

UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY AND UPON
RECORDING TO BE RETURNED TO:
THOMAS P. DUFFY, ESQ.
Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Chicago, Illinois 60606



Doc#: 0634618101 Fee: \$94.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/12/2006 04:07 PM Pg: 1 of 36

Property of Cook County Clerk's Office

SECOND AMENDMENT TO CONSTRUCTION LOAN AGREEMENT, CONSTRUCTION MORTGAGE AND LOAN DOCUMENTS

GNT # 05-0093

THIS AMENDMENT is dated as of November 27, 2006, and is by and among, CHICAGO TITLE LAND TRUST COMPANY, as Successor Trustee to COLE TAYLOR BANK, not personally, but solely as Trustee under a Trust Agreement dated September 9, 2004, and known as Trust No. 01-341196 (hereinafter referred to as "Trustee") and ZLATKO PEHAR AND STEFAN FILIPOV (hereinafter referred to as "Beneficiary") (Trustee and Beneficiary are hereinafter individually and collectively referred to as the "Borrower"); and COLE TAYLOR BANK, an Illinois banking corporation ("Lender").

RECITALS:

A. Pursuant to a Construction Loan Agreement ("Loan Agreement") dated as of February 1, 2005, by and among Borrower and Lender, Borrower requested a loan from Lender in the sum of Four Million and No/100 Dollars (\$4,000,000.00) for the purpose of refinancing the existing indebtedness which encumbered the Mortgaged Premises and construction of the Project on the Mortgaged Premises in accordance with the Plans and Specifications.

B. The Loan is evidenced by a Note (the "Original Note") dated as of February 1, 2005, made by Borrower payable to the order of Lender in the original principal amount of Four Million and No/100 Dollars (\$4,000,000.00).

C. The Loan as evidenced by the Original Note is secured by (i) a Construction Mortgage (the "Mortgage") dated as of February 1, 2005, executed by

GT
36
X
C

UNOFFICIAL COPY

Trustee in favor of Lender, encumbering the property legally described on Exhibit A attached hereto and made a part hereof (the "Mortgaged Premises"), which was recorded with the Recorder of Deeds for Cook County on March 2, 2005, as Document No. 0506145145; and (ii) a Collateral Assignment of Rents and Leases (the "Assignment of Rents") dated as February 1, 2005, executed by Trustee in favor of Lender encumbering the Mortgaged Premises, which was recorded with the Recorder of Deeds for Cook County on March 2, 2005, as Document No. 0506145146.

D. The Loan is also secured by (i) a Security Agreement and Collateral Assignment of Beneficial Interest under Land Trust dated as of February 1, 2005, executed by Beneficiary, which collaterally assigns 100% of the beneficial interest in and to Borrower to Lender; (ii) a Security Agreement dated as of February 1, 2005, executed by Borrower, as Debtor in favor of Lender, as Secured Party; (iii) a Environmental Indemnity Agreement dated as of February 1, 2005 executed by Beneficiary in favor of Lender; (iv) a Collateral Assignment of Contract and Contractor's Permits dated as of February 1, 2005 executed by Borrower in favor of Lender; (v) UCC Financing Statements executed by Borrower; (vi) a Collateral Assignment of Real Property Purchase Agreements dated as of February 1, 2005 executed by Borrower in favor of Lender; and (vii) such other collateral documents delivered in connection with the Loan.

E. Pursuant to that certain Amendment to Construction Loan Agreement, Construction Mortgage and Loan Documents (the "Amendment") by and among Borrower and Lender dated as of February 10, 2006, which was recorded with the Recorder of Deeds for Cook County, Illinois on February 22, 2006, as Document No. 0605334046, Borrower and Lender amended the Loan Documents to provide for, among other things, an increase in the Loan from Four Million and No/100 Dollars (\$4,000,000.00) to Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00), which \$500,000.00 increase was available to Borrower to pay additional construction costs in connection with construction of the Project on the Mortgaged Premises pursuant to the terms of the Loan Agreement and Loan Documents, as amended by the Amendment.

F. In connection with the Amendment, Borrower executed that certain Amended and Restated Note (the "Existing Note") dated as of February 10, 2006, in the original principal amount of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00), which superseded and replaced the Original Note.

The documents set forth in Recitals A - F above, together with any amendments, modifications, extensions or renewals thereof, are hereinafter individually and collectively referred to as the "Loan Documents".

G. As of the date hereof, the outstanding principal balance of the Loan as evidenced by the Existing Note is \$4,500,000.00.

H. Borrower and Lender desire to further amend the Loan Documents to provide for, among other things, (i) an increase in the amount of the Loan from Four

UNOFFICIAL COPY

Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) to Five Million and No/100 Dollars (\$5,000,000.00), which \$500,000.00 increase shall be available to Borrower to pay additional construction costs in connection with construction of the Project on the Mortgaged Premises, (ii) to convert the Loan Rate commencing November 27, 2006, from a variable rate to a fixed rate of seven and one-quarter percent (7-1/4%) per annum, and (iii) to extend the stated Maturity Date of the Loan to December 31, 2007 and other certain terms and provisions as hereinafter provided.

I. In connection with this Amendment, Borrower is required to deposit into a collateral account to be established and maintained with Lender during the term of the Loan, the amount of One Hundred Eighty Thousand and No/100 Dollars (\$180,000.00), which shall be used as a reserve to pay for interest which shall accrue on the Loan during the term of the Loan as hereinafter provided.

J. Borrower and Lender deem it to be in their best interests to modify the Loan Documents as hereinafter provided.

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree acknowledge and agree as follows:

1. All capitalized terms used herein shall have the same meaning as such terms are used in the Loan Documents.
2. The Recitals are hereby incorporated into and shall become part of this Amendment.
3. Concurrent with the execution and delivery of this Amendment, Borrower shall execute and deliver to Lender the following documents:

A. Borrower shall execute and deliver to Lender an Amended and Restated Note (the "Amended and Restated Note") dated as of the date hereof in the original principal amount of Five Million and No/100 Dollars (\$5,000,000.00) payable to the order of Lender, in the form attached hereto as Exhibit B, the terms of which are hereby incorporated by reference herein. The Amended and Restated Note shall evidence the Loan, as hereby modified, and the indebtedness, liabilities and obligations of Borrower in favor of Lender under the Existing Note, which indebtedness, liabilities and obligations Borrower hereby confirms, reaffirms and restates. The Amended and Restated Note also includes a \$500,000.00 additional advance and increase in the amount of the Loan, which \$500,000.00 increase shall be available to Borrower to pay for additional construction costs in connection with construction of the Project pursuant to the terms of the Loan Documents, as amended by this Amendment. The Amended and Restated Note shall supersede, renew and replace the Existing Note and shall be secured by and entitled to all of the benefits of the Loan Documents.

B. Beneficiary shall execute and deliver to Lender a Reaffirmation of Environmental Indemnity Agreement dated as of the date hereof

UNOFFICIAL COPY

in the form attached hereto as Exhibit C, the terms of which are hereby incorporated by reference herein.

C. Borrower shall concurrently herewith deliver to Lender, in form and substance satisfactory to Lender, the items which are referred to on the Document Checklist attached hereto as Exhibit D as a condition to the modification of the Loan as provided above.

4. Section 1.1Q of the Mortgage is hereby deleted in its entirety and the following is inserted in lieu thereof:

1.1Q. "Note" means an Amended and Restated Note, together with any and all amendments, renewals, extensions, modifications or replacements of such Note, which Mortgagor and Beneficiary have executed and delivered to Mortgagee, dated as of November 27, 2006, in the principal amount of \$5,000,000.00, wherein Mortgagor and Beneficiary jointly and severally promise to pay on or before December 31, 2007 (the "Maturity Date"), to the order of Mortgagee, Five Million and No/100 Dollars (\$5,000,000.00) plus interest as provided in the Note. Interest only on the principal balance of the Note shall be computed from the date of initial funding under the Note at the Loan Rate and shall be paid monthly in arrears commencing on the first day of January, 2006, and thereafter on the first day of each succeeding month through and including the Maturity Date. A final balloon payment of all of the unpaid principal balance of the Note and unpaid interest accrued thereon plus unpaid loan fees shall become due, if not sooner paid or due by acceleration or otherwise, on the Maturity Date. Notwithstanding the foregoing, after maturity of the Note or the occurrence and continuation of an Event of Default, the interest rate shall be increased to the Default Rate until the Note is fully paid. THIS IS A BALLOON MORTGAGE.

5. All references in the Loan Documents to a non-revolving Loan in the amount of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) are hereby deleted in their entirety and a non-revolving Loan in the amount of Five Million and No/100 Dollars (\$5,000,000.00) is inserted hereby inserted in lieu thereof.

6. All references in the Loan Documents to the Loan Documents being security for the Indebtedness in the amount of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) as evidenced by the Existing Note are hereby amended to refer to the Indebtedness which is or shall be evidenced by the Amended and Restated Note in the amount of Five Million and No/100 Dollars (\$5,000,000.00).

7. Notwithstanding anything to the contrary contained in any of the Loan Documents, the term "Principal Sum" as defined in the Loan Agreement and the Mortgage and which is and shall be secured by the Loan Documents is hereby amended to refer to the following definition in lieu thereof:

UNOFFICIAL COPY

"Principal Sum" shall mean Five Million and No/100 Dollars (\$5,000,000.00).

8. The "Loan Rate" as defined in the Loan Documents is hereby converted to a fixed rate of seven and one-quarter percent (7-1/4%) per annum.

9. All references in the Loan Documents to the Existing Note are hereby deleted and in such references the Amended and Restated Note is hereby inserted in lieu thereof, which Amended and Restated Note now evidences the Loan and is and shall be secured by the Loan Documents.

10. Notwithstanding anything to the contrary contained in any of the Loan Documents, the stated Maturity Date of the Loan is hereby extended from February 15, 2007 to December 31, 2007. All references in the Loan Documents to the stated Maturity Date of the Loan of "February 15, 2007" are hereby deleted in their entirety and the stated Maturity Date of the Loan of "December 31, 2007" shall be inserted in the Loan Documents in lieu thereof.

11. Concurrent with the execution and delivery of this Amendment and as a condition to Lender's amendment of the Loan and Loan Documents pursuant to this Amendment, Borrower shall establish with Lender a non-interest bearing demand deposit account (the "Collateral Account") in which Borrower shall deposit the amount of One Hundred Eighty Thousand and No/100 Dollars (\$180,000.00), which shall be used as a reserve to pay interest which shall accrue on the Loan during the term of the Loan ("Interest Reserve"). After such Interest Reserve has been exhausted, any interest which accrues on the Loan shall be payable by Borrower from its own sources of funds other than Loan Proceeds. Borrower hereby authorizes Lender to withdraw and/or transfer funds directly from the Interest Reserve and apply the same to interest payments when the same are due and payable under the Amended and Restated Note. The Collateral Account shall be maintained by Borrower during the term of the Loan and shall be collaterally assigned by Borrower to Lender as additional security for Borrower's obligations to Lender under the Loan concurrent with the execution and delivery of this Amendment, which Collateral Assignment shall be in the form attached hereto as Exhibit E.

12. In addition to all other payments due from Borrower to Lender under the Loan Documents, in consideration for Lender amending the Loan pursuant to this Amendment, Lender has earned an additional loan service fee of Two Thousand Seven Hundred Fifty and No/100 Dollars (\$2,750.00) ("Additional Loan Service Fee"), which has been fully earned by Lender and shall be payable by Borrower to Lender concurrent with the execution and delivery of this Amendment.

13. Section 41.1 of the Mortgage and Section 27.1 of the Loan Agreement are hereby amended by add the following:

"The Partial Release Amount shall be applied by Mortgagee/Lender first to any outstanding fees or costs due Mortgagee/Lender by Mortgagor/Borrower under

SP
ZP
UTLTC
ep

UNOFFICIAL COPY

the Loan Documents, and then to the unpaid principal balance of the Loan. Mortgagee shall have the right and power to increase the Partial Release Amount for a Condominium Unit if in Mortgagee's/Lender's judgment the aggregate Partial Release Amount for the remaining unsold Condominium Units in the Project will not result in the repayment in full of the sum of the Loan (whether available or actually disbursed) not later than the closing of eighty percent (80%) of the Condominium Units in the Project."

14. Borrower represents and warrants that no Event of Default has occurred under any of the Loan Documents, as hereby amended, and Borrower hereby reaffirms all of their representations, covenants, agreements and obligations under each of the Loan Documents, as amended, which secure Borrower's obligations under the Loan.

15. In all other respects, the terms and provisions of the Loan Documents, as hereby amended, shall remain in full force and effect.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

SK
Z.P.
UTLTC
UP

UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower and Lender have executed this Amendment as of the day and year first above written.

BORROWER:

ATTACHED EXONERATION RIDER IS INCORPORATED HEREIN
CHICAGO TITLE LAND TRUST COMPANY,
as Successor Trustee to Cole Taylor Bank, as
Trustee under a Trust Agreement dated
September 9, 2004, and known as Trust No.
01-041196 AND NOT PERSONALLY

BY: _____

Its ~~Trust Officer~~

ZLATKO PEHAR, Individually

STEFAN FILIPOV, Individually

LENDER:

COLE TAYLOR BANK, an Illinois banking
corporation

BY: _____

Its

Property of Cook County Clerk's Office

UNOFFICIAL COPY

TRUSTEE'S EXONERATION RIDER ATTACHED TO A MORTGAGE DATED NOVEMBER 27, 2006, UNDER CHICAGO TITLE LAND TRUST COMPANY, AS NOT PERSONALLY BUT AS SUCCESSOR TRUSTEE TO COLE TAYLOR BANK UNDER TRUST AGREEMENT DATED SEPTEMBER 9, 2004 AND KNOWN AS TRUST NUMBER 01-041196 PAYABLE TO COLE TAYLOR BANK.

THIS MORTGAGE IS EXECUTED BY THE UNDERSIGNED TRUSTEE AND NOT PERSONALLY, BUT AS TRUSTEE AS AFORESAID IN THE EXERCISE OF THE POWER AND AUTHORITY CONFERRED UPON AND VESTED IN IT AS SUCH TRUSTEE AND SAID TRUSTEE HEREBY WARRANTS THAT IT POSSESSES FULL POWER AND AUTHORITY TO EXECUTE THIS INSTRUMENT AND IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT NOTHING HEREIN OR IN SAID NOTE CONTAINED SHALL BE CONSTRUED AS CREATING ANY LIABILITY ON SAID MORTGAGOR OR ON SAID (CORPORATION) PERSONALLY TO PAY THE NOTE OR ANY INTEREST THAT MAY ACCRUE THEREON, OR ANY INDEBTEDNESS ACCRUING HEREUNDER, OR TO PERFORM ANY COVENANT EITHER EXPRESS OR IMPLIED HEREIN CONTAINED (IT BEING UNDERSTOOD AND AGREED THAT EACH OF THE PROVISIONS HEREOF SHALL CONSTITUTE A CONDITION AND NOT A COVENANT OR AGREEMENT, REGARDLESS WHETHER THE SAME MAY BE COINED IN LANGUAGE OF A PROMISE OR COVENANT OR AGREEMENT), ALL SUCH LIABILITY, IF ANY EXPRESSLY WAIVED BY THE MORTGAGEE AND BY EVERY PERSON NOW OR HEREAFTER CLAIMING ANY RIGHT OR SECURITY HEREUNDER, AND SO FAR AS THE MORTGAGOR AND ITS SUCCESSOR AND SAID (CORPORATION) PERSONALLY ARE CONCERNED, THE LEGAL HOLDER OR HOLDERS OF THE NOTE AND THE OWNER OR OWNERS OF ANY INDEBTEDNESS ACCRUING HEREUNDER SHALL LOOK SOLELY TO ANY ONE OR MORE OF: (1) THE PREMISES HEREBY CONVEYED AND THE RENTS, ISSUES AND PROFITS THEREOF, FOR THE PAYMENT THEREOF, BY THE ENFORCEMENT OF THE LIEN HEREBY CREATED, IN THE MANNER HEREIN AND IN THE NOTE PROVIDED; (2) ANY OTHER SECURITY GIVEN TO SECURE THE INDEBTEDNESS; OR (3) THE PERSONAL LIABILITY OF THE GUARANTOR, CO-SIGNOR, SURETY OR ENDORSER, IF ANY.

CHICAGO TITLE LAND TRUST COMPANY, AS SUCCESSOR TRUSTEE AS AFORESAID AND NOT PERSONALLY.

BY: 

Mario V. Gotanco, Trust Officer

UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF COOK

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Mario V. Gotanco and _____ personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and _____ of Chicago Title Land Trust Company, as Successor Trustee to Cole Taylor Bank, not personally, but solely as Trustee under a Trust Agreement dated September 9, 2004, and known as Trust No. 01-041196 appeared before me this day in person and acknowledged that ^{he} they signed and delivered the said instrument as ~~the~~ their own free and voluntary act and as the free and voluntary act of said corporation, as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 5th day of December 2006.

[Handwritten Signature]

 Notary Public

My Commission Expires: 10-17-08



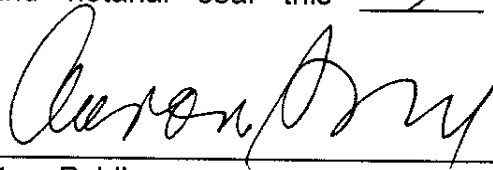
UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF COOK

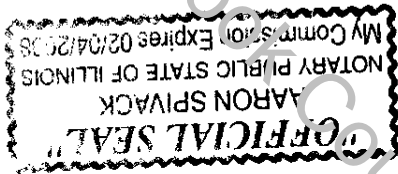
I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that ZLATKO PEHAR AND STEFAN FILIPOV, personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 5 day of December, 2005



Notary Public

My Commission Expires:



UNOFFICIAL COPY

STATE OF ILLINOIS

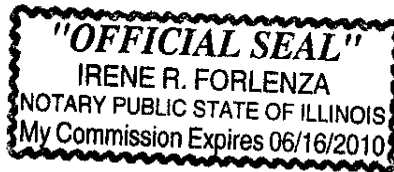
COUNTY OF COOK

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that DAVID LIVINGSTON personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President of Cole Taylor Bank 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 said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 7th day of December, 2004.

Irene R. Forlenza
Notary Public

My Commission Expires:



UNOFFICIAL COPY

EXHIBIT "A" LEGAL DESCRIPTION

LOTS 1, 2, 3 AND THE EAST 10 FEET OF LOT 4 IN THE SUBDIVISION OF THE SOUTH ½ OF LOT 30 IN JACKSON'S SUBDIVISION OF THE SOUTHEAST ¼ OF SECTION 11, AND THE SOUTHWEST ¼ OF SECTION 12, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN NO. 13-12-315-013

3001-09 W. GUNNISON AVENUE
CHICAGO, ILLINOIS

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

AMENDED AND RESTATED NOTE

\$5,000,000.00

State of Illinois
November 27, 2006

1.1 Description of Parties. This Note is made by CHICAGO TITLE LAND TRUST COMPANY, as Successor Trustee to Cole Taylor Bank, not personally, but solely as Trustee under a Trust Agreement dated September 9, 2004, and known as Trust No. 01-041196 (hereinafter referred to as "Trustee") and ZLATKO PEHAR AND STEFAN FILIPOV (hereinafter referred to as "Beneficiary") (Trustee and Beneficiary are hereinafter individually and collectively referred to as the "Borrower") and is payable to the order of COLE TAYLOR BANK, an Illinois banking corporation (hereinafter referred to as the "Lender") evidencing a loan (hereinafter referred to as the "Loan") from Lender to Borrower. This Note supersedes and replaces that certain Note dated as of February 10, 2006 (the "Existing Note"), executed by Borrower payable to the order of Lender in the principal amount of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00). This Note evidences a renewal of the indebtedness due Lender under the Existing Note, which indebtedness is hereby confirmed, reaffirmed and restated by Borrower. This Note also includes a \$500,000.00 additional advance and increase in the amount of the Loan as described in the Second Amendment (hereafter defined).

1.2 Payment.

FOR VALUE RECEIVED, Borrower hereby jointly and severally promise to pay on or before December 31, 2007 (the "Maturity Date"), in lawful money of the United States of America to the order of Lender the principal amount of Five Million and No/100 Dollars (\$5,000,000.00) ("Principal Sum"), together with interest on the principal balance of this Note remaining from time to time unpaid (the "Principal Balance") as follows:

Interest only on the Principal Balance of this Note shall be computed from the date of the initial disbursement of the proceeds of this Note at the Loan Rate (hereinafter defined) and shall be paid monthly in arrears commencing on the first day of January, 2007, and thereafter on the first day of each succeeding month through and including the Maturity Date. A final balloon payment of all of the Principal Balance hereunder and unpaid interest accrued thereon shall become due, if not sooner paid or due by acceleration or otherwise, on the Maturity Date. Notwithstanding the foregoing, after maturity of this Note or upon the occurrence and continuation of an Event of Default (hereinafter defined), the interest rate on the Principal Balance of this Note shall be increased to the Default Rate (hereinafter defined) until this Note is fully paid.

UNOFFICIAL COPY

The time is hereby extended for the payment of any monthly payment or for performance of any act or for the exercise of any right if the due date thereof falls on a Saturday, Sunday or any other day which is not a business day of Lender. Such payment shall be made or act performed or right exercised on the next succeeding business day of Lender with the same force and effect as if done on the nominal dates provided in this Note.

1.3 Interest.

(a) Prime Rate Defined. The "Prime Rate" as used herein shall mean that rate determined from time to time by Lender as its Prime Rate and, in determining interest payable hereon, interest shall be adjusted from time to time as and on the date change is effected in the Prime Rate. The Prime Rate does not purport to be the most favorable rate offered by Lender to its borrowers. The written statement or notice from Lender as to what the Prime Rate was on any given date shall be conclusive and in the event that Lender should cease to determine a Prime Rate, the Prime Rate announced by any other Chicago bank selected by Lender shall be an acceptable substitute therefore. Any change in the Loan Rate due to a change in the Prime Rate shall take effect on the date of such change in the Prime Rate.

(b) Default Rate Defined. The "Default Rate" as used herein shall mean the Prime Rate plus five percent (5%) per annum.

(c) Loan Rate Defined. The "Loan Rate" as used herein shall mean seven and one-quarter percent (7.25%) per annum.

(d) Interest Rate Computation. All interest calculated hereunder shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30) day months and calculated for the actual number of days elapsed.

(e) Application of Payments. All payments made hereunder shall be applied first to the payment of accrued interest and the remainder, if any, shall be applied to the Principal Balance.

(f) Late Charge. In the event any payment due under this Note is not paid on or before ten (10) days after the date such payment is due, Borrower shall pay Lender a "late charge" of five cents (\$.05) for each dollar so overdue or Twenty-Five and No/100 Dollars (\$25.00), whichever is greater. The late charge shall be due and payable with the next payment due hereunder.

2.1 Description of Security. The payment of this Note is secured by:

(a) Construction Loan Agreement (the "Loan Agreement") dated as of February 1, 2005, by and among Borrower and Lender, as amended by an Amendment to Construction Loan Agreement, Construction Mortgage and Loan Documents (the "First Amendment") dated as of February 10, 2006, by and among Borrower and Lender and as further amended by a Second Amendment to Construction Loan Agreement, Construction Mortgage and Loan Documents (the "Second Amendment") dated as of

UNOFFICIAL COPY

November 27, 2006, by and among Borrower and Lender. The First Amendment and Second Amendment are hereinafter individually and collectively referred to as the "Amendments".

(b) Construction Mortgage dated as of February 1, 2005, executed by Trustee, as Mortgagor, in favor of Lender, as Mortgagee, encumbering the property legally described therein (the "Mortgaged Premises"), as amended by the Amendments;

(c) Collateral Assignment of Rents and Leases dated as of February 1, 2005, executed by Trustee, as Assignor, in favor of Lender, as Assignee, encumbering the Mortgaged Premises, as amended by the Amendments;

(d) Security Agreement dated as of February 1, 2005, executed by Borrower, as Debtor in favor of Lender, as Secured Party, as amended by the Amendments;

(e) Security Agreement and Collateral Assignment of Beneficial Interest in Land Trust dated as of February 1, 2005, executed by Beneficiary in favor of Lender which collaterally assigns 100% of the beneficial interest in Trustee to Lender, as amended by the Amendments;

(f) Environmental Indemnity Agreement dated as of February 1, 2005, executed by Beneficiary in favor of Lender, as reaffirmed by a Reaffirmation of Environmental Indemnity Agreement dated as of the date hereby executed by Beneficiary to and for the benefit of Lenders;

(g) Collateral Assignment of Construction Contracts and Permits dated as of February 1, 2005, executed by Borrower in favor of Lender, as amended by the Amendments;

(h) UCC Financing Statements, as amended by the Amendments; and

(i) Collateral Assignment of Real Property Purchase Agreements dated as of February 1, 2005, executed by Borrower in favor of Lender, as amended by the Amendments;

and other collateral documents delivered in connection with this Note, together with any amendments, modifications, renewals and replacements thereof and any and all other instruments now or hereinafter given to Lender (the "Loan Documents").

2.2 Prepayment. The Principal Balance and any accrued interest may be prepaid in its entirety or partially prepaid at any time without a prepayment penalty.

If any funds are received and applied on account of this Note by the Lender pursuant to its rights under the Loan Documents, it shall be applied pursuant to Paragraph 1.3(e) above. The payments under Paragraph 1.2 above shall continue on the Principal Balance until said Principal Balance is fully retired.

UNOFFICIAL COPY

2.3 Place of Payment. The payments of all amounts due under the Loan Documents shall be made at the office of Lender at 5501 West 79th Street, Burbank, Illinois 60459 or such other place as Lender may from time to time designate in writing.

3.1 Events of Default. If the occurrence of any one or more of the following events ("Events of Default") shall occur:

(a) failure to make payment on or before the date any payment of principal or interest is due hereunder;

(b) failure to perform or observe, within thirty (30) days after written notice from Lender to Borrower, any other covenant, promise or agreement contained herein; other than those described in subsections (a), (c), (d) and (e) of this Section 3.1;

(c) the occurrence of an "Event of Default" (as defined in the other Loan Documents) under any of the other Loan Documents, the terms of which are hereby incorporated by reference herein;

(d) failure to make payment on or before the date when any payment of any indebtedness or obligation is due or owing from Borrower or any guarantor of the Loan in favor of Lender;

(e) the occurrence of a Prohibited Transfer, as defined in the Mortgage, the terms of which are hereby incorporated by reference herein;

then, at any time thereafter, at the sole option of Lender, without further notice to Borrower, the Maturity Date shall be accelerated and the Principal Balance and all accrued interest thereon together with any other sums due under the Loan Documents shall become immediately due and payable without presentment, demand, notice or protest of any kind, all of which are expressly waived by the Borrower.

3.2 Nature of Remedies. Lender's remedies under this Note and the Loan Documents, shall be cumulative and concurrent and may be pursued singly, successively, or together against Borrower and any guarantor of the Loan, the Mortgaged Premises or any portion or combination thereof, and Lender may resort to every other right or remedy available at law or in equity without first exhausting the rights and remedies contained herein, all in Lender's sole discretion. Failure of Lender, for any period of time or on more than one occasion, to exercise its option to accelerate the maturity of this Note, or to give any notice required as a condition precedent to the occurrence of an Event of Default, shall not constitute a waiver of the right to exercise such option or give such notice at any time during the continued existence of the event or events giving rise to the Lender's ability to exercise such option or give such notice. Lender shall not by any other omission or act be deemed to waive any of its rights or remedies hereunder unless such waiver be in writing and signed by Lender, and then only to the extent specifically set forth therein. A waiver in connection with one event shall not be construed as continuing or as a bar to or waiver of any right or remedy in connection with a subsequent event. Lender, may without demand or notice, appropriate and apply toward any indebtedness or obligation due Lender from Borrower

UNOFFICIAL COPY

or any guarantor of the Loan any balances, credits, deposits, accounts, money or other property of Borrower or any guarantor of the Loan in the possession, custody or control of Lender.

3.3 Collection. Borrower promises and agrees to pay all costs of collection (including reasonable attorneys' fees) incurred or paid by Lender in enforcing this Note upon the occurrence of any Event of Default, whether or not suit is actually filed. All such costs, expenses and fees shall become immediately due and payable and shall bear interest at the Default Rate when paid or incurred by Lender.

3.4 Waivers, Consents, Etc. Borrower (a) waives and renounces any and all redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced by this Note or by any extension or renewal hereof; (b) waives presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (c) waives all notices in connection with the delivery and acceptance hereof; (d) waives any and all lack of diligence and delays in the enforcement of the payment hereof; (e) consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and (f) consents to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such obligors or security shall not affect the liability of Borrower or any guarantor for the payment hereof.

3.5 Extensions. Except as herein provided, Borrower agrees that the time of payment of the Principal Balance or any accrued interest thereon or any part thereof may be extended from time to time without modifying or releasing the Mortgage or other Loan Documents or the liability of Borrower, any guarantor of the Loan or any other such parties, the right of recourse against Borrower, any guarantor of the Loan and such parties being hereby reserved by Lender.

3.6 Governing Law/Venue. This Note shall be governed by and construed in accordance with the laws of the State of Illinois. Venue for all disputes and claims may, at the sole election of Lender, be in the Circuit Court of Cook County, Illinois.

3.7 Waiver of Trial by Jury. THE UNDERSIGNED WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (I) UNDER THIS NOTE OR UNDER ANY DOCUMENT SECURING THIS NOTE OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT WHICH MAY BE DELIVERED IN THE FUTURE IN CONNECTION HEREWITH, OR (II) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS NOTE, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

UNOFFICIAL COPY

3.8 Names. As used herein, the term "Lender" shall also mean the subsequent holder or holders of this Note from time to time. Regardless of their form, all words shall be deemed singular or plural and shall have the gender as required by the text. If there is more than one Borrower of this Note, the liability of the undersigned shall be joint and several.

3.9 Benefit of Lender. This Note shall inure to the benefit of the Lender and its successors and assigns and shall be binding upon Borrower and its successors and assigns.

3.10 Time of Essence. Time is of the essence of this Note.

3.11 Compliance With Applicable Law. Borrower agrees that the obligations evidenced by this Note constitute an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Section 1601, et seq. and said obligations constitute a business loan which comes within the purview of Section 4(l)(c) of "An Act in Relation to the Rule of Interest and Lending of Money," approved May 24, 1879, as amended, 815 ILCS 205/4(l)(c).

3.12 Severability. If any provision of this Note is held to be void or unenforceable, such provision, at the option of Lender, shall be deemed omitted and this Note, with such provision omitted, shall remain in full force and effect.

3.13 Lawful Interest. It being the intention of Lender and Borrower to comply with the applicable laws with regard to the interest charged hereunder, it is agreed that, notwithstanding any provision to the contrary in this Note or other Loan Documents, no such provision, including without limitation any provision of this Note providing for the payment of interest or other charges, shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by this Note or by any extension or renewal hereof. If any Excess Interest is provided for, or is adjudicated to be provided for, in this Note or the other Loan Documents, then in such event:

- (a) the provisions of this paragraph shall govern and control;
- (b) Borrower shall not be obligated to pay any Excess Interest;
- (c) any Excess Interest that Lender may have received hereunder shall, at the option of Lender, be (i) applied as a credit against the Principal Balance due under this Note or accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the Borrower, or (iii) any combination of the foregoing;
- (d) the applicable interest rate or rates shall be automatically subject to reduction to the maximum lawful rate allowed to be contracted for in writing under the applicable governing usury laws, and this Note and the Loan Documents shall be

UNOFFICIAL COPY

deemed to have been, and shall be, reformed and modified to reflect such reduction in such interest rate or rates; and

(e) Borrower shall not have any action or remedy against Lender for any damages whatsoever or any defense to enforcement of the Note or arising out of the payment or collection of any Excess Interest.

3.14 Notices. Any notice, demand, request or other communication desired to be given or required pursuant to the terms hereof shall be in writing and shall be delivered by personal service or sent by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight express courier, freight prepaid, addressed as follows or to such other address as the parties hereto may designate in writing from time to time:

Trustee: Chicago Title Land Trust Company, as Successor Trustee to
Cole Taylor Bank, as Trustee under Trust No. 01-041196
181 West Madison Street, 17th Floor
Chicago, Illinois 60602
Attn: Land Trust Department

Copy to: Law Offices of Aaron Spivack
811 West Superior Street
Chicago, Illinois 60622
Attn: Aaron Spivack

Beneficiary: Zlatko Pehar
3325 West Ardmore
Chicago, Illinois 60659

Stefan Filipov
5631 North Rockwell
Chicago, Illinois 60659

Copy to: Law Offices of Aaron Spivack
811 West Superior Street
Chicago, Illinois 60622
Attn: Aaron Spivack

Lender: Cole Taylor Bank
5501 West 79th Street – 4th Floor
Burbank, Illinois 60459
Attn: Real Estate Department

Copy to: Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive
Chicago, Illinois 60606-1229
Attn: Thomas P. Duffy

UNOFFICIAL COPY

Any such notice, demand, request or other communication shall be deemed given when personally delivered or if mailed three days after deposit in the mail or if delivered by a nationally recognized overnight express courier, freight prepaid, the next business day after delivery to such courier.

3.15 Headings. The various headings used in this Note as headings for sections or otherwise are for convenience and reference only and shall not be used in interpreting the text of the section in which they appear and shall not limit or otherwise affect the meanings thereof.

4.1 Exculpation. This Note is executed by Chicago Title Land Trust Company, as Successor Trustee to Cole Taylor Bank, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee, and with respect to Chicago Title Land Trust Company, as Successor Trustee to Cole Taylor Bank, as Trustee, is payable only out of the property specifically described in the Mortgage and the other Loan Documents securing the payment hereof, by the enforcement of the provisions contained in the Mortgage or the other Loan Documents. No personal liability shall be asserted or be enforceable against Chicago Title Land Trust Company, as Successor Trustee to Cole Taylor Bank, as Trustee, because or in respect of this Note or the making, issue or transfer of this Note, all such liability with respect to Chicago Title Land Trust Company, as Successor Trustee to Cole Taylor Bank, as Trustee, being expressly waived by each subsequent holder hereof. Notwithstanding the foregoing or any other limitations set forth in this Note or the Loan Documents with respect to Chicago Title Land Trust Company, as Successor Trustee to Cole Taylor Bank, as Trustee, having no personal liability for the payment of this Note, nothing herein contained shall modify, diminish or discharge the personal liability of Zlatko Pehar or Stefan Filipov for the payment of this Note or the performance of their obligations as set forth in this Note and the Loan Documents. No trustee or land trust exculpation clause set forth in this Note or the Loan Documents shall have any applicability to Zlatko Pehar or Stefan Filipov, who shall remain personally obligated to pay this Note and perform all of their obligations as set forth in this Note and the Loan Documents. With respect to Chicago Title Land Trust Company, as Successor Trustee to Cole Taylor Bank, as Trustee, only, each original and successive holder of this Note accepts the same upon the express condition that no duty shall rest upon Chicago Title Land Trust Company, as Successor Trustee to Cole Taylor Bank, as Trustee, to sequester the rents, issues and profits arising from the property described in said Mortgage, or the proceeds arising from the sale or other disposition hereof.

5.1 Incorporation by Reference. To the extent not inconsistent with the terms of this Note, the terms of the Loan Documents are incorporated herein and made a part hereof by reference.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK
SIGNATURES ON FOLLOWING PAGE]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and attested by its duly authorized representatives.

CHICAGO TITLE LAND TRUST COMPANY,
as Successor Trustee to Cole Taylor Bank, not
personally, but solely as Trustee under a Trust
Agreement dated September 9, 2004, and
known as Trust No. 01-041196

BY: _____

Its

ZLATKO PEHAR, Individually

STEFAN FILIPOV, Individually

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C REAFFIRMATION OF ENVIRONMENTAL INDEMNITY AGREEMENT

This Reaffirmation of Environmental Indemnity Agreement is made as of this 27th day of November, 2006, by ZLATKO PEHAR AND STEFAN FILIPOV (hereinafter individually and collectively referred to as "Indemnitor") to and for the benefit of COLE TAYLOR BANK, an Illinois banking corporation ("Lender").

WITNESSETH:

A. Pursuant to a Construction Loan Agreement ("Loan Agreement") dated as of February 1, 2005, by and among Chicago Title Land Trust Company, as Successor Trustee to Cole Taylor Bank, not personally, but solely as Trustee under a Trust Agreement dated September 9, 2004, and known as Trust No. 01-041196 (hereinafter referred to as "Trustee") and Indemnitor (Trustee and Indemnitor are hereinafter individually and collectively referred to as "Borrower") and Lender, Borrower requested a loan from Lender in the sum of Four Million and No/100 Dollars (\$4,000,000.00) for the purpose of refinancing the existing indebtedness which encumbered the Mortgaged Premises and construction of the Project on the Mortgaged Premises in accordance with the Plans and Specifications.

B. The Loan is evidenced by a Note (the "Original Note") dated as of February 1, 2005, made by Borrower payable to the order of Lender in the original principal amount of Four Million and No/100 Dollars (\$4,000,000.00).

C. The Loan as evidenced by the Original Note is secured by (i) a Construction Mortgage (the "Mortgage") dated as of February 1, 2005, executed by Trustee in favor of Lender, encumbering the property legally described on Exhibit A attached hereto and made a part hereof (the "Mortgaged Premises"), which was recorded with the Recorder of Deeds for Cook County on March 2, 2005, as Document No. 0506145145; and (ii) a Collateral Assignment of Rents and Leases (the "Assignment of Rents") dated as February 1, 2005, executed by Trustee in favor of Lender encumbering the Mortgaged Premises, which was recorded with the Recorder of Deeds for Cook County on March 2, 2005, as Document No. 0506145146.

D. The Loan is also secured by (i) a Security Agreement and Collateral Assignment of Beneficial Interest under Land Trust dated as of February 1, 2005, executed by Beneficiary, which collaterally assigns 100% of the beneficial interest in and to Borrower to Lender; (ii) a Security Agreement dated as of February 1, 2005, executed by Borrower, as Debtor in favor of Lender, as Secured Party; (iii) a Environmental Indemnity Agreement dated as of February 1, 2005 executed by Beneficiary in favor of Lender; (iv) a Collateral Assignment of Contract and Contractor's Permits dated as of February 1, 2005 executed by Borrower in favor of Lender; (v) UCC Financing Statements executed by Borrower; (vi) a Collateral Assignment of Real Property Purchase Agreements dated as of February 1, 2005 executed by Borrower in

UNOFFICIAL COPY

favor of Lender; and (vii) such other collateral documents delivered in connection with the Loan.

F. Pursuant to (i) an Amended and Restated Note (the "Existing Note") dated as of February 10, 2006, executed by Borrower payable to the order of Lender in the original principal amount of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) and (ii) an Amendment to Construction Loan Agreement, Construction Mortgage and Loan Documents (the "First Amendment") dated as of February 10, 2006, by and among Borrower and Lender, such parties have agreed, among other things, an increase in the amount of the Loan from Four Million and No/100 Dollars (\$4,000,000.00) to Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00), as provided in the Existing Note and the First Amendment.

G. Pursuant to (i) an Amended and Restated Note (the "Amended and Restated Note") dated as of November 27, 2006, executed by Borrower payable to the order of Lender in the original principal amount of Five Million and No/100 Dollars (\$5,000,000.00) and (ii) a Second Amendment to Construction Loan Agreement, Construction Mortgage and Loan Documents (the "Second Amendment") dated as of November 27, 2006, by and among Borrower and Lender, such parties have agreed, among other things, to (i) an increase in the amount of the Loan from Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) to Five Million and No/100 Dollars (\$5,000,000.00), (ii) to convert the Loan Rate commencing November 27, 2006, from a variable rate to a fixed rate of seven and one-quarter percent (7-1/4%) per annum, and (iii) to extend the stated Maturity Date of the Loan to December 31, 2007, as provided in the Amended and Restated Note and the Second Amendment.

The documents set forth in Recitals A - G above, together with any amendments, modifications, extensions or renewals thereof, are hereinafter individually and collectively referred to as the "Loan Documents". All capitalized terms used herein shall have the same meaning as such terms are used in the Loan Documents.

H. As of the date hereof, the outstanding principal balance of the Loan as evidenced by the Existing Note is \$4,500,000.00.

I. Indemnitor and Lender deem it to be in their best interests to modify the Loan Documents as hereinafter provided.

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor agree as follows:

1. Indemnitor hereby acknowledges that the Environmental Indemnity Agreement is in full force and effect in accordance with its terms as hereby reaffirmed and modified. Indemnitor hereby acknowledges that Indemnitor's obligations, covenants and agreements under the Environmental Indemnity Agreement are not diminished, discharged or adversely affected by the Second Amendment or the Amended and Restated Note or any action or inaction taken by Lender in connection with the Loan.

UNOFFICIAL COPY

Indemnitor hereby agrees that all of Indemnitor's covenants, agreements, representations and warranties and liabilities and obligations as set forth in the Environmental Indemnity Agreement with respect to the Loan are hereby incorporated by reference herein and reaffirmed and apply to the Loan as modified.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK
SIGNATURES ON FOLLOWING PAGE]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

ZLATKO PEHAR

STEFAN FILIPOV

Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT D**

**COLE TAYLOR BANK
ZLATKO PEHAR AND STEFAN FILIPOV
SECOND AMENDMENT TO LOAN**

AMENDMENT CHECKLIST

RESPONSIBLE PARTY	LOAN DOCUMENTS	STATUS	RECEIVED
Lender	1. Second Amendment to Construction Loan Agreement, Construction Mortgage and Loan Documents		
Lender	2. Amended and Restated Note		
Lender	3. Reaffirmation of Environmental Indemnity Agreement		
Lender	4. Security Agreement (Collateral Account)		
Lender	5. UCC Financing Statement – Collateral Account		
Borrower	6. Certified Copy of Letter of Direction		
Borrower	7. Certified Copy of Land Trust Agreement		
Borrower	8. Trustee's Certification of Beneficiary		
Borrower	9. Establish Collateral Account – Deposit of \$180,000		
Borrower	10. Proforma Endorsement to Title Policy increasing title insurance by \$500,000		
Borrower	11. ALTA Statements		
Borrower	12. Personal Undertaking (GAP)		
Borrower	13. Payment of Service Fee		

UNOFFICIAL COPY

RESPONSIBLE PARTY	LOAN DOCUMENTS	STATUS	RECEIVED
Borrower	14. Payment of Attorney's Fees		

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT E

SECURITY AGREEMENT

(Collateral Account)

THIS SECURITY AGREEMENT ("Agreement") is made as of the 27th day of November, 2006, by ZLATKO PEHAR AND STEFAN FILIPOV ("Pledgor"); in favor of COLE TAYLOR BANK, an Illinois banking corporation ("Secured Party"). All capitalized terms used herein but not defined shall have the meaning ascribed in the Loan Agreement (hereafter defined).

RECITAL

A. Pursuant to a Construction Loan Agreement ("Loan Agreement") dated as of February 1, 2005, by and among Chicago Title Land Trust Company, as Successor Trustee to Cole Taylor Bank, not personally, but solely as Trustee under a Trust Agreement dated September 9, 2004, and known as Trust No. 01-041196 (hereinafter referred to as "Trustee") and Pledgor (Trustee and Pledgor are hereinafter individually and collectively referred to as "Borrower") and Secured Party, Borrower requested a loan from Secured Party in the sum of Four Million and No/100 Dollars (\$4,000,000.00) for the purpose of refinancing the existing indebtedness which encumbered the Mortgaged Premises and construction of the Project on the Mortgaged Premises in accordance with the Plans and Specifications.

B. The Loan was evidenced by a Note (the "Original Note") dated as of February 1, 2005, made by Borrower payable to the order of Secured Party in the original principal amount of Four Million and No/100 Dollars (\$4,000,000.00).

C. The Loan as evidenced by the Original Note is secured by (i) a Construction Mortgage (the "Mortgage") dated as of February 1, 2005, executed by Trustee in favor of Secured Party, encumbering the property legally described therein (the "Mortgaged Premises"), which was recorded with the Recorder of Deeds for Cook County on March 2, 2005, as Document No. 0506145145; and (ii) a Collateral Assignment of Rents and Leases (the "Assignment of Rents") dated as February 1, 2005, executed by Trustee in favor of Secured Party encumbering the Mortgaged Premises, which was recorded with the Recorder of Deeds for Cook County on March 2, 2005, as Document No. 0506145146.

D. The Loan is also secured by (i) a Security Agreement and Collateral Assignment of Beneficial Interest under Land Trust dated as of February 1, 2005, executed by Beneficiary, which collaterally assigns 100% of the beneficial interest in and to Borrower to Secured Party; (ii) a Security Agreement dated as of February 1, 2005, executed by Borrower, as Debtor in favor of Secured Party, as Secured Party; (iii) a Environmental Indemnity Agreement dated as of February 1, 2005 executed by Beneficiary in favor of Secured Party; (iv) a Collateral Assignment of Contract and Contractor's Permits dated as of February 1, 2005 executed by Borrower in favor of Secured Party; (v) UCC Financing Statements executed by Borrower; (vi) a Collateral

UNOFFICIAL COPY

Assignment of Real Property Purchase Agreements dated as of February 1, 2005 executed by Borrower in favor of Secured Party; and (vii) such other collateral documents delivered in connection with the Loan.

F. Pursuant to (i) an Amended and Restated Note (the "Existing Note") dated as of February 10, 2006, executed by Borrower payable to the order of Secured Party in the original principal amount of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) and (ii) an Amendment to Construction Loan Agreement, Construction Mortgage and Loan Documents (the "First Amendment") dated as of February 10, 2006, by and among Borrower and Secured Party, such parties have agreed, among other things, to modify and increase the Loan as more particularly provided in the Existing Note and the First Amendment.

G. Pursuant to (i) an Amended and Restated Note (the "Amended and Restated Note") dated as of November 27, 2006, executed by Pledgor payable to the order of Secured Party in the original principal amount of Five Million and No/100 Dollars (\$5,000,000.00) and (ii) a Second Amendment to Construction Loan Agreement, Construction Mortgage and Loan Documents (the "Second Amendment") dated as of November 27, 2006, by and among Pledgor and Secured Party, such parties have agreed, among other things, to modify and increase the Loan as more particularly provided in the Amended and Restated Note and the Second Amendment.

The documents set forth in Recitals A - G above, together with any amendments, modifications, extensions or renewals thereof, are hereinafter individually and collectively referred to as the "Loan Documents".

H. Pursuant to the terms of the Second Amendment, Pledgor shall deposit the amount of One Hundred Eighty Thousand and No/100 Dollars (\$180,000.00) into the Collateral Account (hereafter defined), which has been established and shall be maintained as a reserve to pay interest which shall accrue on the Loan during the term of the Loan in accordance with the terms, provisions and limitations set forth in the Second Amendment and this Agreement, including without limitation, Section 5 hereof. The Collateral Account, together with all other monies or funds from time to time deposited therein and all accrued interest earned thereon and proceeds thereof, are hereinafter sometimes collectively referred to as the "Funds".

NOW THEREFORE, in consideration of the foregoing and the mutual promises and agreements hereinafter contained, the parties hereto hereby agree as follows:

1. Recitals. The recital set forth above are incorporated herein as if fully set forth herein.

2. Deposits. During the Loan, in addition to the payments due under the Note and the other Loan Documents, Pledgor hereby covenants and agrees to deposit into the Collateral Account all rent receipts and other operating revenue generated from the Mortgaged Premises, whether received by Pledgor or its agents or representatives.

UNOFFICIAL COPY

3. Pledge and Assignment. Pledgor hereby pledges and assigns to Secured Party, for its benefit and that of its successors and assigns, all of Pledgor's right, title and interest in, and hereby grants to Secured Party and its successors and assigns a security interest in and right of set-off against, the following collateral, whether now owned by the Pledgor or hereafter acquired (collectively, the "Collateral Account"):

(i) The account maintained by Pledgor with Secured Party and identified as account no. _____ established for the purposes described in the Recitals;

(ii) The Funds and all certificates and instruments, if any, from time to time representing or evidencing the Funds;

(iii) All interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing; and

(iv) To the extent not covered by clauses (i) through (iii) above, all additions, alterations, substitutions thereto and therefor and the proceeds of any of the foregoing.

Nothing in this clause shall be deemed to constitute an assumption by Secured Party of any liability or obligation of Pledgor with respect to any of the Collateral Account.

4. Security for Obligations. This Security Agreement secures and the Collateral Account is collateral security for the prompt payment or performance in full when due, whether at stated maturity, by acceleration or otherwise, of all obligations, covenants and agreements now or hereafter existing under this Security Agreement or any of the Loan Documents, including any and all extensions, modifications or renewals of any of the foregoing (the "Secured Obligations").

5. Investment of the Funds. The Collateral Account shall be a non-interest bearing demand deposit account.

6. No Withdrawals from the Collateral Account. Pledgor will maintain the Collateral Account with Secured Party and shall not be permitted to make any withdrawals therefrom until the Loan has been paid in full. Pledgor hereby authorizes Secured Party to withdraw and/or transfer funds directly from the Interest Reserve and apply the same to interest payments when the same are due and payable under the Amended and Restated Note.

7. Representations and Warranties. Pledgor hereby represents and warrants to Secured Party that:

(a) Pledgor is the sole legal and beneficial owner of all of the Collateral Account, except for the security interests granted to Secured Party herein.

UNOFFICIAL COPY

(b) The pledge of the Collateral Account pursuant to this Security Agreement creates a valid and, upon the proper filing of the UCC financing statements executed in connection with the execution and delivery of this Security Agreement, perfected security interest in the Collateral Account, in favor of the Secured Party, and a right of set-off against the Secured Obligations owed by the Pledgor to Secured Party, except that continuations of financing statements may be required from time to time under the Commercial Code.

(c) Pledgor has the full power and authority to pledge all of the Collateral Account pursuant to this Agreement, and the execution and delivery of this Agreement has been duly authorized by Pledgor.

(d) This Agreement has been duly authorized and constitutes the legal, valid and binding obligations of Pledgor enforceable against Pledgor in accordance with its terms.

8. Further Assurances. Pledgor agrees that at any time, and from time to time, at the expense of the Pledgor, Pledgor will promptly execute and deliver all further instruments and documents, and take all further action that Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable the Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral Account.

9. Transfers and Other Liens. Pledgor will not directly or indirectly, by operation of law or otherwise (i) sell, assign or otherwise dispose of, or grant any option with respect to, any of the Collateral Account, or (ii) create or permit to exist any lien, security interest, option or other charge or encumbrance upon or with respect to any of the Collateral Account, except for the security interest and right of set-off created herein or any liens, security interests or encumbrances granted to Secured Party under the other Loan Documents.

10. Secured Party Appointed Attorney-in-Fact. Pledgor hereby appoints Secured Party as Pledgor's attorney-in-fact, with full power and authority in the place and stead of the Pledgor and in the name of the Pledgor to receive, endorse, negotiate and collect in the name of the Pledgor all checks and other instruments and certificates made payable to the Pledgor, representing any interest payment, principal payment, or other distribution with respect to the Collateral Account or any part thereof and to deposit the same into the Collateral Account. The power of attorney created hereunder, being coupled with an interest, shall be irrevocable.

11. Secured Party May Perform. If Pledgor fails to perform any agreement contained herein, Secured Party may itself perform or cause the performance of such agreement, and the expenses of Secured Party incurred in connection therewith, plus interest at the default rate specified in the Note from the date of each advance to the date of reimbursement, shall be payable by Pledgor and constitute additional Secured Obligations.

UNOFFICIAL COPY

12. Standard of Care. Except as otherwise specifically provided for herein, the Secured Party shall not have any responsibility for (a) ascertaining or taking any action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral Account, whether or not the Secured Party has or is deemed to have knowledge of such matters or (b) taking any necessary steps to preserve rights against any persons with respect to any Collateral Account. The Secured Party shall not be liable, except for its own gross negligence or willful misconduct and under no circumstances shall be liable for consequential damages in connection with any of the foregoing. The Secured Party shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to the Secured Party, without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service or delivery thereof. The Secured Party may act in reliance upon any instrument or signature assumed by the Secured Party to be genuine, and the Secured Party may assume that any person purporting to make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so. The Secured Party may act pursuant to the advice of counsel with respect to any matter relating to this Security Agreement and shall not be liable for any action taken (or not taken) in good faith in accordance with such advice.

13. Remedies upon Default.

(a) Upon any failure of Pledgor to perform in accordance with this Security Agreement or default by Pledgor under this Security Agreement (an "Event of Default") or upon the occurrence of an Event of Default under the other Loan Documents shall have occurred: (i) the Secured Party may exercise one or more of those rights and remedies set forth herein and in the Loan Documents (all such remedies being cumulative); (ii) the Secured Party may, without notice to the Pledgor, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Collateral Account against the Secured Obligations or any part thereof without demand of performance or other demand, advertisement or notice of any kind to or upon the Pledgor or any other person (all demands, advertisements and notices being expressly waived); and (iii) the Secured Party may exercise all the rights and remedies of a secured party under the Uniform Commercial Code in effect in the State of Illinois (the "Code").

(b) Pledgor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Pledgor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Secured Party shall not be obligated to make any sale of Collateral Account regardless of notice of sale having been given. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Pledgor hereby waives any claims against Secured Party arising by reason of the fact that the price at which any Collateral Account may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if Secured Party accepts the first offer received and does not offer such Collateral

UNOFFICIAL COPY

Account to more than one offeree, and in all events such sale shall be deemed to be commercially reasonable. At any such public or private sale, Secured Party may be the purchaser of the Collateral Account.

14. No Presentment, Demand or Protest. Except as hereinabove expressly provided or as required by law, Secured Party shall not be required to make presentment, demand or protest or give any notices thereof, and need not take action to preserve any rights against prior parties in connection with the Collateral Account or any obligation secured hereby. Pledgor further waives any right to require Secured Party to proceed against or exhaust the Collateral Account, or any other security, or to proceed against any other person or to pursue any other remedy available to Secured Party before proceedings against Pledgor or the Collateral Account.

15. Expenses and Fees. The Pledgor will, upon demand, pay to the Secured Party, reasonable costs (and reasonable attorneys' fees) incurred by the Secured Party, in accordance with the terms of the Loan Documents, in connection with (a) the sale of, collection from, or other realization upon, any of the Collateral Account, (b) the exercise or enforcement of any of the rights of the Secured Party hereunder, or (c) the failure by the Pledgor to perform or observe any of the provisions hereof.

16. Continuing Security Interest. This Security Agreement shall create a continuing assignment of, security interest in, and right of set-off against, the Collateral Account. The creation of the rights and security interest set forth herein shall be absolute and unconditional irrespective of:

(a) the lack of enforceability of the Note or any other Loan Document or other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Note or any other Loan Document or other agreement or instrument relating thereto; or

(c) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to departure from any guaranty for all or any of the Secured Obligations.

17. Authorization to File Financing Statement. By executing this Agreement, Pledgor and its successors and assigns, hereby authorizes Secured Party and its successors and assigns, to file an initial Financing Statement, Amendment, and Continuation thereof, covering: (i) the Collateral Account described in this Agreement and (ii) any property that becomes Collateral under Section 9-315(a)(2), whether or not this Agreement expressly covers such Proceeds.

18. Amendments, Waivers. No amendment or waiver of any provision of this Agreement nor consent to any departure by Pledgor herefrom shall in any event be effective unless the same shall be in writing and signed by Secured Party, and then

UNOFFICIAL COPY

such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

19. Notices. Any notice, demand, request or other communication desired to be given or required pursuant to the terms hereof shall be in writing and be deemed to have been properly given, served and received (a) if mailed, on the third business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, or (b) if delivered by a nationally recognized overnight express courier, freight prepaid, the next business day after delivery to such courier, in every case addressed to the party to be notified as follows:

If to Secured Party:

Cole Taylor Bank
2501 West 79th Street – 4th Floor
Burbank, Illinois 60459
Attn: Real Estate Department

with a copy to:

WILDMAN, HARROLD, ALLEN & DIXON LLP
225 West Wacker Drive, Suite 2800
Chicago, Illinois 60606-1229
Attention: Thomas P. Duffy, Esq.

If to Pledgor:

Zlatko Pehar
3325 West Ardmore
Chicago, Illinois 60659

Stefan Filipov
5631 North Rockwell
Chicago, Illinois 60659

with a copy to:

Law Offices of Aaron Spivack
811 West Superior Street
Chicago, Illinois 60622
Attn: Aaron Spivack

The parties hereto may change the address at which notice may be served by notice to the other as above required.

20. Successors and Assigns. This Security Agreement shall be binding upon and benefit the Pledgor, the Secured Party and their respective successors and

UNOFFICIAL COPY

assigns. The Pledgor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for the Pledgor.

21. Governing law. This Security Agreement has been submitted to Secured Party at its office in Illinois and shall be construed in all respects in accordance with, and governed by, all of the provisions of the Code and by the other internal laws (as opposed to conflicts of laws provisions) of the State of Illinois.

22. Conflict between Documents. The terms, covenants, conditions, rights and obligations contained in this Security Agreement are in addition to and not in limitation of those set forth in the Loan Documents. Nevertheless, in the event of any conflict or inconsistency between the terms of this Security Agreement and the terms of the Loan Documents, the terms of the Loan Documents shall prevail. A provision herein shall not be deemed contrary or inconsistent with the Loan Documents by reason of the fact that such provision covers the same subject matter as a provision in the Loan Documents, except to the extent the provisions of the Loan Documents and this Security Agreement are, when taken together, incapable of interpretation in a manner which is not contrary or inconsistent, as opposed to merely additive or supplementary.

23. Severability. The parties hereto intend and believe that each provision herein comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions in this Security Agreement is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Security Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Security Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of the Pledgor and the Secured Party under the remainder of this Security Agreement remaining full force and effect.

24. Counterparts. This Security Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered to each of Secured Party and Pledgor.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK
SIGNATURES ON FOLLOWING PAGE]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Pledgor has executed and delivered this Security Agreement as of the date first above written.

ZLATKO PEHAR, Individually

STEFAN FILIPOV, Individually

Property of Cook County Clerk's Office