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Cook County Recorder



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Cook County Recorder 42.50

LOAN ASSUMPTION AND MODIFICATION AGREEMENT
DATED SEPTEMBER 17, 2002
MADE BY AND BETWEEN
GE LIFE AND ASSURANCE ANNUITY COMPANY
(SURVIVOR IN MERGER WITH THE LIFE INSURANCE COMPANY OF VIRGINIA)
AND
40 CORP. AND FREQUENT RENTERS, LLC
(AS SUCCESSORS OF THE 40 EAST OAK LIMITED PARTNERSHIP)

Prepared by Stephen H. Malato, Hinshaw & Culbertson, 222 N. LaSalle, Suite 300, Chicago, Illinois 60601

After recording mail to: Stephen H. Malato, Hinshaw & Culbertson, 222 N. LaSalle, Suite 300, Chicago, Illinois 60601

- d. Zemans Partners, L.P., an Illinois limited partnership, as to an undivided 5.617552% interest;
- e. SAM Investment Partners II L.P., a Delaware limited partnership, as to an undivided 0.278670% interest;
- f. The 40 Corp., an Illinois corporation, as to an undivided 1.000000%;
- g. Atlanta Transition, LLC, an Illinois limited liability company, as to an undivided 29.403000%; and
- h. Frequent Renters, LLC, an Illinois limited liability company, as to an undivided 20.493233% interest;

2. Quit Claim Deed (the "Second Transfer") from the following people to Frequent Renters, dated January 7, 2002, and recorded in the Recorder's Office on January 7, 2002, as Document No. 0020160772.

- a. Berger Investment Company, an Illinois limited partnership, as to an undivided 40.429125% interest;
- b. Leonard Worssek, an individual, as to an undivided 2.450250% interest;
- c. RAM Partners L.P., an Illinois limited partnership, as to an undivided 0.328170% interest;
- d. Zemans Partners, L.P., an Illinois limited partnership, as to an undivided 5.617552% interest;
- e. SAM Investment Partners II L.P., a Delaware limited partnership, as to an undivided 0.278670% interest; and

3. Quit Claim Deed (the "Third Transfer") from Atlanta Transition, LLC, an Illinois limited liability company, as to an undivided 19.403000% interest to Frequent Renters, and as to an undivided 10% interest to Guaranty National Exchange Services Corporation ("Guaranty National"), as exchange agent, dated January 7, 2002 and recorded in the Recorder's Office on February 7, 2002 as Document No. 0020160771.

4. Quit Claim Deed (the "Fourth Transfer") from Guaranty National, as to an undivided 10% interest and recorded in the Recorder's Office on _____, 2002 as Document No. _____.

The First Transfer, the Second Transfer, the Third Transfer and the Fourth Transfer are herein collectively referred to as the "Transfers". As a result of the Transfers, title to the Property will be held as follows: an undivided 1% interest in the The 40 Corp., an Illinois corporation and an undivided 99% interest in Frequent Renters who, together, are sometimes referred to as the "Borrower".

C. Request for Consent to the Transfers and Assumption. The Original Borrower has previously asked Lender to consent to the Transfers of interests in the Property and to consent to

Frequent Renters' and the 40 Corp's assumption of the Loan. Lender is willing to do so on the terms and conditions in this Agreement.

D. Assignment to Lender. Lender, as successor-in-interest by merger to The Life Insurance Company of Virginia, a Virginia corporation, is the owner and holder of the Loan Documents.

AGREEMENT

THEREFORE, the parties agree as follows:

A. Regarding the Transfer:

1. Frequent Renters' and The 40 Corp's Acknowledgment of Loan Documents. Frequent Renters and The 40 Corp acknowledge that they are fully familiar with the terms of the Loan Documents and that the Loan Documents express the entire understanding of the parties regarding the Loan.

2. Frequent Renters' and The 40 Corp's Assumption of Loan Obligations. Frequent Renters and The 40 Corp assumes and agrees to perform all of the Original Borrower's obligations under the Loan Documents; provided, however, that, notwithstanding any other provision of the Loan Documents, Frequent Renters and The 40 Corp shall be personally liable on the Note only to the extent that the Original Borrower has been liable; that is, the extent of the personal liability of Frequent Renters and The 40 Corp shall, at all times, be the same as if Frequent Renters and The 40 Corp had been the original maker of the Note. The personal liability of each person having liability pursuant to the Loan Documents shall be joint and several with respect to all such Loan obligations.

3. Original Borrower's Liability. Notwithstanding the foregoing assumption, Original Borrower remains personally obligated under the Loan Documents to the extent Borrower has personal liability thereunder.

4. Liability of Certain "Indemnitors" (as such term is defined in that certain Indemnity Agreement dated November 15, 1993 which is one of the Loan Documents). By separate instrument, the Lender shall release certain Indemnitors from liability under the Indemnity Agreement.

5. Consent to Conveyance.

a. Lender consents to the Transfers of interests in the Property and agrees that such Transfers do not constitute a default under the Mortgage and such Transfers shall not constitute the "one sale of the Property" provided for in the Mortgage.

b. Original Borrower, Frequent Renters and The 40 Corp agree that Lender's consent to the Transfers of the Property does not constitute a waiver of the provisions of paragraph 32 of the Mortgage and that, all further sales, conveyances, encumbrances and transfers of the Property will be subject to Paragraph 32 of the Mortgage.

LOAN ASSUMPTION AND MODIFICATION AGREEMENT

THIS AGREEMENT is dated this 17th day of September, 2002, and is made by GE LIFE AND ASSURANCE ANNUITY COMPANY, a Virginia corporation (survivor in merger, effective January 1, 1999, with The Life Insurance Company of Virginia, a Virginia corporation) ("Lender"), the 40 Corp, an Illinois corporation ("The 40 Corp") and FREQUENT RENTERS, LLC, an Illinois limited liability company ("Frequent Renters"), together the successors of the 40 East Oak Limited Partnership, an Illinois limited partnership (the "Beneficiary"), the sole beneficiary of that certain Trust Agreement with LaSalle Bank National Association, a national banking association, as successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated July 17, 1972, known as Trust No. 25035 (the "Trust") (the Beneficiary and the Trust are together the "Original Borrower").

RECITALS

A. Loan Documents. On or about November 15, 1993, Lender made a loan ("Loan") to the Trust in the original principal sum of Five Million and No/100 Dollars (\$5,000,000.00). The Loan is evidenced by the following documents (together with this Agreement the "Loan Documents"):

1. Promissory Note dated November 15, 1993, from the Trust to the Lender ("Note") in the Loan amount.

2. Illinois Mortgage and Security Agreement securing Note (the "Mortgage") of same date executed by the Trust in favor of the Lender, recorded on November 22, 1993, in the office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office"), as Document No. 93954653, and encumbering the property ("Property") legally described on the attached Exhibit A.

3. Miscellaneous other loan documents executed and delivered to evidence and secure the Loan.

B. Transfer Documents. As a part of a plan of liquidation of the Beneficiary, the Property was transferred pursuant to the following documents (the "Transfer Documents"):

1. Trustee's Deed dated December 31, 2001 and recorded in the Recorder's Office on December 31, 2001 as Document No. 11244162 which conveyed the following fractional interest in the Property to the following people:

- a. Berger Investment Company, an Illinois limited partnership, as to an undivided 40.429125% interest;
- b. Leonard Worsek, an individual, as to an undivided 2.450250% interest;
- c. RAM Partners L.P., an Illinois limited partnership, as to an undivided 0.328170% interest;

B. Regarding General Matters:

1. Loan Fee, Lender's Expenses. Frequent Renters has paid a \$1,000.00 Non-Refundable Transfer Fee to Lender in consideration of Lender's consent to Transfers and the assumption of the Loan and Frequent Renters further agrees to pay all of Lender's legal and administrative expenses in connection with this Agreement. Lender acknowledges receipt of the fee.

2. Conditions. This Agreement is effective only when all of the following conditions are satisfied on or before the Commitment Expiration Date under the Loan Application, or as such may be duly extended in writing by Lender, time being of the essence:

a. This Loan Assumption and Agreement has been duly executed and recorded in the Recorder's Office.

b. An endorsement insuring that the Transfers and assumption referred to in this Agreement do not affect the validity or priority of the lien of the Mortgage has been issued to Lender's title policy. There shall be no exceptions to title other than those approved when the Loan closed.

c. Frequent Renters has paid all of Lender's expenses and fees arising out of this transfer and Agreement, including title endorsement, recording, attorney's fees, and other out-of-pocket costs.

d. There is then no default or event of default under the Loan Documents, nor any event or condition which would be a default or event of default if not cured within the time allowed.

3. Attorney's Fees. If Lender seeks the advice of counsel or any suit or action is brought to enforce or interpret the terms of this Agreement, Borrower shall pay all of Lender's resulting costs and expenses, including reasonable attorneys' fees. Such fees shall include, without limitation, attorneys' fees incurred at or in preparation for any trial, appeal or review or incurred to assert any defenses, rights or remedies available under federal bankruptcy law.

4. Miscellaneous.

a. Frequent Renters and The 40 Corp represent and warrant to Lender that they have no defenses or claims of offset to payment of the Loan or enforcement of the Loan Documents or any other defenses or offsets with respect to Lender's lending of funds to the Original Borrower. As further consideration for this Agreement, Frequent Renters and The 40 Corp release Lender from any and all liability, known or unknown, arising out of any act or circumstance to date with respect to the Loan or any collateral for repayment of the Loan.

b. Each person included within Frequent Renters and The 40 Corp warrants to Lender that each has full right, power, and authority to enter into this Agreement and to perform all its obligations, and that all information and materials submitted to Lender in connection with the request for this modification contain no material misstatement or misrepresentation nor omit to state any material fact or circumstance.

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c. This document constitutes the entire agreement with respect to the modification of the Loan and shall not be amended, modified or terminated except by a writing signed by the party to be charged therewith.

d. Except as provided in this Agreement, the terms of the Loan Documents remain in full effect and are ratified. This Agreement is not intended to and shall not be construed to impair the validity, priority or enforceability of the Mortgage or the other Loan Documents.

e. This Agreement is binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

f. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument.

g. Lender's address is changed to 707 East Main Street, Suite 1300A, Richmond, Virginia 23219.3110.

h. Frequent Renters and The 40 Corp address is c/o Berger Financial Services Corp., 40 East Oak Street, Chicago, Illinois 60610.

DATED the day and year first above written.

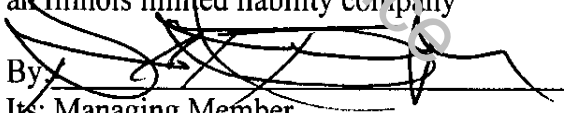
LENDER

GE LIFE AND ASSURANCE ANNUITY
COMPANY, a Virginia corporation

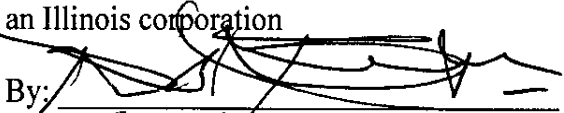
By: GE ASSET MANAGEMENT
INCORPORATED, its investment advisor

By: 
Name: Curt Dawson
Title: VP-Real Estate

FREQUENT RENTERS, LLC,
an Illinois limited liability company

By: 
Its: Managing Member

THE 40 CORP,
an Illinois corporation

By: 
Its: Secretary

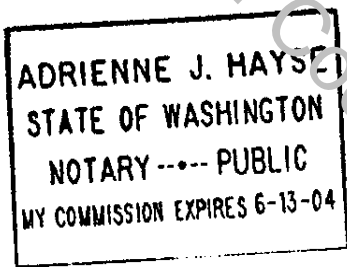
STATE OF Washington)
) SS.
COUNTY OF King)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that Curt Dawson, personally known to me to be the VP-Real Estate of GE Asset Management Incorporated, the investment advisor of GE Life and Assurance Annuity Company, a Virginia corporation, 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 limited liability company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 27th day of September, 2002.

Adrienne J. Hayse
Notary Public

My commission expires: 6-13-04



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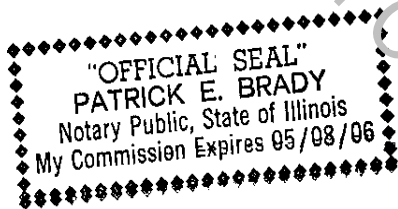
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that Robert Breger, personally known to me to be the Secretary of The 40 Corp, an Illinois corporation, 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 the corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 17th day of September, 2002.

Patrick E. Brady
Notary Public

My commission expires: 5/8/06



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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that Robert Burger, personally known to me to be the Managing Member of Frequent Renters, LLC, an Illinois limited liability company, 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 limited liability company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 17th day of September, 2002.

Patrick E. Brady
Notary Public

My commission expires 5/8/02
"OFFICIAL SEAL"
PATRICK E. BRADY
Notary Public, State of Illinois
My Commission Expires 05/08/02

Property of Cook County Clerk's Office

EXHIBIT A

Legal Description

Parcel 1:

LOT 6 (EXCEPT NORTH 8 FEET THEREOF TAKEN FOR ALLEY) IN COLLINS SUBDIVISION OF SOUTH ½ BLOCK OF BLOCK 7 IN CANAL TRUSTEES' SUBDIVISION OF SOUTH FRACTIONAL HALF OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel 2:

LOTS 1 AND 2 (EXCEPT NORTH 8 FEET OF EACH OF LOTS TAKEN FOR ALLEY) IN RESUBDIVISION OF LOTS 7 TO 9 IN COLLINS SUBDIVISION OF SOUTH ½ OF BLOCK 7 IN CANAL TRUSTEES' SUBDIVISION OF SOUTH FRACTIONAL HALF OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 40 East Oak Street, Chicago, Illinois

Permanent Index No.: 17-03-204-059