) dated as of the date hereof in the face principal amount of \$6,912,148.55 executed by Borrower in favor of GECC ("Note II"). Note I and Note II are sometimes collectively referred to herein as the "Notes."

(b) The indebtedness previously evidenced by Existing Note I and Existing Note II is now evidenced by Note I and Note II, respectively. Any references contained in the Present Loan Documents to the Original Note shall be deemed to refer to Note I and Note II, collectively; any reference in the Present Loan Documents to Existing Note I or Existing Note II shall be deemed to refer to Note I and Note II, respectively.

(c) Note I shall be deemed to be fully disbursed as of the date hereof, and there shall be no further disbursements of the principal amount of Note I. Accordingly, all disbursements to be made pursuant to the Holdback Agreement (as hereinafter defined) shall be deemed to be disbursements of the principal amount of Note II.

5. Holdback Agreement. Simultaneously herewith, the Existing Holdback Agreement is being amended and restated in its entirety and replaced with the Amended and Restated Holdback Agreement of even date herewith between Borrower and GECC (the "Holdback Agreement").

6. Mortgage. The Mortgage is hereby further amended as follows:

(a) The words "Sixty Million Four Hundred Sixty Thousand Four Hundred Fifty (\$60,460,450) Dollars" in the second and third lines of the WITNESSETH clause on page 1 are deleted and replaced with Eleven Million Nine Hundred Forty-Two Thousand Sixty-Five and 54/100 Dollars (\$11,942,065.54).

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(b) The first paragraph on page 4 (which is the paragraph immediately following the Habendum Clause and immediately preceding Article I) is hereby deleted in its entirety.

(c) The second paragraph of Section 1.16 is deleted in its entirety and replaced with the following: "Notwithstanding anything contained herein to the contrary, Mortgagee hereby approves the transfer by members of Mortgagor of membership interests in Mortgagor to officers, directors and employees of Heitman Financial Ltd., and their immediate family members or trusts for their benefit; provided that Norman Perlmutter and any of Stephen, Robert or Joseph Perlmutter remain the managers of Mortgagor and there is no change in the day to day management or control of Mortgagor as a result of any such transfer."

*or its affiliates*

(d) Section 1.9 is amended by deleting the words "partnership agreement" on the 15th line and replaced with them with "organizational documents."

(e) Section 2.1 is amended by deleting both subsection (t) and the last paragraph thereof.

(f) Section 3.15 is deleted in its entirety.

(g) Section 3.16 is deleted in its entirety.

(h) Section 3.17 is amended by deleting the words "or the Montgomery Mall (as defined in the Note)" in the 2nd and 3rd lines thereof.

(i) Section 3.18 is deleted in its entirety.

(j) Section 3.25 is amended by (i) replacing the word "partner" in the second line with the word "member", (ii) adding the following at the end of clause (iii) thereof: "(it being understood that Mortgagor shall not be deemed to have failed to properly apply such proceeds to the extent it is paying all such proceeds to Mortgagee)" and (iii) adding the following at the end of clause (iv) thereof: "(it being understood that failure of Mortgagor to pay principal or interest on the Loan or taxes and insurance premiums with respect to the Mortgaged Property shall not constitute waste for purposes hereof)".

(k) Section 3.26 is deleted in its entirety.

(l) The form of Note attached as Exhibit A to the Mortgage is hereby replaced with the forms of Note attached as Exhibits B-1 and B-2 to this Agreement.

(m) The title of the Mortgage shall be amended to read "First Mortgage and Security Agreement", and all references in the Present Loan Documents to a "Second

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Mortgage" therein shall be deemed references to a "First Mortgage."

7. General. The Present Loan Documents shall be and are hereby deemed modified and amended effective as of July 1, 1996, subject to compliance with the conditions precedent set forth in Section 8 below, in the manner and to the extent set forth in Sections 2 through 6 above, and as so modified are approved, ratified and confirmed and shall remain in full force and effect. Wherever in the Present Loan Documents or in any other instrument evidencing, securing or relating to the Loan reference is made to any of the Present Loan Documents, such reference shall be deemed a reference to such Present Loan Documents as hereby modified, amended and/or replaced.

8. Conditions. Notwithstanding anything to the contrary contained herein, the agreements of GECC hereunder and the effectiveness of the amendment to the Present Loan Documents provided for herein are subject to and conditioned upon the satisfaction, on or before July 31, 1997, of the following conditions precedent:

(a) This Agreement shall have been duly executed and in form for recording in the Office of the Recorder of Deeds of Cook County, Illinois.

(b) Borrower shall have duly executed Note I and Note II and shall have delivered the same to GECC as evidencing the Loan.

(c) Stuart Isen shall have executed and delivered to GECC a consent to this Agreement and an affirmation of the Indemnity Agreement dated June 23, 1993 given by Stuart Isen to GECC.

(d) Borrower shall have duly executed and delivered to GECC the Holdback Agreement.

(e) M/M Associates and Borrower shall have executed and delivered the Assumption Agreement.

(f) Borrower shall at its own expense (which monies may be funded from the Loan to the extent funds therefor are available) have caused First American Title Insurance Company to issue to GECC an endorsement or revised title insurance policy (the "Required Endorsement") supplementing Policy No. C-64034 (the "Existing Policy"), which Required Endorsement shall (i) insure that at a date on or after the date of recordation hereof that the lien of the Mortgage, as modified and amended hereby, is a first lien on the Mortgaged Property as described therein, subject only to the matters described in Schedule B of the Existing Policy (exclusive of exceptions 3, 4, 8 and 9) and the lien of current real estate taxes not yet due and payable, (ii) continue, as at the date of issuance of the Required Endorsement, all endorsements to the Existing Policy, and (iii) show title to the Mortgaged Property as vested in Borrower.

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(g) ~~Borrower shall have furnished to GECC a favorable opinion of counsel as to the due formation and existence of Borrower, the due authorization, execution and delivery of this Agreement, the Notes and any documents executed and delivered in connection herewith, the legality, validity, binding effect and enforceability of this Agreement, the Notes and the Loan Documents and such other matters as GECC may reasonably require.~~

(h) Borrower shall have fully complied with Section 9 of this Agreement.

9. GECC Fees and Expenses. Borrower agrees to pay all costs, fees and expenses (including without limitation legal fees and disbursements) incurred by GECC in connection with this Agreement and for the implementation of the additional disbursements contemplated hereunder. Costs, fees and expenses incurred prior to the execution and delivery hereof together with all other outstanding fees, charges and other sums due to GECC in connection with the Loan shall be paid concurrent with the execution and delivery of this Agreement. All other fees, costs and expenses shall be paid within five business days after demand therefor. Such amounts may be funded from the Loan to the extent funds therefor are available.

10. Inconsistencies. In the event of any inconsistency between the terms of the Loan Documents and the terms of this Agreement, the terms of this Agreement shall control.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of GECC and Borrower, and their respective heirs, legal representatives, successors and assigns subject to all limitations currently set forth in the Loan Documents. This Agreement is not intended to benefit any party other than the Borrower, the GECC, and the successors and assigns of the GECC and is specifically not intended to be for the benefit of any party other than those which are a party to this Agreement.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which may be executed by one or more of the parties hereto, but all of which, when taken together, shall constitute but one agreement.

13. Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Illinois applicable to contracts made to be performed in that State.

14. Reaffirmation. Except as expressly modified or replaced pursuant to the terms of or as contemplated by this Agreement, the Present Loan Documents are in full force and effect and are hereby approved, ratified and confirmed by Borrower and GECC. Borrower agrees that the Present Loan Documents, as so modified or replaced, assuming the same have been duly authorized and executed by GECC, are valid, continuing and binding obligations of Borrower, enforceable in accordance with their terms, subject to the effect of bankruptcy laws and general equitable principles, are supported by good and valid consideration and are

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not subject to any defenses, set-offs or counterclaims.

15. Limitation of Liability. The liability of Borrower under this Agreement is limited to the extent set forth in Section 17 of the Notes, and such Section is hereby incorporated herein by reference with the same force and effect as if fully set forth herein.

16. No Modification of Settlement Agreement. Nothing contained in this Agreement, the Notes or the Present Loan Documents as modified, amended or restated, as the case may be, shall be deemed or construed as in any manner amending, modifying or superseding the terms and provisions of that certain Settlement Agreement dated August 16, 1996, by and between M/M Associates and GECC.

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

BORROWER:

105 WEST MADISON L.L.C., a Delaware limited liability company

By: [Signature]

Its: Manager

LENDER:

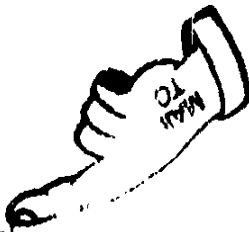
GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation

By: [Signature]

Its: Authorized representative

Prepared by and after recording return to:

Mary Denise O'Connor, Esq.  
Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
Chicago, Illinois 60606-6404  
(312) 876-8139



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STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF COOK )

Before me, a Notary Public, in and for said County and State, personally appeared Stephen Reclmutter, the Manager of 105 West Madison L.L.C., a Delaware limited liability company, and acknowledged the execution of the foregoing instrument on behalf of such company.

WITNESS my hand and Notarial Seal this 8<sup>th</sup> day of ~~July~~ <sup>August</sup>, 1997.

Howard Goldman

Signature

\_\_\_\_\_  
Printed Name

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



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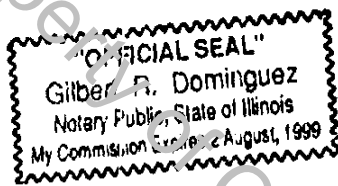
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STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF COOK )

Before me, a Notary Public, in and for said County and State, personally appeared MARCIA MATALEON MIV, the AGENT of GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation, and acknowledged the execution of the foregoing instrument on behalf of the corporation.

WITNESS my hand and Notarial Seal this 11 day of <sup>August</sup> ~~July~~, 1997.



Gilbert R. Dominguez  
Signature

GILBERT R DOMINGUEZ  
Printed Name

My Commission Expires:

2 August 1999

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## EXHIBIT A - LEGAL DESCRIPTION

That part of Original Lots 3 and 4 in Block 118 in School Section addition to Chicago, which is bounded and described as follows:

Beginning at the North East corner of said Original Lot 4, said corner being also the South West corner of Madison and Clark Streets; running thence south with the East line of said Original Lot 4, a distance of 50 feet and 8 inches to a point; thence West parallel with the South line of said Madison Street, 125 feet more or less (to an alley; thence North with the East line of said alley 50 feet 8 inches to the South line of said Madison Street; thence East with said South line of Madison Street 125 feet more or less, to the point of beginning;

126.22 feet measured

said premises being also known and described as Lots 7, 8 and 8 1/2 in Assessor's Division of said Block 118 according to the Plat thereof of said Subdivision recorded in Book 169 of Maps, Page 82, Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Index Numbers: 17-16-204-012      Volume: 511  
17-16-204-012

Commonly known as 105 West Madison, Chicago, Illinois

(126.22 feet measured)

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