

# UNOFFICIAL COPY



THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

James B. Rosenbloom, Esq.  
GOLDBERG KOHN LTD.  
55 East Monroe Street, Suite 3300  
Chicago, Illinois 60603  
(312) 201-4000

Doc#: 1301818084 Fee: \$62.00  
Karen A. Yarbrough RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/18/2013 02:24 PM Pg: 1 of 13

*This space reserved for Recorder's use only*

## FOURTH AMENDMENT TO MORTGAGE AND LOAN DOCUMENTS

THIS FOURTH AMENDMENT TO MORTGAGE AND LOAN DOCUMENTS (this "Agreement") is made as of the 31<sup>st</sup> day of December, 2012, by and among ZLATKO PEHAR and ZORAN PEHAR (individually and collectively, the "Borrower") and COLE TAYLOR BANK, an Illinois banking corporation, its successors and assigns ("Lender").

### RECITALS:

A. Lender has heretofore made a loan to Borrower and Tony Pehar (collectively, "Original Borrower") in the original principal amount of Three Million One Hundred Sixty Thousand and no/100 Dollars (\$3,160,000.00) (the "Loan"). The Loan is currently evidenced by the Note (defined below).

B. The Note is secured by, among other things, (i) that certain Mortgage dated as of June 22, 2004 from Original Borrower to Lender and recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on June 28, 2004, as Document No. 0418005050 ("Mortgage"), which Mortgage encumbers the real property and all improvement is thereon legally described on Exhibit A hereto ("Property"); (ii) that certain Collateral Assignment of Rents and Leases dated as of June 22, 2004 from Original Borrower to Lender and recorded with the Recorder of Deeds in Cook County, Illinois on June 28, 2004, as Document No. 0418005051; (iii) Security Agreement dated as of June 22, 2004 made by Original Borrower in favor of Lender (the "Security Agreement"); (iv) Environmental Indemnity Agreement dated as of June 22, 2004 from Original Borrower to Lender (the "Indemnity Agreement"); and (v) certain other loan documents (the Note, the Mortgage, the Indemnity Agreement, the other documents evidencing, securing the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. On or about December 5, 2006, Original Borrower and Lender entered into that certain Amendment to Mortgage and Loan Documents ("First Modification") pursuant

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to which Lender agreed to amend the Loan Documents in order to increase the amount of the Loan to Three Million Six Hundred Thousand and no/100 Dollars (\$3,600,000.00).

D. On or about March 11, 2008, Original Borrower and Lender entered into that certain Second Amendment to Mortgage and Loan Documents ("Second Modification") recorded with the Recorder's Office on April 9, 2008 as Document No. 0810003001 pursuant to which Lender agreed to amend the Loan Documents in order to, among other things; (a) increase the amount of the Loan to Four Million Five Hundred Thirty Eight Thousand Three Hundred Eighty Nine and no/100 Dollars (\$4,538,389.00); and (b) extend the Maturity Date from June 30, 2009 to March 1, 2011. In conjunction with and as a condition precedent to the Second Modification, (i) Original Borrower executed and delivered to Lender that certain Amended and Restated Promissory Note (the "Note") dated as of March 11, 2008 made payable to the order of Lender in the increased principal amount of Four Million Five Hundred Thirty Eight Thousand Three Hundred Eighty Nine and no/100 Dollars (\$4,538,389.00).

E. On November 21, 2008 (the "Petition Date") Zlatko Pehar commenced a bankruptcy case by filing a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Court") Bankruptcy Case No. 08-31891.

F. As of August 31, 2009 Zlatko Pehar and Lender entered into a Stipulation, Settlement and Mutual Release ("Settlement Agreement"). The Settlement Agreement was approved by the Court on September 29, 2009. Pursuant to a Chapter 11 plan of reorganization (the "Plan") filed by Zlatko Pehar with the Court, certain terms and conditions of the Settlement Agreement are to be performed through the Plan.

G. On or about October 9, 2009, Original Borrower and Lender entered into a certain Third Amendment to Mortgage and Loan Document, pursuant to which, among other things, the Maturity Date of the Note was extended to September 30, 2012 and the terms of the Settlement Agreement were incorporated into the Loan Documents.

H. On October 14, 2010, Tony Pehar was awarded a standard discharge from his debts on October 14, 2010, by the U.S. Bankruptcy Court for the Northern District of Illinois in Bankruptcy Case No. 10-11400.

I. The Loan matured on September 30, 2012.

## AGREEMENTS:

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 extend the Maturity Date, 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:

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1. **Maturity Date.** The Maturity Date of the Note is extended to January 31, 2013. Any reference in the Note, the Mortgage or any other Loan Document to the Maturity Date shall mean January 31, 2013.
2. **Principal and Interest.** The parties acknowledge that before giving effect to the payments to be made concurrently herewith, the principal balance of the Loan is \$4,450,650.20. Effective as of November 1, 2012, principal of and interest on the Loan shall be due and payable in equal monthly installments of \$25,270, based upon a fixed per annum interest rate of 5.50% and a 30 year principal amortization rate. The Note shall be deemed amended to be consistent with the foregoing.
3. **Condition Precedent.** As a condition to the effectiveness of this Agreement, Borrower agrees to pay to Lender, by wire transfer of good funds, concurrently with the execution and delivery hereof, the payments, charges and fees to be paid concurrently herewith as set forth on Schedule 1.
4. **Further Extension of Maturity Date.** Provided that no default or Event of Default under any of the Loan Documents has occurred and is then continuing and Borrower has satisfied each of the Extension Conditions set forth on Schedule 2, the Maturity Date will be further extended to December 31, 2014.
5. **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) After giving effect to this Agreement and the payment hereunder, 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 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

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6. **Reaffirmation.** Each Borrower hereby reaffirms his obligations under the Loan Documents as amended hereby.

7. **Release of Claims.** Borrower hereby fully, finally and completely RELEASES AND FOREVER DISCHARGES Lender and its successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, servicers, attorneys, agents and properties, past, present and future, and their respective heirs, successors and assigns (collectively and individually, "Lender Parties"), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, debts, liens, actions and causes of action of any and every nature whatsoever, known or unknown, whether at law, by statute or in equity, in contract or in tort, under state or federal jurisdiction, and whether or not the economic effects of such alleged matters arise or are discovered in the future, which Borrower has as of the date of this Agreement or may claim to have against Lender Parties arising out of or with respect to any and all transactions relating to the Loan or the Loan Documents occurring on or before the date of this Agreement, including any loss, cost or damage of any kind or character arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of Lender Parties occurring on or before the date of this Agreement. The foregoing release is intended to be, and is, a full, complete and general release in favor of Lender Parties with respect to all claims, demands, actions, causes of action and other matters described therein, including specifically, without limitation, any claims, demands or causes of action based upon allegations of breach of fiduciary duty, breach of any alleged duty of fair dealing in good faith, economic coercion, usury, or any other theory, cause of action, occurrence, matter or thing which might result in liability upon Lender Parties arising or occurring on or before the date of this Agreement. Borrower understands and agrees that the foregoing general release is in consideration for the agreements of Lender contained herein and that they will receive no further consideration for such release.

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 merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower 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 read and understand this Agreement, that they intend to be legally

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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 nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower 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 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 Third Amendment to Mortgage and Loan Documents dated as of the day and year first above written.

**LENDER:**

**COLE TAYLOR BANK**, an Illinois banking corporation

By: *Katerina Duchakov*  
Name: *Katerina Duchakov*  
Title: *VP, Special Assets*

**BORROWER:**

*Zlatko Pehar*  
ZLATKO PEHAR  
*Zoran Pehar*  
ZORAN PEHAR

County of Cook County Clerk's Office

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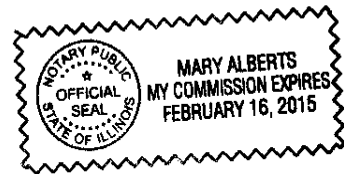
STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I MARY ALBERTS, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ~~KATHERINA OUCHAKOVA~~ VP 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 3 day of December, 2012.

Mary Alberts  
Notary Public

My Commission Expires: 2-16-15



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STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I FRANCES V. OWOC a Notary in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ZLATKO PEHAR, an individual, 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 31<sup>st</sup> day of December, 2012.

Frances V. Owoc  
Notary Public

My Commission Expires: 9-5-15



STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I FRANCES V. OWOC, a Notary in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ZORAN PEHAR, an individual, 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 31<sup>st</sup> day of December, 2012.

Frances V. Owoc  
Notary Public

My Commission Expires: 9-5-15



Acknowledgment to Fourth Amendment  
to Mortgage and Loan Documents



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## EXHIBIT A

### THE PROPERTY

LOT 3 IN ANTHONY SUBDIVISION OF PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 11, 1985, AS DOCUMENT NUMBER 85055693, IN COOK COUNTY, ILLINOIS.

Property Address: 6249-57 N. McCormick Blvd., Chicago, IL

P.I.N.: 13-02-220-032-0000

Property of Cook County Clerk's Office

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## SCHEDULE 1

### SETTLEMENT STATEMENT

To: Cole Taylor Bank ("Lender")      **Date of Settlement: 12-31-12**  
 9550 West Higgins Road, 6<sup>th</sup> Floor  
 Rosemont, IL 60018  
 Attn: Katerina Ouchakov, VP

Re: **ZLATKO PEHAR, ZORAN PEHAR**  
 Property @ 6249-57 MCCORMICK BOULEVARD, CHICAGO, IL  
 Customer #: 93963-50001

#### FEES TO BE PAID BY BORROWER DIRECTLY:

Loan Extension Fee - 1 <sup>st</sup> Installment (Total extension fee of \$11,000 to be paid in 6 monthly consecutive installments as follows: one installment of \$1,835 and five installments of \$1,833 each)	\$1,835.00
Past Due Interest for September, 2012 (at 5.0%; 9/1/12 - 9/30/12)	\$17,926.23
October, November and December 12 <sup>th</sup> & J Payments as of 12-31-12 (three payments \$25,270 each)	\$75,810.00
Late Fee Payments as of 12-31-12	\$5,618.97
Tax Escrow Cushion*	\$TBD
Appraisal Report Fee	\$3,000.00
Appraisal Review Fee	\$920.00
Attorney Fees related to the current extension	\$11,409.71
<b><u>TOTAL FEES PAID BY BORROWERS:*</u></b>	<b><u>\$116,519.91</u></b>

\* Real estate tax escrow cushion will be collected by 1/31/13

**BORROWERS:**

  
 Zlatko Pehar

  
 Zoran Pehar

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## SCHEDULE 2

### EXTENSION CONDITIONS

The Maturity Date shall be extended to December 31, 2014 provided that each of the following conditions is satisfied on or before January 31, 2013:

1. Appraisal. Lender shall have obtained, at Borrower's expense, a current appraisal of the Property in form and substance satisfactory to Lender.
2. Title Date Down. Lender shall have obtained, at Borrower's expense, a date-down endorsement to Lender's loan policy showing no exceptions not set forth in the policy, taxes not due or payable, and any exception approved by Lender in writing and covering the modification of the Mortgage.
3. Legal Fees. Borrower shall have paid 50% of Lender's legal fees in connection with such extension and agreed to pay the balance within 30 days after closing.
4. Real Estate Tax Escrow. Borrower shall have deposited with Lender an amount sufficient, when taking into account monthly tax escrow payments under the amended Loan Documents, to pay all real estate taxes on the Property when due.
5. Insurance. Borrower shall have furnished to Lender updated evidence satisfactory to Lender of property and liability insurance with respect to Borrower and the Property.
6. No Event of Default. No default or Event of Default shall have occurred and be continuing.
7. Management Agreement. Lender shall have reviewed and approved the management agreement for the Property, if any.
8. Estoppel Certificates. Borrower shall provide Lender with estoppel certificates on Lender's form from all existing tenants of the Property showing no material exceptions to the statements set forth in such form.
9. Legal Opinion. Lender shall have received and approved an opinion of counsel to Borrower covering due execution, delivery and enforceability.
10. Amended and Restated Loan Documents. Borrower and Lender have executed, amended and restated Loan Documents in form and substance satisfactory to Lender incorporating the revised payment terms set forth in the foregoing Agreement, the obligation of Borrower to pay the balance of the Extension Fee in accordance with the Settlement Statement (Schedule 1) and the following covenants:

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- Borrower will make monthly real estate tax escrow based upon 105% of annual real estate taxes as estimated by Lender based upon the last tax bill.
- Furnish Lender by May 31st of each year the current personal financial statement for each co-Borrower on Lender's form or in a format acceptable to Lender.
- Furnish Lender by May 31st of each year a copy of the individual income tax returns of for each co-Borrower. Should an extension for an annual income tax return be filed, a copy of the extension form shall be furnished to Lender by the aforesaid date and a copy of the annual income tax return shall be furnished to Lender within thirty (30) days after filing.
- Semi-annually beginning on December 31, 2012, provide to Lender the rent roll, delinquency report, property operating statements and leasing activity for the Property (certified by Borrower as being true and correct).
- Management fees shall not exceed 6% of gross rent annually.
- The Property shall maintain a net operating income to debt service ratio of at least 1.10 to 1.00 times, tested semi-annually on a 12-month trailing basis beginning December 31, 2012. If DSCR is not achieved, Borrower will have 60 days from the quarter end to escrow funds with Lender in an interest-bearing pledge account in the amount necessary to bring the DSCR into compliance on a 12-month trailing basis.
- No leases can be executed without Lender's prior review and approval. Borrower shall provide Lender with the copies of the newly executed leases and extensions within 30 days after execution.
- Furnish Lender with such financial statements and other related information at such frequencies and in such detail as Lender may reasonable request.
- Open and maintain all the Property's operating depository accounts at Lender for the life of the Loan.

11. Extension of Broadway/Briar Loan. The maturity date of the loan secured by the Briar and Broadway properties has been extended to December 31, 2014, pursuant to that certain Third Amendment to Mortgage and Loan Documents of even date herewith among Zlatko Pehar, Mary Pehar, Chicago Title Land Trust Company as Trustee under Trust No. 02-9521 (as borrowers) and Lender.

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