

# UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

ARONBERG GOLDGEHN  
330 North Wabash Ave. – Suite 1700  
Chicago, Illinois 60611  
Attention: Ned S. Robertson

Permanent Tax Index Number:

20-10-313-011-0000

Property Address:

363-369 E. 53<sup>rd</sup> Street and 5300-02 South King  
Drive, Chicago, Illinois



Doc#: 1310744070 Fee: \$56.00  
RHSP Fee: \$10.00 Affidavit Fee:  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 04/17/2013 04:16 PM Pg: 1 of 10

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## MODIFICATION OF LOAN DOCUMENTS

**THIS MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made this 21<sup>st</sup> day of March, 2013, but effective as of February 21, 2013 ("Effective Date") by and among **CHICAGO TITLE LAND TRUST COMPANY, NOT PERSONALLY BUT AS TRUSTEE U/T/A DATED APRIL 4, 2007 AND KNOWN AS TRUST NO. 8002348475** ("Borrower"), **ESSEX KING APARTMENTS LLC**, an Illinois limited liability company ("Essex"), **WAFEEK AIYASH** ("Wally") and **COLE TAYLOR BANK**, an Illinois state bank, its successors and assigns ("Lender"). Essex and Wally are sometimes referred to individually and collectively as "Guarantors".

## RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of One Million Three Hundred Sixty Thousand and 00/100 Dollars (\$1,360,000.00) as evidenced by a Promissory Note dated February 21, 2008, in the amount of the Loan made payable by Borrower to the order of Lender ("Note"). The outstanding principal balance of the Note as of the Effective Date is \$1,223,598.21.

B. The Note is secured by, among other things, (i) that certain Mortgage dated February 21, 2008 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on March 17, 2008, as Document No. 0807705097 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents dated February 21, 2008, from Borrower to Lender and recorded in the Recorder's Office on March 17, 2008, as Document No. 0807705098 ("Assignment of Leases"); (iii) that certain Collateral Assignment of Beneficial Interest dated February 21, 2008, from Essex to Lender ("Collateral ABI"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases,

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the Collateral ABI and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Commercial Guaranty dated February 21, 2008 from Guarantors to Lender (the "Guaranty").

D. Borrower desires to amend the Loan Documents in order to, among other things, extend the maturity date of the Note from February 21, 2013 to March 5, 2016 and Lender has agreed to do so, subject to the terms of this Agreement.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date.** The Maturity Date of the Note is extended to March 5, 2016. Any reference in the Note or any other Loan Document to the Maturity Date shall mean March 5, 2016.

2. **Amendments to the Note.** The Note is revised in the following respects:

(a) The Promise to Pay section is hereby deleted in its entirety and the following is inserted in its place:

"PROMISE TO PAY. Chicago Title Land Trust Company Trust Number 8002348475 promises to pay to Cole Taylor Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of \$1,223,598.21, together with interest at the rate set forth below on the unpaid principal balance until paid in full. The interest rate may change under the terms and conditions of the "INTEREST AFTER DEFAULT" section."

(b) The Payment section is hereby deleted in its entirety and the following is inserted in its place:

"PAYMENT. Borrower will pay this loan in monthly consecutive principal payments of \$4,223.00 each (based upon a 17 year amortization), plus all accrued and unpaid interest due as of each payment date, with the first payment being due on March 21, 2013, and subsequent payments due on the 21st day of each successive month, with a balloon payment of the outstanding principal balance, together with all accrued and unpaid interest and all other payments required under the Loan Documents, due on March 5, 2016."

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(c) The Payment Default section is hereby deleted in its entirety and the following is inserted in its place:

“Payment Default. Borrower fails to make any payment when due under this Note or any other promissory note executed by Borrower.”

(d) The following section is hereby inserted after the Payment section:

“VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an index which is Lender’s Prime Rate (“Index”). The Index is the rate Lender charges, or would charge, on 90-day unsecured loans to the most creditworthy corporate customers. This rate may or may not be the lowest rate available from Lender at any given time. Lender will advise Borrower of the current Index rate upon Borrower’s request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The interest to be applied to the unpaid principal balance of this Note will be at a rate of 1.00 percentage points over the Index. Interest is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. NOTICE: Under no circumstances will the interest rate on this Note be less than 5.00% per annum or more than the maximum rate allowed by applicable law.”

(e) The Collateral Section is hereby deleted in its entirety and the following is inserted in its place:

“COLLATERAL. Borrower acknowledges that this Note is secured by that certain Mortgage and Assignment of Rents dated February 21, 2008 relating to the property commonly known as 363-369 East 53<sup>rd</sup> Street/5300-5302 S. King Drive, Chicago, Illinois and that certain Mortgage and Assignment of Rents dated February 21, 2008 relating to the property commonly known as 364-370 East 53<sup>rd</sup> Street/5248-5258 S. King Drive, Chicago, Illinois.”

(f) A new section is hereby added to the end of the Note to read as follows:

“LOCK BOX. At Lender’s request, Borrower shall direct all tenants to remit all payments to a Lock Box established pursuant to Lender’s customary lock box documentation. All such proceeds shall then be transferred on a daily basis to Borrower’s operating account at Lender. Borrower shall execute any agreements or instruments necessary, in Lender’s discretion, to effect the foregoing.”

3. **Amendment to the Mortgage.** The CROSS-COLLATERALIZATION Section of the Mortgage is deleted in its entirety and the following is inserted in its place:

“CROSS-COLATERALIZATION. In addition to the Note, this Mortgage secures all obligations, debts and liabilities, plus interest thereon, of Borrower to

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Lender, or any one or more of them, including but not limited to that certain Promissory Note from Borrower to Lender dated February 21, 2008 in the original principal amount of \$1,300,000.00, as it may be amended, restated or replaced from time to time, as well as all claims by Lender against any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Borrower may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Borrower presently assigns to Lender all of Borrower's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Borrower grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents."

4. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantors or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the state of Illinois and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly

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authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

5. **Reaffirmation of Guaranty.** The Guarantors ratify and affirm the Guaranty and agree that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantors in the Guaranty are, as of the date hereof, true and correct and neither Guarantors know of any default thereunder. The Guaranty continues to be the valid and binding obligation of the Guarantors, enforceable in accordance with its terms and neither of the Guarantors has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

6. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay Lender all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

7. **Land Trustee Exculpation.** This Agreement is executed by the undersigned Borrower, not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (but the undersigned represents and covenants that it possesses full power and authority, and that it has been properly directed, to execute this Agreement). No personal liability shall be asserted or be enforceable against Trustee because or in respect of this Agreement or the making, issue or transfer hereof, all such liability, if any, being expressly waived by each taker and holder hereof; provided, however, that nothing contained herein shall limit, modify or reduce any liability of Borrower or any other party under any document or instrument other than this Agreement to pay any amounts due hereunder. The sole remedies of the holder hereof shall be as provided in the Mortgage, the Loan Documents and any other documents given to secure the indebtedness evidenced by the Note, in accordance with the terms and provisions contained therein, and/or by action to enforce the personal liability of the guarantors, if any, for the payment or for the performance of any other agreements or undertakings made in connection with the indebtedness evidenced by this Agreement.

8. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantors and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantors and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have



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read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or a Guarantors nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantors and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantors and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. 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.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

SIGNATURE PAGE FOLLOWS

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

**LENDER:**

**COLE TAYLOR BANK**

By: [Signature]  
Name: DOAN GARRET  
Title: SVP

**BORROWER:**

**CHICAGO TITLE LAND TRUST  
COMPANY, AS TRUSTEE  
AFORESAID**

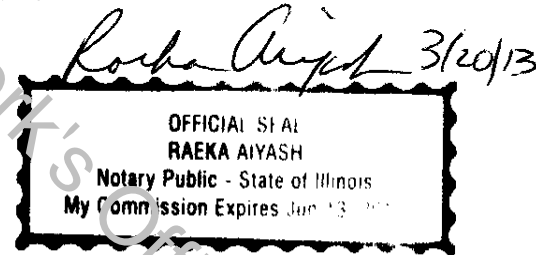
By: [Signature]  
Name: Mario V. Gotanco  
Title: TRUST OFFICER

**GUARANTORS:**

[Signature]  
Wafeek Aiyash

**ESSEX KING APARTMENTS LLC**

By: [Signature]  
Name: Wafika Khalil  
Title: Manager



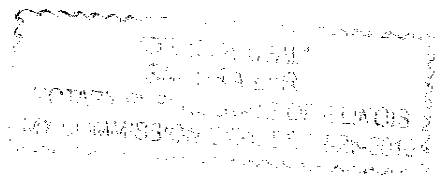
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STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Adam Garrett, BVA of Cole Taylor Bank, is 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 that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28<sup>th</sup> day of March, 2013.

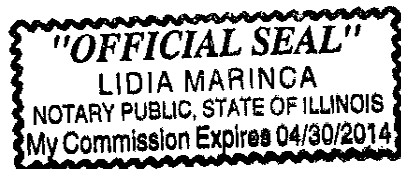
[Signature]  
Notary Public



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 Mario V. Gotanco, Trust Officer of Chicago Title Land Trust Company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, as Trustee appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28<sup>th</sup> day of March, 2013.



[Signature]  
Notary Public



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STATE OF ILLINOIS )  
COUNTY OF DePue ) .SS

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Wafika Khalil, the Manager of Essex King Apartments LLC, an Illinois limited liability company, is 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 that he/she signed and delivered said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of March, 2013.

Raeka Aiyash  
Notary Public

STATE OF ILLINOIS )  
COUNTY OF DePue ) .SS



The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Wafeek Aiyash is 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 that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of March, 2013.

Raeka Aiyash  
Notary Public



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## EXHIBIT A

### THE PROPERTY

LOTS 17 AND 18 IN SUBDIVISION OF BLOCK 6 (EXCEPT THE SOUTH 300 FEET OF THE EAST 180 FEET) OF JENNINGS AND MOFFET'S SUBDIVISION OF THE SOUTH 60 ACRES OF THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office