

UNOFFICIAL COPY

99827239

13/3/0018 51 001 Page 1 of 11  
1999-08-30 10:42:02  
Cook County Recorder 41.50

Prepared by and after recording  
return to:



David B. Allswang  
D'Ancona & Pflaum LLC  
111 East Wacker - Suite 2800  
Chicago, IL 60601-4205

MTL 2013711 *AMJ*

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (this "Modification Agreement") is entered into as of June 12, 1999 between Demetrios L. Kozonis and Chrisoula Kozonis (collectively, "Beneficiaries") and American National Bank and Trust Company of Chicago (the "Trust Company") not personally but as Trustee under Trust Agreement dated November 17, 1987 and known as Trust No. 104043-09 ("Trustee") (Beneficiaries and Trustee are collectively, "Mortgagor"), and Berkshire Life Insurance Company ("Mortgagee").

11  
M

RECITALS:

1. On July 14, 1989, Mortgagor borrowed from Mortgagee and Mortgagee loaned to Mortgagor, the sum of EIGHT HUNDRED SIXTY FIVE THOUSAND AND NO/100 DOLLARS (\$865,000) (the "Loan"), and the Loan was evidenced by a Promissory Note (the "Note") of even date therewith made by Mortgagor to Mortgagee in the principal amount of EIGHT HUNDRED SIXTY FIVE THOUSAND AND NO/100 DOLLARS (\$865,000).

2. The Note was secured by the following described documents (collectively, the "Loan Documents"):

a. Mortgage and Security Agreement (the "Mortgage") made by the Trustee dated July 14, 1989 and recorded July 24, 1989 in the Cook County Recorder of Deeds, recorded as document number 89337517, granting Mortgagee a first security interest in certain properties known as 5777, 5779, 5783, 5785, 5787, and 5789 North Milwaukee Avenue, Chicago, Illinois, and legally described in Exhibit A attached hereto and made a part hereof (the "Property").

b. Assignment of Rents and Lessor's Interest in Leases made by the Trustee, dated July 14, 1989 and recorded July 24, 1989 in Cook County Recorder of Deeds, recorded as document number 89337518.

c. UCC-1 and UCC-2 Financing Statements from Mortgagor, as debtor, to Mortgagee, as secured party, filed with the Secretary of State of Illinois and recorded in the Cook County Recorder of Deeds, respectively.

d. Irrevocable Right to Approve Trust Documents, signed by Beneficiaries and Trustee dated July 14, 1989.

e. The Collateral Assignment of the Beneficial Interest, signed by Beneficiaries, Trustee and Lender dated July 14, 1989.

f. The Environmental Indemnity Agreement, signed by Beneficiaries, Trustee and Lender dated July 14, 1989.

3. Mortgagee and Mortgagor have agreed to, among other things, reduce the interest rate of the Loan, subject to the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

a. Recitals. The foregoing recitals are hereby incorporated into and made a part of this Modification Agreement.

b. Modifications to Note and/or Mortgage. Effective as of July 1, 1999, the Note and Mortgage are hereby amended, to the extent applicable, as follows:

- (i) The interest rate set forth in the Note is reduced from 10.75% to 7.75%;
- (ii) Notwithstanding the reduction of the interest rate, as set forth above, the monthly installments of principal and interest shall remain \$8,156.43;
- (iii) In Paragraph (b) of the Note, the words "after the last day of the Fifth (5<sup>th</sup>) Loan Year (as herein defined)" are deleted and replaced with "June 30, 2004";
- (iv) In Paragraph (d) of the Note, the words "the Tenth (10<sup>th</sup>)," and "last day of the Tenth (10<sup>th</sup>) Loan Year or the" are hereby deleted in their entirety;
- (v) In Paragraph (e) of the Note, "the last day of the Fifth (5<sup>th</sup>) Loan Year, or of the premium required in connection with any prepayment after the last day of the Fifth (5<sup>th</sup>) Loan Year, whichever is applicable" and "the last day of the Fifth (5<sup>th</sup>) Loan year" are each deleted in their entirety and are each replaced with "June 30, 2004";
- (vi) Paragraph C of the Recital of the Mortgage is revised by deleting "the Tenth (10<sup>th</sup>) Loan Year" and replaced with "the Fifteenth (15<sup>th</sup>) Loan Year"; and
- (vii) This Modification Agreement is one of the Loan Documents, as defined on Page 7 of the Note and on Page 2 of the Mortgage.

c. Costs and Fees. Concurrently with the execution of this Modification Agreement, Mortgagor shall pay to Mortgagee all costs and expenses associated with the negotiation and execution of this Modification Agreement, attorneys' fees and appraisal fees, survey and title costs, travel expenses, inspection fees and recording and escrow charges, whether incurred in connection with the Loan or the modification of the Loan pursuant to the terms of the Modification Agreement. Mortgagor shall be responsible for the payment of all costs and fees to any brokers claiming a fee or commission in connection with the credit facility contemplated herein and Mortgagor and Mortgagee represent and warrant to each other that neither has engaged the services of any such broker other than Baird & Warner.

d. Documents to Remain in Effect; Confirmation of Obligations. The Note and the Loan Documents shall remain in full force and effect as originally executed and delivered by the parties, except as expressly modified and amended herein. All references in the Note and the Loan Documents to such documents shall be deemed to refer to the Note and Loan Documents as modified herein. Mortgagor hereby confirms and reaffirms all of its obligations under the Note and the Loan Documents as modified and amended herein, and confirms and reaffirms that the Loan Documents secure the Note. To induce Mortgagee to enter into this Modification Agreement, Mortgagor hereby represents, acknowledges and agrees that it does not now have or hold any defense to the performance of any of its obligations under the Note or the Loan Documents, nor does Mortgagor have any claim against Mortgagee which might be set off or credited against any payments due under any of the Note or Loan Documents. Mortgagor further represents, acknowledges and agrees that, as of the date hereof, it does not have any actual or potential actions, claims, suits or defenses arising from any letters of intent, correspondence or other communications (oral or written) between Mortgagor and Mortgagee.

e. Certifications, Representations and Warranties. In order to induce Mortgagee to enter into this Modification Agreement, Beneficiary hereby certifies, represents and warrants and Trustee hereby certifies and represents to Mortgagee that all certifications, representations and warranties contained in the Note and the Loan Documents and in all certificates, heretofore delivered to Mortgagee are true and correct as of the date hereof, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Modification Agreement. Beneficiary certifies, represents and warrants and Trustee certifies and represents to Mortgagor that Mortgagee has all due authority to execute this Modification Agreement and that all consents required to be delivered in order for Mortgagee to execute and deliver this Modification Agreement have been received.

f. Additional Certificates, Representations and Warranties. In addition to the certifications, representations and warranties set forth in the Note, the Loan Documents and this Modification Agreement, Beneficiary hereby certifies, represents and warrants and Trustee certifies and represents to Mortgagee that:

- (i) Mortgagor has all necessary power to carry on its present business, and has full right, power and authority to enter into and execute and deliver this Modification Agreement and to otherwise perform and consummate the transactions contemplated hereby.

- (ii) This Modification Agreement has been duly authorized, executed and delivered by Mortgagor and constitutes a valid and legally binding obligation enforceable against Mortgagor in accordance with its terms but subject to applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance and other similar laws now or hereafter in effect relating to or affecting creditors' rights generally. The execution and delivery of this Modification Agreement and compliance with the provisions hereof and thereof under the circumstances contemplated herein and therein does not and will not conflict with or constitute a breach or violation of or default under the agreement creating Mortgagor or any agreement or other instrument to which Mortgagor is a party, or by which Mortgagor is bound, or to which any of its properties are subject, or any existing law, administrative regulation, court order or consent decree to which Mortgagor is subject.
- (iii) There is not litigation or administrative proceeding pending or, to Mortgagor's knowledge, threatened to restrain or enjoin the transactions contemplated by this Modification Agreement or questioning the validity hereof or of the Loan Documents, or in any way contesting the existence or powers of Mortgagor, or with respect to which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Modification Agreement.
- (iv) Mortgagor is in full compliance with all of the terms and conditions of this Modification Agreement, the Note and the Loan Documents, no event of default has occurred and is continuing with respect thereto and no event has occurred and is continuing which with the lapse of time or the giving of notice or both would constitute such an event of default, and Mortgagor hereby releases and waives any and all (i) existing defenses to payment of obligations under the Note, the Loan Documents and this Modification Agreement; and (ii) existing claims or causes of action which Mortgagor may have against Mortgagee or its agents.

g. Not a Novation. Mortgagor and Mortgagee expressly state, declare and acknowledge that this Modification Agreement is intended only to modify Mortgagor's continuing obligations under the Note and the Loan Documents in the manner set forth herein and is not intended as a novation.

h. Entire Agreement. This Modification Agreement sets forth all of the covenants, provisions, agreements, conditions and understandings of the parties relating to the subject matter of this Modification Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. The parties hereto hereby agree that the terms of this Modification Agreement supersede

all of the terms, conditions and obligations of Mortgagee set forth in all prior commitment letters, correspondence or other commitments (oral or written) between Mortgagor and Mortgagee relating to this Modification Agreement.

i. Additional Documents. Mortgagor agrees to execute and deliver such other and further documents reasonably requested by Mortgagee or its counsel to achieve the objectives of this Modification Agreement, provided such other and further documents do not obligate Mortgagor to provide additional collateral for or materially increase Mortgagor's obligations related to the Loan.

j. Reaffirmation. Mortgagor does hereby reaffirm all of Mortgagor's obligations set forth in the Loan Documents.

k. Successors. This Modification Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

l. Severability. In the event any provision of this Modification Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

m. Amendments, Changes and Modifications. This Modification Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

n. Exculpation. This instrument is executed by the Trust Company, not personally, but solely as trustee, as aforesaid, in the exercise of power and authority conferred upon and vested in it as such trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by the Trust Company are undertaken by it solely as trustee, as aforesaid, and not individually and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against the Trust Company by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

o. Construction.

- (i) The words "hereof", "herein", and "hereunder", and other words of a similar import refer to this Modification Agreement as a whole and not to the individual sections in which such terms are used.
- (ii) The headings of this Modification Agreement are for convenience only and shall not define or limit the provisions hereof.
- (iii) Where the context so requires, words used in singular shall include the plural and vice versa, and words of the gender shall include all other genders.

(iv) Any capitalized terms not defined herein shall retain the meaning as set forth in the Loan Documents.

p. Execution of Counterparts. This Modification Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

q. Governing Law. This Modification Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

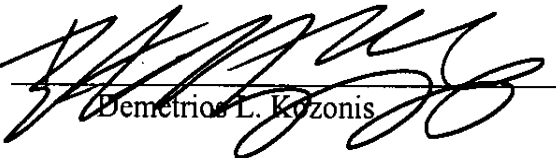
r. Effective Date. The effective date of this Modification Agreement shall be as of the date hereof.

IN WITNESS WHEREOF, the parties have executed this Modification Agreement as of the date first above written.

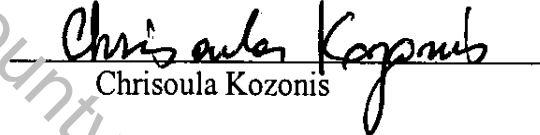
TRUST COMPANY:

BENEFICIARY:

AMERICAN NATIONAL BANK AND TRUST COMPANY, not personally but as Trustee under Trust Agreement dated November 17, 1987 and known as Trust No. 104043-09

  
Demetrios L. Kozonis


BY:   
NAME: \_\_\_\_\_  
ITS: \_\_\_\_\_

  
Chrisoula Kozonis

(SEAL)

ATTEST: Signature not required by American National Bank and Trust Company, Chicago, Illinois  
ITS: \_\_\_\_\_

MORTGAGEE:

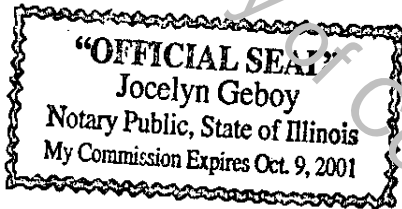
BERKSHIRE LIFE INSURANCE COMPANY  
BY:   
NAME: Richard M. Sullivan  
ITS: Vice President

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

STATE OF IL)  
 ) SS.  
COUNTY OF COOK)

I, JOCELYN GEBOY, a Notary Public in and for said County, in the State aforesaid do hereby certify that Gregory S. Kasperzyk Vice President of American National Bank and Trust Company of Chicago, a national banking association, and \_\_\_\_\_ Secretary of said bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this date in person and severally acknowledged that they signed and delivered the said instrument as such officers of said bank as their own and voluntary act and as the free and voluntary act of said bank as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 25 day of April, 1999.



Jocelyn Geboy  
Notary Public

STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 18th day of ~~April~~ <sup>June</sup>, 1999 by Demetrious L. Kozonis. The above-named individual is personally known to me or has provided \_\_\_\_\_ as identification.



Constantine Kalamatianos  
Notary Public

My Commission Expires:

5-7-2003

PROPERTY OF COOK COUNTY CLERK'S OFFICE



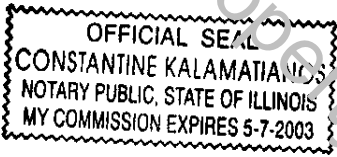
# UNOFFICIAL COPY

STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of ~~April~~ <sup>June</sup>, 1999 by Chrisoula Kozonis. The above-named individual is personally known to me or has provided \_\_\_\_\_ as identification.

*Constantine Kalamatiarios*

Notary Public




My Commission Expires:

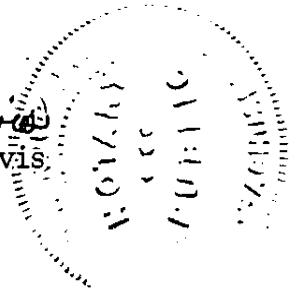
5-7-2003

Property of Cook County Clerk's Office

STATE OF MASSACHUSETTS )  
 ) SS.  
COUNTY OF BERKSHIRE )

The foregoing instrument was acknowledged before me this 1st day of ~~April~~<sup>July</sup>, 1999 by Richard M. Sullivan, a Vice President of Berkshire Life Insurance Company, and that by authority duly given, he signed the foregoing instrument as his free and voluntary act and as the free and voluntary act of said corporation.

  
Notary Public, Donna Rood Davis



My Commission Expires:

April 28, 2006

Property of Cook County Clerk's Office

EXHIBIT A

LEGAL DESCRIPTION

Lot 5, 6, 7 and 8 in Block 2 (except that part taken for widening Milwaukee Avenue) in Harvey Hill and Company's Subdivision of that part of the Southeast 1/4 of fractional Section 5, Township 40 North, Range 13 East of the Third Principal Meridian, described as follows:

Commencing at a point 1.38 chains South of the Northwest corner of said 1/4 Section, running thence South on West line of said 1/4 Section, 1128.15 feet more or less to center of Milwaukee Plank Road; thence running Southeasterly along center of said Road, 602.5 feet; running thence North parallel with the West line of said 1/4 Section, 1387.9 feet more or less to center of Elston Road; thence Northwest along center of said Road, 418.5 feet to place of beginning, according to the plat of said Subdivision recorded January 6, 1915 as document 5557020, in Cook County, Illinois.

Permanent Index Nos. 13-05-408-016  
13-05-408-017  
13-05-408-018  
13-05-408-019

Street Address: 5777, 5779, 5783, 5785, 5787 & 5789  
North Milwaukee Avenue  
Chicago, Illinois