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(Above Doc#: 0524539076 Fee: \$48.50
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 09/02/2005 02:40 PM Pg: 1 of 13

PIN 06-28-201-129

**RECAPTURE AGREEMENT
RELATING TO CERTAIN COSTS FOR
IMPROVEMENTS IN CONNECTION WITH THE
SUTTON PARK DEVELOPMENT**

This Agreement is entered into this 2nd of June, 2005 by and between the VILLAGE OF STREAMWOOD, Cook County, Illinois, a municipal corporation (the "Village"), and Harlem Irving Companies, Inc., ("Harlem Irving").

WITNESSETH:

WHEREAS, Harlem Irving is the subdivider of the parcel of real estate legally described on Exhibit A attached hereto, and which is within the corporate limits of the Village, and for which a plat of subdivision has been approved ("Sutton Park"); and

WHEREAS, the Streamwood Subdivision Control Ordinance requires as a condition to the acceptance of final plats of subdivision that water mains, sanitary sewers, drains, and other facilities for water, sewers and drains, roadways and other traffic related improvements be provided for by the subdivider; and

WHEREAS, pursuant to 65 ILCS 5/9-5-1 (Municipal Code) of the Illinois Compiled Statutes, the corporate authorities of the Village are empowered to contract and agree with subdividers of property for the purpose of reimbursing subdividers installing any of the aforescribed improvements which, in the opinion of the corporate authorities, may be used for the benefit of properties outside subdivisions, for a portion of the cost of such improvements from fees charged to owners of the properties benefiting therefrom and to enter into "recapture agreements" with respect thereto; and

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The Village has agreed to enter into a recapture agreement with Harlem Irving for purposes of reimbursing Harlem Irving for a portion of the cost of (i) installation of traffic signals and related engineering work at Rt. 59 and Gulf Keys and (ii) construction of highway improvements to Rt. 59 and other pavement improvements, and which, in the opinion of the corporate authorities, may be reasonably expected to benefit those properties depicted on the map attached hereto as Exhibit C, and which are legally described on Exhibit D attached hereto (the properties are hereinafter collectively referred to as the "**Benefited Properties**"); and

WHEREAS, it is the intention of the parties to enter into this Recapture Agreement.

NOW, THEREFORE, for and in consideration of the recitals stated above and the covenants, conditions and agreements set forth in this Agreement and for other good and valuable consideration exchanged between the parties, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Harlem Irving has installed in connection with the development of Sutton Park, (i) installation of traffic signals and related engineering work at Rt. 59 and Gulf Keys and (ii) construction of highway improvements to Rt. 59 and other pavement improvements (collectively, the "**Improvements**") and has caused or will cause the Improvements to be dedicated to the Village or other governmental entity as directed by the Village by executing either a Bill of Sale (in the form attached hereto and made a part hereof as Exhibit E) or other written instrument for such purpose in favor of the Village or other governmental entity, as the case may be. The Village will accept said Bill of Sale upon satisfactory inspection of the Improvements and receipt of a one (1) year maintenance bond and such contractors' affidavits and lien waivers as the Village may reasonably request.

2. It is agreed that the Benefited Properties hereinabove described are reasonably expected to benefit by such Improvements and that the allocation of costs for each of the Benefited Properties (the "**Recapture Fee**"), as set forth on the chart attached hereto as Exhibit B, is fair and reasonable and

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accurately represents the percentage of the certified cost of the Improvements allocable to each of the Benefited Properties.

3. The Village shall use its best efforts to collect the Recapture Fee from the owners of each of the Benefited Properties as indicated in Exhibit B hereto, plus interest at the rate of Eight Percent (8%) per annum from and after the date of completion of the Improvements being the date which has been determined by the Village to be the date of the completion of the Improvements or termination of this agreement, whichever shall first occur, and shall pay such amounts and interest to Harlem Irving upon receipt thereof. Interest shall not be compounded. It is understood and agreed that the Village's obligation to reimburse Harlem Irving shall be limited only to funds collected as Recapture Fees from Benefited Properties. Interest payments made hereunder shall be made solely out of said funds. The Village's obligation to collect and deliver to Harlem Irving the Recapture Fees and interest collected from the owners of the Benefited Properties constitutes a limited obligation of the Village, payable solely from amounts received by the Village from such Recapture Fees and interest. It is further agreed that said obligation does not now, and shall not be construed, and shall never constitute a general indebtedness of the Village within the meaning of any State of Illinois constitutional or statutory provision, and shall not constitute or give rise to a pecuniary liability on the part of the Village or a charge against its general credit or taxing power.

4. The Village shall use its best efforts to collect the Recapture Fee specified on Exhibit B hereto, plus interest, from the owners of each of the Benefited Properties at the following times:

(a) With respect to any of the Benefited Properties within the corporate limits of the Village but which have not yet been subdivided, such amounts and interest shall be collected by the Village upon the first to occur of: (i) approval by the Village of a final plat of subdivision or planned unit development for that property; (ii) approval of final engineering plans by the Village; or (iii) connection of that property to any Village sanitary sewer and water main;

(b) With respect to any of the Benefited Properties within the corporate limits of the Village and which have been subdivided into separate lots of record, such amounts and interest shall be collected by the Village upon the first to occur of: (i) issuance of a building permit for each such lot; or (ii) connection of each lot to any sanitary sewer or water main of the Village; and

(c) With respect to any of the Benefited Properties not now within the corporate limits of the Village, such amounts and interest shall be collected by the Village upon the first to

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occur of (i) approval by the Village of a final plat of subdivision or planned unit development for that property; (ii) approval of final engineering plans by the Village; or (iii) connection of said property to any sanitary sewer or water main of the Village.

5. Harlem Irving hereby covenants and agrees that if the Village is sued by a third-party to prevent collection by the Village, of amounts described herein to be collected by the Village and paid to Harlem Irving, Harlem Irving shall indemnify, defend, and hold harmless the Village, its officers, employees, agents, representatives, and attorneys in both their official and individual capacities from and against any such suits, and any appeals thereof. In addition, if in such suit the Village is finally adjudicated to be prohibited by law from collecting the sums specified herein and paying the same to Harlem Irving, the Village shall thereafter have no liability to Harlem Irving for its inability to collect and pay such further sums to Harlem Irving, and if the Village is further finally adjudicated to be responsible to repay to the party bringing the suit any amounts previously collected and paid to Harlem Irving, Harlem Irving shall repay any such amounts to the Village. In the event the owners or developer of the Benefited Properties refuse to pay such allocable amount, the Village may, at its election, make connection to and use the Improvements without collecting such allocable amount and Harlem Irving shall then have the right, to the extent permitted by law, to take action against any such owners or developers to collect the allocable amount due.

6. This Agreement shall be in full force and effect for a period often (10) years from the date on which it was executed by the last party so executing the same as hereinbefore set forth, unless extended by agreement of the parties hereto or terminated by the agreement of the parties hereto or by the completion of all duties to be performed hereunder.

7. This Agreement may be amended by mutual consent of the parties hereto or their successors or assigns, from time to time by written instrument without the consent of any other person or corporation owning the parcels of property deemed benefited hereunder.

8. Should any provision of this Agreement, or the application of such provision to any person or circumstance, be held invalid by a court of competent jurisdiction, the remaining provisions of

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this Agreement and/or the application of such provisions to such persons or circumstances, shall not be affected. However, in no event shall the Agreement be valid unless Paragraph 3 and 5 shall remain valid.

9. Except as otherwise herein provided, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Harlem Irving and any successor or assign of the Village as the case may be.

10. Any party to this Agreement or its successors or assigns, may either in law or in equity by suit, action, mandamus or other proceeding, enforce and compel performance of this Agreement against any other party hereto and its successors and assigns.

11. This agreement shall be recorded by Harlem Irving with the Recorder of Deeds of Cook County, Illinois and shall constitute an agreement of the type described in 65 ILCS 5/9-5-1 (Municipal Code) of the Illinois Compiled Statutes.

IN WITNESS WHEREOF, the parties have entered into this Agreement the date and year first above written.

HARLEM IRVING COMPANIES, INC.

VILLAGE OF STREAMWOOD:

By: *Donald W. Bailey*
Vice President

By

Bruce S. Pich

Attorneys-in-Fact

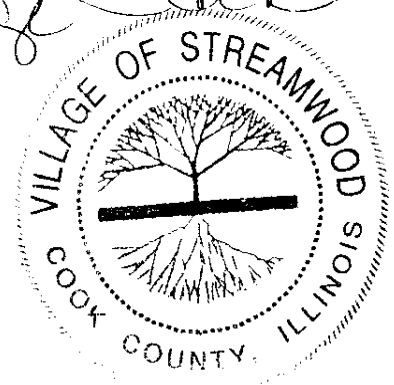
Village President

This instrument prepared by
And after recording return to

Storino, Ramello & Durkin
9501 W. Devon Avenue
Rosemont, Illinois 60018
Attention: Thomas Bastian

Attest:

Katherine J. Kopitzke
Village Clerk



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STATE OF ILLINOIS)

COUNTY OF Cook

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Billie D. Roth and Kittiel Kopitke personally known to me to be the Village President and Clerk, respectively, of the Village of Streamwood, and 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 severally acknowledged that as such President and Clerk of said Village, they signed and delivered said instrument as such president and Clerk of said Village, and caused the Corporate Seal of said Village to be affixed thereto, pursuant to authority, given by the Board of Trustees of said Village as their free and voluntary act, and as the free and voluntary act and deed of said Village, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18th day of August, 2005.

Notary Public Elizabeth M. Misicka
My Commission Expires: 8/6/2006



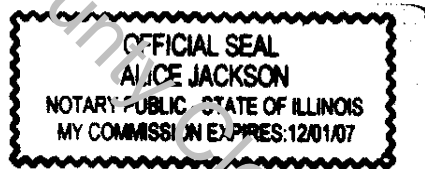
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STATE OF ILLINOIS)
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Donald W. Bailey and _____ personally known to me to be the Attorneys-in-Fact of HARLEM IRVING COMPANIES, INC., 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 Attorneys-in-Fact of said corporation, and caused the corporate seal to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 15th day of August, 2005.

Notary Public Alice Jackson
My Commission Expires: 12-01-07



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Exhibit A

(Sutton Park Legal Description)

Lots 1-10 in the Sutton Park Subdivision, being a subdivision of part of the Northwest $\frac{1}{4}$ of Section 27 and part of the Southwest $\frac{1}{4}$ of Section 22, Township 41 North, Range 9 East of the Third Principal Meridian as recorded on November 12, 2003 as Document No. 0331639008, in Cook County, Illinois.

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Exhibit B

Allocation of Costs of the Benefited properties

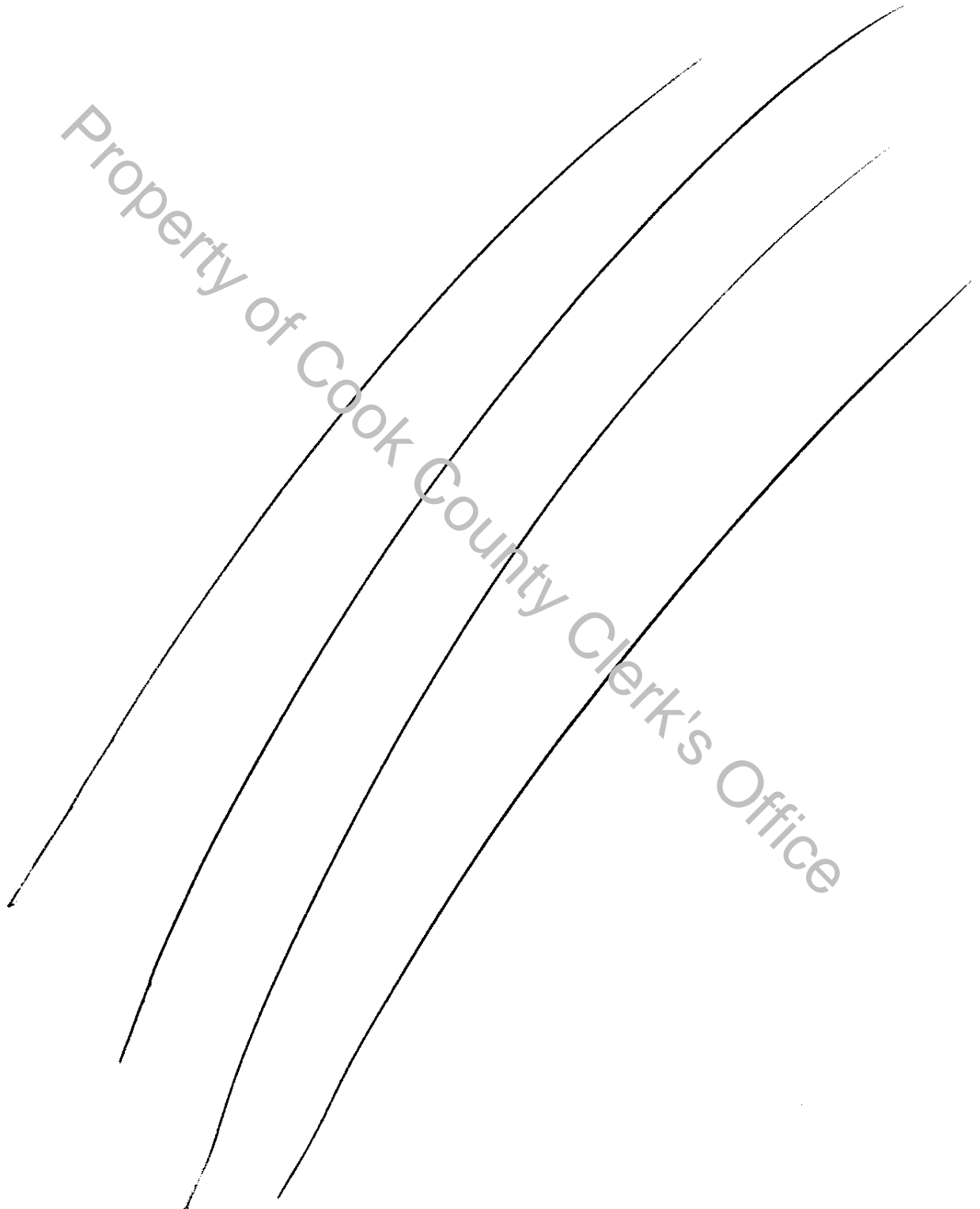
<u>Name of Benefited Property</u>	<u>Description of Recapturable Cost</u>	<u>Recapturable Amount</u>
Willow Pond	Traffic signal and engineering	\$19,915.56
	Pavement improvements at Rt. 59 and Gulf Keys	<u>19,000.00</u>
		<u>\$38,915.56</u>

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Exhibit C

(Map of Benefited Properties)



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Exhibit D

(Legal Description of Benefited Properties)

Lots 1 and 2 in the Willow Pond Marketplace Subdivision, being a subdivision of part of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 28, Township 41 North, Range 9, East of the Third Principal Meridian, as recorded on March 25, 2005 as Document No. 0508439003, in Cook County Illinois.

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EXHIBIT E

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that Harlem Irving Companies, Inc., ("Harlem Irving"), in consideration of Ten and no/100 (\$10.00) Dollars, receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over to the Village of Streamwood, a municipal corporation, County of Cook, State of Illinois (the "Village"), the following described goods, chattels and other items of personal property, to-wit:

(1) Each and every part of the improvements set forth on Exhibit A attached hereto and made a part hereof (the "Improvements"), as fully described in the plans and specifications attached hereto and incorporated herein as Exhibit B.

(2) The object of this Bill of Sale is to grant, sell, transfer and deliver to the Village, with the exceptions noted, the ownership in all items of personalty which comprise the Improvements by Harlem Irving as of the date hereof to the Village.

Harlem Irving hereby represents and warrants to Buyer that Harlem Irving is the absolute owner of said Improvements, that the Improvements are free and clear of all liens, charges and encumbrances, and that Harlem Irving has full right, power and authority to sell said Improvements and to make this bill of sale.

IN WITNESS WHEREOF, Harlem Irving has caused this bill of sale to be signed and sealed in its name by its officers thereunto duly authorized this ____ day of _____, 2005.

ATTEST:

HARLEM IRVING COMPANIES, INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____