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Cook County Recorder 43.50

NAB Loan Nos. 76414 and 76919 and 78014

Prepared by and after
recording return to:



Thomas G. Jaros
Levenfeld Pearlstein, LLC
33 West Monroe
21st Floor
Chicago, Illinois 60603

Property Common Addresses:

SEE EXHIBIT A, B AND C

PIN(s): SEE EXHIBIT A, B AND C

**NAB BANK
AMENDED AND RESTATED
CROSS-COLLATERALIZATION AND
CROSS-DEFAULT AGREEMENT**

THIS AMENDED AND RESTATED CROSS-COLLATERALIZATION AND CROSS-DEFAULT AGREEMENT dated as of June 11, 2001 is made by **FIFTH THIRD BANK**, successor to OLD KENT BANK, not individually, but as trustee under a trust agreement dated June 22, 2000 known as Trust No. 16669 ("*Trust 16669*"); **FIFTH THIRD BANK**, successor to OLD KENT BANK, not individually, but as trustee under a trust agreement dated July 20, 1999 known as Trust No. 16395 ("*Trust 16395*"); and **CARLTON KNIGHT** ("*Knight*") in favor of **NAB BANK** whose address is 222 West Cermak Road, Chicago, Illinois 60616 ("*Bank*") and has reference to the following:

WHEREAS, Trust 16395 and Knight have executed and delivered to the Bank a Secured Note dated of even date herewith in the original principal amount of Four Hundred Ninety Thousand and no/100ths Dollars (\$490,000.00)(the "*Essex Note*");

WHEREAS, the Essex Note is secured by, among other things, a mortgage against the property commonly known as to 7601-07 South Essex and 2509-11 East 76th Street, Chicago, Illinois 60649 which is legally described on EXHIBIT A hereto (collectively, the "*Essex Property*");

WHEREAS, in connection with the execution and delivery of the Essex Note, Knight and/or Trust 16395 have also executed and delivered to Bank a Commercial Mortgage, an Assignment of Leases and Rents, an Environmental Indemnity Agreement, UCC Financing Statements and other certificates, affidavits and documents relating to the Essex Property (all such documents and agreements along with the Essex Note are collectively referred to herein as the "*Essex Loan Documents*");

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WHEREAS, Trust 16669 and Knight have executed and delivered to the Bank a Secured Note dated October 18, 2000 in the original principal amount of Five Hundred Forty Thousand and no/100ths Dollars (\$540,000.00)(the "74th Street Note");

WHEREAS, the 74th Street Note is secured by, among other things, a mortgage recorded on October 24, 2000 as document number 00834307 against the property commonly known as 1938-46 East 74th Street, Chicago, Illinois 60649 which is legally described on EXHIBIT B hereto (collectively, the "74th Street Property");

WHEREAS, in connection with the execution and delivery of the 74th Street Note, Knight and/or Trust 16669 have also executed and delivered to Bank a Commercial Mortgage, an Assignment of Leases and Rents, an Environmental Indemnity Agreement, UCC Financing Statements and other certificates, affidavits and documents relating to the 74th Street Property (all such documents and agreements along with the 74th Street Note are collectively referred to herein as the "74th Street Loan Documents");

WHEREAS, Trust 16669 and Knight executed and delivered to Bank a Secured Note dated July 7, 2000 in the original principal amount of Five Hundred Sixty-Five Thousand and no/100ths Dollars (\$565,000.00)(the "Merrill Note");

WHEREAS, the Merrill Note is secured by, among other things, a Commercial Mortgage (the "Merrill Mortgage") recorded on July 7, 2000 as document number 00534994 which is a lien against the property commonly known as 6750-56 South Merrill and 2116-20 East 68th Street, Chicago, Illinois 60649 and which is legally described on EXHIBIT C hereto (the "Merrill Property");

WHEREAS, in connection with the execution and delivery of the Merrill Note and the Merrill Mortgage, Knight and/or Trust 16669 executed and delivered to Bank mortgages, assignments, guaranties and other certificates, affidavits and documents relating to the Merrill Property (all such documents and agreements along with the Merrill Note are collectively referred to herein as the "Merrill Loan Documents");

WHEREAS, on or about October 18, 2000, Trust 16669, Knight and Bank executed and delivered that certain Cross-Collateralization and Cross-Default Agreement (the "Original Agreement") whereby the Merrill Loan Documents and the 74th Street Loan Documents were cross-collateralized and cross-defaulted with each other and which Original Agreement was recorded against the 74th Street Property and the Merrill Property on October 24, 2000 as document number 00834309; and

WHEREAS, in order to induce Bank into making the loan evidenced by the Essex Note, Knight, Trust 16395 and Trust 16669 (hereinafter collectively referred to as "Borrower") have agreed that the Essex Note, the 74th Street Note and the Merrill Note shall be cross-collateralized and cross-defaulted with each other; and

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WHEREAS, the parties desire to amend and restate the Original Agreement on the terms set forth herein in order to set forth in writing the terms and conditions under which the Essex Note, the Merrill Note and the 74th Street Note shall be cross-collateralized and cross-defaulted with each other.

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

1. Cross-Collateralization. Notwithstanding anything to the contrary contained in the Essex Loan Documents, the Merrill Loan Documents or the 74th Street Loan Documents, Borrower and Bank hereby agrees as follows:

(a) all mortgages, security interest, liens, pledges and collateral given by Borrower (*or any other person*) to Bank in order to secure the payment and performance of Borrower's obligations under the Merrill Note and the other Merrill Loan Documents shall also secure the payment and performance of all of Borrower's obligations to Bank under: (i) the 74th Street Note and the other 74th Street Loan Documents; and (ii) the Essex Note and the other Essex Loan Documents;

(b) all mortgages, security interest, liens, pledges and collateral given by Borrower (*or any other person*) to Bank in order to secure the payment and performance of Borrower's obligations under the 74th Street Note and the other 74th Street Loan Documents shall also secure the payment and performance of all of Borrower's obligations to Bank under: (i) the Merrill Note and the other Merrill Loan Documents; and (ii) the Essex Note and the other Essex Loan Documents; and

(c) all mortgages, security interest, liens, pledges and collateral given by Borrower (*or any other person*) to Bank in order to secure the payment and performance of Borrower's obligations under the Essex Note and the other Essex Loan Documents shall also secure the payment and performance of all of Borrower's obligations to Bank under: (i) the Merrill Note and the other Merrill Loan Documents; and (ii) the 74th Street Note and the other 74th Street Loan Documents.

2. Cross-Default. Notwithstanding anything to the contrary contained in the Essex Loan Documents, the 74th Street Loan Documents or the Merrill Loan Documents, Borrower and Bank hereby agrees as follows:

(a) a default or event of default (*after the expiration or any applicable notice, cure or grace period*) arising under or pursuant to the terms of the 74th Street Note or the other 74th Street Loan Documents shall hereby constitute a default (*with no additional notice, cure or grace period*) under: (i) the Merrill Note and the other Merrill Loan Documents; and (ii) the Essex Note and the other Essex Loan Documents;

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(b) a default or event of default (*after the expiration or any applicable notice, cure or grace period*) arising under or pursuant to the terms of the Merrill Note or the other Merrill Loan Documents shall hereby constitute a default (*with no additional notice, cure or grace period*) under: (i) the 74th Street Note and the other 74th Street Loan Documents; and (ii) the Essex Note and the other Essex Loan Documents; and

(c) a default or event of default (*after the expiration or any applicable notice, cure or grace period*) arising under or pursuant to the terms of the Essex Note or the other Essex Loan Documents shall hereby constitute a default (*with no additional notice, cure or grace period*) under: (i) the 74th Street Note and the other 74th Street Loan Documents; and (ii) the Merrill Note and the other Merrill Loan Documents.

3. Amendments. In order to effectuate the terms of this Agreement, Borrower and Bank hereby agree that: (a) the Essex Loan Documents shall hereby be amended to provide for the cross-collateralization and cross-defaulting as provided for above; (b) the 74th Street Loan Documents shall hereby be amended to provide for the cross-collateralization and cross-defaulting as provided for above and (c) the Merrill Loan Documents shall hereby be amended to provide for the cross-collateralization and cross-defaulting as provided for above. Borrower acknowledges that no separate amendment to each of the Essex Loan Documents, the 74th Street Loan Documents or the Merrill Loan Documents shall be necessary to effectuate the amendments provided for herein. Except as modified by or as otherwise expressly provided for in this Agreement, the Essex Loan Documents, the 74th Street Loan Documents and the Merrill Loan Documents shall remain in full force and effect, will remain binding and enforceable, against Borrower in accordance with their respective terms and shall be unaffected and in no way be released, mitigated, or discharged as a result of this Agreement. In the event of a conflict between the terms of the Essex Loan Documents, the 74th Street Loan Documents, the Merrill Loan Documents and the terms of this Agreement, the terms of this Agreement shall control.

4. Remedies. Borrower hereby acknowledges that, upon the occurrence of a default or event of default which triggers the cross-default provisions of Section 2, above, Bank may (*in its discretion*) exercise its rights under the Essex Loan Documents, the 74th Street Loan Documents, the Merrill Loan Documents or any of them. Bank shall be under no obligation to exercise its rights with respect to the any one of the properties to the inclusion or exclusion of any other property. Bank shall have no obligation to marshal any collateral which secures the loans from Borrower to Bank. Further, to the extent that Bank enforces the Essex Loan Documents, the 74th Street Loan Documents or the Merrill Loan Documents (but not all of them), the documents not being enforced shall continue to remain in full force and effect, notwithstanding any judgment, judgment of foreclosure, deed-in-lieu of foreclosure or other judicial or non-judicial process entered or agreed to with respect to the property being enforced against. Borrower hereby waives all of its defenses and counter-claims which it may have against Bank arising out of or related to Bank's election to proceed against all, some or none of the properties upon the occurrence of a default or event of default which triggers the cross-default provisions of Section 2, above. In all cases, all of Bank's rights and

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remedies under the Essex Loan Documents, the 74th Street Loan Documents and the Merrill Loan Documents are cumulative and non-exclusive.

5. Continuing Agreement/Amendment and Restatement. (a) This Agreement shall constitute a continuing agreement and Bank may, without affecting the validity of this Agreement, lend monies, extend credit and make other financial accommodations to or for the account of the Borrower on the faith hereof. Bank may, at any time and from time to time, enter into any such agreement or agreements with the Borrower as Bank may deem proper extending the time of payment or renewing or otherwise altering the terms of any of the Essex Loan Documents, 74th Street Loan Documents or the Merrill Loan Documents without in any way impairing or affecting this Agreement.

(b) This Agreement is being executed as in amendment of the Original Agreement and as a restatement of the terms and provisions of the cross-collateralization and cross-defaulting intended to be created hereby. Any conflict between the terms of this Agreement and the terms of the Original Agreement, this Agreement shall control.

6. Miscellaneous. This Agreement represents the entire agreement of the parties and supersedes all agreements (*written or otherwise*) between the parties with respect to the matters addressed herein. The recitals set forth above are an integral part of this Agreement and are incorporated herein. If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement. No modification or amendment to this Agreement shall be valid unless the same is in writing and signed by Borrower and Bank. This Agreement shall be construed and governed by the laws of the State of Illinois. If more than one person or entity is signing as Borrower, their obligations hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of the parties successors and assigns. The terms "Essex Loan Documents", "74th Street Loan Documents" and "Merrill Loan Documents" used herein shall also include all substitutions, renewals, replacements and amendments thereto. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The headings herein are for convenience only and shall in no manner be construed to affect the substantive nature of this Agreement. Borrower agrees to pay, upon Bank's demand therefor, any and all reasonable costs, fees and expenses (*including attorneys' fees, costs and expenses*) incurred in enforcing any of Bank's rights hereunder. Any notice required hereunder shall be sent to Borrower via hand delivery or registered or certified U.S. mail, return receipt requested, sent to the address listed below (*or any different address specified by Borrower in writing to Bank*) and shall be deemed served on the date hand delivered or two (2) days after mailing the notice if served by registered or certified mail. Notices to be served on Bank shall be served in the same manner at its address set forth below. Bank's failure to require strict performance by Borrower of any provision of this Agreement shall not waive, affect or diminish any right of Bank thereafter to demand strict compliance and performance therewith. **BORROWER AND BANK WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE ARISING OUT OF THIS AGREEMENT.**

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7. Trustee Exculpation. This Assignment is executed by Old Kent Bank, not personally, but solely as trustee in the exercise of the power and authority conferred upon and vested in it as trustee of the below referenced trusts. It is expressly understood and agreed that all of 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. It is further understood and agreed that the Trustee merely holds title to the properties described herein and has no agents, employees or control over the management of such properties and no knowledge of other factual matters except as represented to it by the beneficiaries of the trusts. 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 Assignment.

[signatures on next page]

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IN WITNESS WHEREOF, this Amended and Restated Cross-Collateralization and Cross-Default Agreement has been delivered as of the date first set forth above.

BORROWER:

*Fifth Third Bank, successor to
/ OLD KENT BANK, not individually, but as
trustee under a trust agreement dated June 22,
2000 known as Trust No. 16669*

Address:

3101 West 95th Street
Evergreen Park, Illinois 60805

By: *Robert J. Mayo*
Name: Robert J. Mayo
Title: Vice President & Trust Officer

*Fifth Third Bank, successor to
/ OLD KENT BANK, not individually, but as
trustee under a trust agreement dated July 20,
1999 known as Trust No. 16395*

Address:

3101 West 95th Street
Evergreen Park, Illinois 60805

By: *Robert J. Mayo*
Name: Robert J. Mayo
Title: Vice President & Trust Officer

Address:

5510 South Cornell
Unit C
Chicago, Illinois 60637

Carlton Knight
CARLTON KNIGHT

NAB BANK

Address:

222 West Cermak Road
Chicago, Illinois 60616

By: *DW*
Name: Douglas W. Dancer
Title: V.P. / Branch Mgr.

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert J. Mayo a Vice President & Trust Officer of **OLD KENT BANK**, not individually, but as trustee under a trust agreement dated June 22, 2000 known as Trust No. 16669 personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged before me (s)he signed and delivered the said instrument as a free and voluntary act, for the uses and purposes therein set forth

GIVEN under my hand and Notarial Seal, this 18th day of May, 2001.

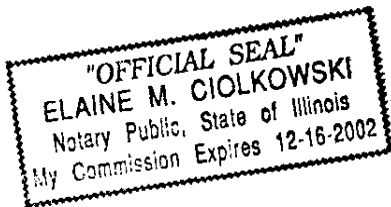


Elaine M. Ciolkowski
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert J. Mayo a Vice President & Trust Officer of **OLD KENT BANK**, not individually, but as trustee under a trust agreement dated July 20, 1999 known as Trust No. 16395 personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged before me (s)he signed and delivered the said instrument as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 18th day of May, 2001.



Elaine M. Ciolkowski
Notary Public

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **CARLTON KNIGHT** personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged before me that he signed and delivered the said instrument as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 18 day of May, 2001.



[Signature]
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DOUGLAS W DANCER, a VP & BRANCH MGR of **NAB BANK**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged before me he signed and delivered the said instrument as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 14TH day of May, 2001.

[Signature]
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION OF ESSEX PROPERTY

LOT 35 AND LOT 36 IN BLOCK 7 IN SOUTH SHORE PARK, A SUBDIVISION OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD RINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.I.N. 21-30-309-001-0000

COMMON ADDRESS: 7601-07 SOUTH ESSEX
2509-11 EAST 76TH STREET
CHICAGO, ILLINOIS 60649

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EXHIBIT B

LEGAL DESCRIPTION OF 74th STREET PROPERTY

LOT 27 (EXCEPT THE WEST 7 FEET THEREOF) ALL OF LOTS 28, 29 AND 30 (EXCEPT THE EAST 15 FEET THEREOF) IN DALEY AND MCBRIDE'S SUBDIVISION OF BLOCK 9 IN CLARK'S SUBDIVISION OF THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD RINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.I.N. 20-25-130-028-0000

COMMON ADDRESS: 1938-46 EAST 74TH STREET
CHICAGO, ILLINOIS 60649

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EXHIBIT C

LEGAL DESCRIPTION OF MERRILL PROPERTY

LOTS 51 AND 52 IN THE FIRST ADDITION TO BRYN MAWR HIGHLANDS, BEING A SUBDIVISION OF THE NORTH $\frac{3}{4}$ OF THE WEST $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD RINCIPAL MERIDIAN (EXCEPT THE WEST 500.5 FEET THEREOF AND EXCEPT BRYN MAWR HIGHLANDS SUBDIVISION AND EXCEPT EAST 67TH STREET AND EAST 69TH STREET HERETOFORE DEDICATED), IN COOK COUNTY, ILLINOIS

P.I.N. 20-24-402-017-0000

COMMON ADDRESS: 6750-56 SOUTH MERRILL
2116-20 EAST 68TH STREET
CHICAGO, ILLINOIS 60649

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