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Cook County Recorder 47.00

FOURTH LOAN MODIFICATION AGREEMENT

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THIS ~~FOURTH~~ LOAN MODIFICATION AGREEMENT (this "Modification Agreement") is made as of the 18th day of August, 1998 but effective June 26, 1998 (the "Effective Date") by and among AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association not personally, but solely as Trustee under Trust Agreement dated January 18, 1990 and known as Trust No. 110232-07 ("Trustee No. 1"), AMERICAN NATIONAL BANK AND TRUST COMPANY, a national banking association not personally, but solely as Trustee under Trust Agreement dated July 9, 1991 and known as Trust No. 114177-06 ("Trustee No. 2"), GOLUB WOODFIELD LIMITED PARTNERSHIP, an Illinois limited partnership ("Beneficiary") and GENERAL ELECTRIC CAPITAL CORPORATION ("GECC"). Trustee No. 1, Trustee No. 2 and Beneficiary are sometimes collectively referred to herein as "Borrower".

RECITALS:

A. Trustee No. 1 is the owner of a parcel of real estate improved with an office complex commonly known as "Woodfield Green Executive Centre" in Schaumburg, Cook County, Illinois, the legal description of which is set forth on Exhibit A attached hereto and made a part hereof.

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

Alison M. Mitchell, Esq.
Rudnick & Wolfe
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601

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B. Trustee No. 2 is the owner of real estate improved with an office complex commonly known as "Glendale Office Park" in Glendale Heights, DuPage County, Illinois, the legal description of which is set forth on Exhibit A-1 attached hereto and made a part hereof. The Woodfield Green Executive and the Glendale Office Park are referred to herein as "Premises".

C. Beneficiary is the beneficiary of trust agreements pursuant to which each of Trustee No. 1 and Trustee No. 2 acts.

D. GECC has heretofore made a loan ("Woodfield/Glendale Loan") to Trustee No. 1 and Trustee No. 2 in the original stated principal sum of \$16,925,500, which loan is evidenced by (i) Amended and Restated Promissory Note ("Note 1") dated June 15, 1995 in the principal amount of \$7,105,960, (ii) Amended and Restated Promissory Note ("Note 2") in the principal amount of \$3,232,872 and (iii) Amended and Restated Promissory Note ("Note 3") in the principal amount of \$6,585,668. Note 1, Note 2 and Note 3 may be collectively referred to herein as the "Notes".

E. To secure the Notes, Trustee No. 1 and Trustee No. 2 executed that certain Amended and Restated First Mortgage, Security Agreement, Assignment of Rents and Fixture Filing dated June 15, 1995 ("Mortgage"), recorded with the Cook County, Illinois Recorder as Document No. 95-409949 and the DuPage County, Illinois Recorder as Document No. 95-075462 and that certain Amended and Restated Assignment of Rents and Leases dated June 15, 1995 ("Assignment of Rents"), recorded with the Cook County, Illinois Recorder as Document No. 95-408845 and the DuPage County, Illinois Recorder as Document No. 95-075463.

F. To govern various terms and conditions of the Woodfield/Glendale Loan, Trustee No. 1, Trustee No. 2, Beneficiary and GECC (and other parties) executed that certain Loan Agreement dated June 15, 1995 (the "Loan Agreement").

G. Borrower and GECC have agreed to make certain modifications in the Woodfield/Glendale Loan Documents (as said term is defined in that certain Third Loan Modification Agreement dated June 15, 1995 ("Third Loan Modification Agreement"), recorded with the Cook County, Illinois Recorder as Document No. 95-409948 and the DuPage County, Illinois Recorder as Document No. 95-075461) on the terms and conditions hereinafter contained.

H. Among the modifications to the Woodfield/Glendale Loan Documents, Borrower has requested that GECC increase the principal stated amount of Note 3 and GECC has consented to increase the principal stated amount of Note 3 upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the recitals and the mutual covenants contained in this Modification Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and GECC hereby agree, stipulate and

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covenant as follows, notwithstanding anything to the contrary contained in the Woodfield/Glendale Loan Documents:

1. **AFFIRMATION OF RECITALS.** The recitals set forth above are true and correct and are incorporated herein by this reference.
2. **ACKNOWLEDGEMENT OF DEBT.** Borrower acknowledges that on the Effective Date, the Principal Sum (as defined in Note 3) of Note 3 was \$6,328,440.83.¹ As of the Effective Date, GECC agrees to loan to Borrower an additional \$192,104.60 on the terms and conditions provided in the Woodfield/Glendale Loan Documents. **THEREFORE, TRUSTEE NO. 1 AND TRUSTEE NO. 2 HEREBY, JOINTLY AND SEVERALLY, PROMISE TO PAY TO THE ORDER OF GECC, IN THE MANNER PROVIDED FOR IN NOTE 3 AND IN THE WOODFIELD/GLENDALE LOAN DOCUMENTS, ALL DEFERRED INTEREST PLUS THE PRINCIPAL AMOUNT OF \$6,777,772.60, OR SO MUCH THEREOF AS MAY BE ADVANCED FROM TIME TO TIME, WITH INTEREST ON THE UNPAID BALANCE OF SUCH AMOUNT FROM THE DATE OF SUCH ADVANCE, AT THE RATES PROVIDED IN NOTE 3, AS HEREBY AMENDED.**
3. **LOAN AGREEMENT.** As of the Effective Date, the definition of "Paydown Amount" is deleted and the following is inserted in its place:

"Paydown Amount" shall mean, with respect to the Woodfield/Glendale Loan, an amount which as of June 26, 1998 equals \$695,991.17,² and which may be (a) increased by amounts paid to GECC and which are applied to reduce the principal balance of one or more of the Woodfield/Glendale Notes pursuant to Section 3(b) of Note 1 and (b) decreased to the extent any Paydown Amounts are disbursed pursuant to the terms of this Agreement.

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- 1/ The Principal Sum is determined by adding (a) the outstanding balance of Note 3 on the Effective Date (being \$5,669,873.83 [being \$6,173,760.40, which is the funded portion of Note 3 less the Additional Capital Paydown Amount (as defined in the Loan Agreement) of \$503,886.57]) and (b) the Deferred Interest (as defined in Note 3) (being \$658,567.00 as of the Effective Date).
 - 2/ This amount is determined by adding (a) \$251,943.28 (one-half the Additional Capital Paydown Amount received by GECC), plus (b) \$158,846.89 (those amounts which were paid to GECC and which were applied to reduce the principal balance of the Old Note 1 between October 1, 1994 and June 14, 1995), plus (c) \$285,201.

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4. **MORTGAGE.** As of the Effective Date, the principal amount of Note 3 set forth on page 1 of the Mortgage being "\$6,585,668" is deleted and "\$6,777,772.60" is inserted in its place.
5. **LOAN DOCUMENTS.** As of the Effective Date, all of the Woodfield/Glendale Loan Documents are modified as follows:
 - (a) Any reference to (i) the amount of Note 3 or (ii) "\$6,585,668" is changed to "\$6,777,772.60".
 - (b) The definition of the term "Loan Documents" or "Woodfield/Glendale Loan Documents" appearing in the Woodfield/Glendale Loan Documents is amended to include, in addition to the documents already covered thereby, this Modification Agreement.
6. **TITLE INSURANCE.** Concurrently with the execution and delivery of this Modification Agreement (and, as a condition precedent to the effectiveness of this Modification Agreement), Borrower agrees to provide GECC with an endorsement to GECC's Title Insurance Policy No. 9503557 dated June 26, 1995 issued by Chicago Title Insurance Company ("GECC's Title Policy"), which endorsement is to be dated as of the date of recording of this Modification Agreement, shall reflect that the amount of the insurance is \$17,117,604.60 (exclusive of additional interest pursuant to the Additional Interest Endorsement attached to GECC's Title Policy) and shall guarantee as of the date hereof that there are no exceptions to title other than (a) the objections to title included in GECC's Title Policy, and (b) general real estate taxes not presently due or payable.
7. **GECC'S EXPENSES.** Borrower agrees to pay all reasonable costs, fees and expenses (including but not limited to legal fees) incurred by GECC in connection with the preparation of this Modification Agreement and/or the implementation of the additional disbursements contemplated hereunder. Such of the foregoing as are incurred prior to the execution and delivery of this Modification Agreement shall be paid concurrent with such execution and delivery. All other fees, costs and expenses shall be paid within ten (10) business days after notice from GECC to Beneficiary of the amount due and the reason therefor.
8. **DEFAULT.** If there is a default in any provision of this Modification Agreement then such shall be deemed an "Event of Default" under the Mortgage and GECC shall be entitled to all rights and remedies provided under the Mortgage and the other Woodfield/Glendale Loan Documents.

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9. **NOTICE.** Any notice required to be delivered herein shall be delivered in accordance with the terms of the Mortgage.
10. **GOVERNING LAW.** This Modification Agreement shall be construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles.
11. **CONSTRUCTION.** This Modification Agreement shall not be construed more strictly against GECC merely by virtue of the fact that the same has been prepared by GECC or its counsel. Borrower and GECC each acknowledge and waive any claim contesting the existence and the adequacy of the consideration given by any of the other parties hereto in entering into this Modification Agreement.
12. **GENDER.** All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders and 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.
13. **ENTIRE AGREEMENT.** Borrower and GECC each acknowledge that there are no other agreements or representations, either oral or written, express or implied, not embodied in this Modification Agreement or the other Woodfield/Glendale Loan Documents, which, together, represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and GECC.
14. **BENEFIT.** Except as provided herein, this Modification Agreement shall be binding upon and shall inure to the benefit of Borrower and GECC and their respective successors, permitted assigns, grantees, heirs, executors, personal representatives, and administrators.
15. **RATIFICATION.** Except as herein expressly modified, the Woodfield/Glendale Loan Documents shall remain in full force and effect, and all of the terms and provisions of the Woodfield/Glendale Loan Documents, as herein modified, are hereby ratified and reaffirmed. Borrower reaffirms and reconfirms all of the representations, warranties and covenants made by Borrower under the Woodfield/Glendale Loan Documents (exclusive of any that relate to the Oakbrook Loan (as defined in the Loan Agreement)) at the time of the initial funding of the Loan.
16. **PRIORITY OF MORTGAGE.** Upon the recordation of this Modification Agreement, all of the Premises shall remain in all respects subject to the lien, charge and encumbrance of the Mortgage and the Assignment of Rents, as herein modified, and nothing herein contained and nothing done pursuant hereto, shall

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affect the lien, charge or encumbrance of the Mortgage, as herein modified, or the priority thereof with respect to other liens, charges, encumbrances or conveyances, or release or affect the liability of any party or parties whomsoever who may now or hereafter be liable under or on account of the other Woodfield/Glendale Loan Documents.

17. **CONSENT TO MODIFICATION.** Borrower acknowledges that it has thoroughly read and reviewed the terms and provisions of this Modification Agreement and is familiar with same, that the terms and provisions contained herein are clearly understood by Borrower and have been fully and unconditionally consented to by Borrower, and that Borrower has had full benefit and advice of counsel of its own selection, or the opportunity to obtain the benefit and advice of counsel of its own selection, in regard to understanding the terms, meaning and effect of this Modification Agreement, and that this Modification Agreement has been entered into by Borrower, freely, voluntarily, with full knowledge, and without duress, and that in executing this Modification Agreement, Borrower is relying on no other representations either written or oral, express or implied, made to Borrower or its partners, by any other party hereto, and that the consideration received by Borrower hereunder has been actual and adequate.
18. **RELEASE.** As additional consideration of the modification of the Woodfield/Glendale Loan Documents by GECC as herein set forth, Borrower hereby releases and forever discharges GECC, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns and all persons, firms, corporations, and organizations on its behalf from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Borrower may now have or claim to have against GECC, as of the date hereof, whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way touching, concerning, arising out of or founded upon the Woodfield/Glendale Loan Documents, as herein modified, including but not limited to, all such loss or damage of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the date hereof. This agreement and covenant on the part of Borrower is contractual, and not a mere recital, and the parties hereto acknowledge and agree that no liability whatsoever is admitted on the part of any party, except the indebtedness herein stated under the Woodfield/Glendale Loan Documents, as herein modified, and that all agreements and understandings between Borrower and GECC are expressed and embodied in the Woodfield/Glendale Loan Documents, as herein modified.
19. **COUNTERPARTS.** This Modification Agreement may be executed in several counterparts, each of which shall, for all purposes, be deemed an original and all

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of such counterparts, taken together, shall constitute one and the same Modification Agreement, even though all of the parties hereto may not have executed the same counterpart of this Modification Agreement.

20. **DEFINITION OF TERMS.** All initial-capitalized terms not expressly defined in this Modification Agreement shall bear the same respective definitions herein as they bear in the Woodfield/Glendale Loan Documents, as herein modified.

21. **EXCULPATION.** This Modification Agreement is executed by Trustee No. 1 and Trustee No. 2 not personally but as Trustee aforesaid, and it is expressly understood and agreed that nothing herein contained shall be constituted as creating any liability on Trustee, personally, to pay the Notes or any interest that may accrue thereon, or any indebtedness accruing under the Mortgage, or to perform any covenant either express or implied contained in the Mortgage, all such liability, if any, being expressly waived by GECC and by every person now or hereafter claiming any right or security in the Mortgage, and that so far as Trustee, and its successors, personally, are concerned, GECC and the holder or holders of the Notes shall look solely to any one or more of (a) the Premises, by the enforcement of the lien created by the Mortgage or (b) action to enforce the personal liability of any indemnitor, obligor, guarantor or co-maker or (c) enforcement of any other security or collateral securing the indebtedness evidenced by the Notes.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto in manner and form sufficient to bind them, as of the day and year first above written.

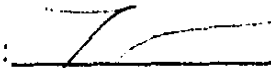
TRUSTEE NO. 1:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement No. 110232-07

ATTEST:



Secretary ASSISTANT SECRETARY

By: 

TRUSTEE

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TRUSTEE NO. 2:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement No. 114177-06

ATTEST:

Secretary

By: _____
TRUST OFFICER

BENEFICIARY:

GOLUB WOODFIELD LIMITED PARTNERSHIP, an Illinois limited partnership

By: Golub Woodfield Corporation, an Illinois corporation, its general partner

By: _____
Name: Michael Newman
Title: Secretary / Treasurer

GECC:

GENERAL ELECTRIC CAPITAL CORPORATION

By: _____
Name: Mariana Matadonffy
Title: Authorized representative

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GECC ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Nancy G. Tramutola, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that MARCCIA MATALON MAY, personally known to me to be the Authorized Representative of GENERAL ELECTRIC CAPITAL CORPORATION, personally known to me whose name is subscribed to the within Instrument, appeared before me this day in person and severally acknowledged that as such she signed and delivered the said Instrument as Authorized of said Corporation as his free and voluntary act and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth. *Representative*

GIVEN under my hand and Notarial Seal, this 18th day of August, 1998.

Nancy G. Tramutola
Notary Public

My Commission Expires:

4/8/2001



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TRUSTEE NO. 1 ACKNOWLEDGMENT

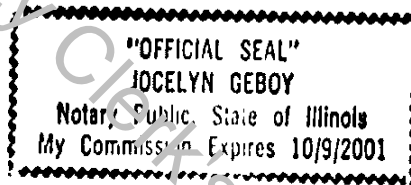
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Joelyn Geboy a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Allen Neary, personally known to me to be the _____ President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a corporation of the State of Illinois, and _____ Gregory Resprink, personally known to me to be the _____ Secretary of said Corporation, whose names are subscribed to the within Instrument, appeared before me this day in person and severally acknowledged that as such _____ President and _____ Secretary they signed and delivered the said Instrument as _____ President and _____ Secretary of said Corporation as their free and voluntary act and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 24 day of August, 1998.

Joelyn Geboy
Notary Public

My Commission Expires:



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TRUSTEE NO. 2 ACKNOWLEDGMENT

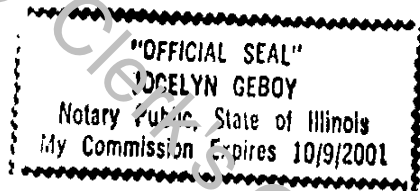
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Jacelyn Geboy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Eileen Neary, personally known to me to be the _____ President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a corporation of the State of Illinois, and Orlyana Kasprzik, personally known to me to be the _____ Secretary of said Corporation, whose names are subscribed to the within Instrument, appeared before me this day in person and severally acknowledged that as such _____ President and _____ Secretary they signed and delivered the said Instrument as _____ President and _____ Secretary of said Corporation as their free and voluntary act and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 24 day of August, 1998.

Jacelyn Geboy
Notary Public

My Commission Expires:



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BENEFICIARY ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, DIANE L CAMBRON, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that MICHAEL NEWMAN, personally known to me to be the Secretary/Treasurer of Golub Woodfield Corporation, an Illinois corporation, the general partner of Golub Woodfield Limited Partnership, an Illinois limited partnership, whose name is subscribed to the within Instrument, appeared before me this day in person acknowledged that as such _____ he signed and delivered the said Instrument as his free and voluntary act and as the free and voluntary act and deed of said corporation as general partner of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 13th day of August, 1998.

Diane L. Cambron
Notary Public

My Commission Expires:

1-16-2002



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EXHIBIT A

LEGAL DESCRIPTION

Woodfield Center

Tract 1

Lots 4 and 5 in Walden International, being a subdivision of part of fractional Section 1 and part of the North 1/2 of Section 12, both in Township 41 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois.

Tract 2

Perpetual easements for storm water drainage and detention, ingress and egress and utilities, as established by Declaration of Protective Covenants dated March 17, 1980 and recorded March 28, 1980 as Document 25406331.

Tract 3

Perpetual easement over, across and upon the land for the purpose of pedestrian and vehicular ingress and egress and general utility purposes created by grant recorded June 13, 1983 as Document 26640290.

Address of Property: 1920-1930 North Thoreau Drive
Schaumburg, Illinois

Permanent Index Nos.: 07-12-101-017
07-12-101-018

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EXHIBIT A-1

LEGAL DESCRIPTION

Glendale Center

Tract 1: Lot 1 in Glendale Office Park, being a subdivision of part of the West 1/2 of Section 22, Township 40 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded August 1, 1980 and Document R80-44115, in DuPage County, Illinois.

Tract 2: The South 246.00 feet, as measured along and perpendicular to the West line of Lot 2 in Glendale Office Park, being a subdivision of part of the West 1/2 of Section 22, Township 40 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded August 1, 1980 as Document R80-44115, in DuPage County, Illinois.

Tract 3: The North 246.00 feet of the South 492.00 feet, as measured along and perpendicular to the West line of Lot 2 in Glendale Office Park, being a subdivision of part of the West 1/2 of Section 22, Township 40 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded August 1, 1980 as Document R80-44115, in DuPage County, Illinois.

Tract 4: Cross easement for the benefit of Tract 3 recorded November 22, 1983 as Document R83-85841 over and across the following described property: Lot 2 (except the South 492.00 feet as measured along and perpendicular to the West line thereof) in Glendale Office Park, being a subdivision of part of the West 1/2 of Section 22, Township 40 North, Range 10, East of the Third Principal Meridian, in DuPage County, Illinois.

Address of Property: 2166-2200 Gladstone
Glendale Heights, Illinois

Permanent Index Nos.: 02-22-301-011
02-22-301-014
02-22-110-026

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