

UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN
TO:



Doc#: 0902333088 Fee: \$68.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/23/2009 11:31 AM Pg: 1 of 17

Bell, Boyd & Lloyd LLP
70 West Madison
Suite 3100
Chicago, Illinois 60602
Attn: Michael J. Roth, Esq.

Recorder's use only

FOURTH MODIFICATION OF LOAN DOCUMENTS

THIS FOURTH MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 5th day of December, 2008, by and among STREAMWOOD-GULF, LLC, an Illinois limited liability company ("Borrower"), THOMAS MORABITO and EVAN OLIFF (individually and collectively, "Guarantor"), RIDGE-WENTWORTH, L.L.C., an Illinois limited liability company ("Ridge"), and BANK OF AMERICA N.A., a national banking association, successor by merger to LaSalle Bank National Association, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a construction loan ("Loan") to Borrower in the principal amount of Five Million Three Hundred Sixty-Nine Thousand Four Hundred Dollars (\$5,369,400) pursuant to the terms and conditions of a Construction Loan Agreement dated as of December 20, 2006 between Borrower and Lender (as amended, the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Note dated December 20, 2006, in the principal amount of the Loan made payable by Borrower to the order of Lender (as amended, the "Note").

B. The Note is secured by, among other things, (i) that certain Mortgage, Security Agreement and Fixture Filing dated December 20, 2006 from Borrower to Lender recorded with the Cook County Recorder of Deeds (the "Recorder's Office") on December 22, 2006, as Document No. 0636341119 (as amended, the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the "Land"), (ii) that certain Assignment of Rents and Leases dated December 20, 2006 from Borrower to Lender and recorded in the Recorder's Office as Document No. 0636341120 (as amended, the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated December 20, 2006 from Borrower and Guarantor to Lender (as amended, the "Indemnity Agreement"); (iv) that certain Payment Guaranty and that certain Completion Guaranty, both dated December 20, 2006 from Guarantor to Lender (collectively, as amended, the "Guaranties"); (v) that certain Assignment of Distributions (Security Agreement) dated as of December 20, 2006 from Guarantor and Ridge in favor of Lender (as amended, the "Assignment of Distributions"); and (vi) certain other loan documents (the Loan Agreement, the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the Guaranties, the Assignment of Distributions, and the

835 295 21 PL/DI

17
8



UNOFFICIAL COPY

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

C. Borrower, Lender, Guarantor, and Ridge entered into that certain Modification of Loan Documents, dated as of December 20, 2007, and recorded with the Recorder's Office, which, among other things, extended the Maturity Date of the Loan to March 20, 2008 and obligated the Borrower to deposit funds into an account pledged to Lender for the payment of monthly payments of interest due on the principal balance of the Loan, pursuant to the terms of that certain Account Pledge Agreement dated as of December 20, 2007 by and between Borrower and Lender (the "Pledge Agreement").

D. Borrower, Lender, Guarantor, and Ridge entered into that certain Second Modification of Loan Documents, dated as of May 19, 2008, and recorded with the Recorder's Office, which, among other things, extended the Maturity Date of the Loan to September 20, 2008.

E. Borrower, Lender, Guarantor, and Ridge entered into that certain Third Modification of Loan Documents, dated as of September 20, 2008, and recorded with the Recorder's Office, which, among other things, extended the Maturity Date of the Loan to April 30, 2009.

F. Borrower, Lender, Guarantor, and Ridge desire to make certain amendments to the Loan Agreement, the Mortgage, the Note, the Pledge Agreement, the Assignment of Leases and certain of the other Loan Documents, on the terms and conditions set forth in this Agreement.

AGREEMENTS:

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

1. Amendment to Loan Agreement. The Loan Agreement is hereby amended as follows:

(a) In Section 1.1, the definition of "Loan Maturity Date" is deleted, and the following is substituted in its place:

Loan Maturity Date, April 30, 2009, subject to (i) acceleration as provided in the Loan Documents or (ii) extension to October 30, 2009, as provided in that certain Fourth Modification of Loan Documents dated as of December 5, 2008."

(b) In Section 1.1, the definitions of "Letter of Credit Application", "Letters of Credit" and "Letters of Credit Fee" are deleted in their entirety.

(c) Section 2.1(h) is deleted in its entirety.

UNOFFICIAL COPY

2. **Amendment to Note.** The Note is hereby amended as follows:

(a) Section 1 is deleted in its entirety and replaced with the following:

1. Nature of the Note. Pursuant to the Loan Agreement (hereinafter defined), the total principal amount due and outstanding at any one time shall not exceed \$5,369,400.00. The Loan Amount shall be advanced through disbursements of Development Funds. The aggregate amount of the Development Funds due and outstanding from time to time is referred to as the "Loan Amount."

(b) Paragraph 2 is deleted in its entirety, and the following is substituted in its place:

2. Payment of Principal and Interest.

2.1 Interest Prior to Default.

(a) Interest shall accrue on the principal balance of this Note outstanding from the date hereof through April 30, 2009 (the "Initial Maturity Date"), subject to extension to October 30, 2009, as provided in that certain Fourth Modification of Loan Documents dated as of December 5, 2008, at a floating per annum rate of interest (the "Floating Rate" or the "LIBOR Rate") equal to LIBOR (as hereinafter defined) for the relevant Interest Period (as hereinafter defined), plus Three and Seventy-five one hundredths percent (3.75%) (the "Applicable Margin"), such LIBOR Rate to remain fixed for such Interest Period. Any portion of the principal amount of this Note bearing interest at the LIBOR Rate is referred to herein as a "LIBOR Loan".

(b) Any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Chicago, Illinois is referred to herein as a "Business Day". As used herein, "Prime Rate" shall mean the floating per annum rate of interest most recently announced by the Lender at Chicago, Illinois as its prime or base rate, plus Three and Seventy-five one hundredths percent (3.75%). A certificate made by an officer of the Lender stating the prime or base rate in effect on any given day, for the purposes hereof shall be conclusive evidence of the prime or base rate in effect on such day. The prime rate is a base reference rate of interest adopted by the Lender as a general benchmark from which the Lender determines the floating interest rates chargeable on various loans to borrowers with varying degrees of creditworthiness and the Borrower acknowledges and agrees that the Lender has made no representations whatsoever that the Prime Rate is the interest rate actually offered by the Lender to borrowers of any particular creditworthiness. Any portion of the principal amount of this Note bearing interest at the Prime Rate is referred to herein as a "Prime Loan".

(c) **LIBOR Rate.** The designation of a LIBOR Loan by the Borrower is subject to the following requirements:

UNOFFICIAL COPY

(i) A request for a LIBOR Loan (a "LIBOR Loan Request") must be received by the Lender no later than 2:00 p.m. Chicago, Illinois time two Business Days prior to the first day of the Interest Period on which such LIBOR Loan shall be advanced, shall be irrevocable, and shall state the initial Interest Period and amount of such LIBOR Loan. Each LIBOR Loan will be in an amount not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) and in increments in excess thereof of \$100,000. No more than four (4) separate LIBOR Loans may be outstanding at any time. A request for a LIBOR Loan received by the Lender after 2:00 p.m. Chicago, Illinois on any Business Day time will be processed and funded by the Lender on the third Business Day thereafter.

(ii) If pursuant to the LIBOR Loan Request, the initial Interest Period of any LIBOR Loan commences on any day other than the first Business Day of any month, then the initial Interest Period of such LIBOR Loan shall end on the first day of the following calendar month, notwithstanding the Interest Period specified in the LIBOR Loan Request, and the LIBOR Rate for such LIBOR Loan shall be equal to the LIBOR Rate for an interest period equal to the length of such partial month, plus the Applicable Margin. Thereafter, each LIBOR Loan shall automatically renew (a "LIBOR Rollover") for the Interest Period specified in the LIBOR Loan Request at the then current LIBOR Rate unless the Borrower, in a subsequent LIBOR Loan Request received by the Lender no later than 2:00 p.m. Chicago, Illinois time on the second (2nd) Business Day before the expiration of the existing Interest Period, shall elect a different Interest Period. The Borrower may not elect a LIBOR Rate, and an Interest Period for a LIBOR Loan shall not automatically renew, with respect to any principal amount which is scheduled to be repaid before the last day of the applicable Interest Period, and any such amounts shall bear interest at the Prime Rate, until repaid.

(iii) "LIBOR" shall mean a rate of interest equal to (A) the per annum rate of interest at which United States dollar deposits in an amount comparable to the amount of the relevant LIBOR Loan and for a period equal to the relevant Interest Period are offered in the London Interbank Eurodollar market at 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period (or three Business Days prior to the commencement of such Interest Period if banks in London, England were not open and dealing in offshore United States dollars on such second preceding Business Day), as displayed in the Bloomberg Financial Markets system (or other authoritative source selected by the Lender in its sole discretion), divided by (B) a number determined by subtracting from 1.00 the then stated maximum reserve percentage for determining reserves to be maintained by member banks of the Federal Reserve System for Eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D), such rate to remain fixed for such Interest Period, or as LIBOR is otherwise determined by the Lender in its sole and absolute discretion. The Lender's determination of LIBOR shall be conclusive, absent manifest error.

UNOFFICIAL COPY

(iv) **"Interest Period"** shall mean, with regard to any LIBOR Loan, successive one, two or three month periods, as selected by the Borrower in its LIBOR Loan Request; provided, however, that: (A) each Interest Period occurring after the initial Interest Period of any LIBOR Loan shall commence on the day on which the preceding Interest Period for such LIBOR Loan expires; (B) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day; (C) whenever the first day of any Interest Period occurs on a date for which there is no numerically corresponding date in the month in which such Interest Period terminates, such Interest Period shall end on the last day of such month, unless such day is not a Business Day, in which case the Interest Period shall terminate on the first Business Day of the following month, provided, however, that so long as the LIBOR Roll-over remains in effect, all subsequent Interest Periods shall terminate on the date of the month numerically corresponding to the date on which the initial Interest Period commenced; and (D) the final Interest Period for any LIBOR Loan must be such that its expiration occurs on or before the Maturity Date. If at any time an Interest Period expires less than one month before the Maturity Date, such LIBOR Loan shall automatically convert to a Prime Loan on the last day of the then existing Interest Period, without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower.

(v) Notwithstanding anything to the contrary contained herein, the principal balance of any LIBOR Loan may not be prepaid in whole or in part at any time. If, for any reason, a LIBOR Loan is paid prior to the last Business Day of any Interest Period, whether voluntary, involuntary, by reason of acceleration or otherwise, each such prepayment of a LIBOR Loan will be accompanied by the amount of accrued interest on the amount prepaid and any and all costs, expenses, penalties and charges incurred by the Lender as a result of the early termination or breakage of a LIBOR Loan, plus the amount, if any, by which (A) the additional interest which would have been payable during the Interest Period on the LIBOR Loan prepaid had it not been prepaid, exceeds (B) the interest which would have been recoverable by the Lender by placing the amount prepaid on deposit in the domestic certificate of deposit market, the Eurodollar deposit market, or other appropriate money market selected by the Lender, for a period starting on the date on which it was prepaid and ending on the last day of the Interest Period for such LIBOR Loan (collectively, the **"Make Whole Costs"**). The amount of any such loss or expense payable by the Borrower to the Lender under this section shall be determined in the Lender's sole discretion based upon the assumption that the Lender funded its loan commitment for LIBOR Loans in the London Interbank Eurodollar market and using any reasonable attribution or averaging methods which the Lender deems appropriate and practical, provided, however, that the Lender is not obligated to accept a deposit in the London Interbank Eurodollar market in order to charge interest on a LIBOR Loan at the LIBOR Rate.

UNOFFICIAL COPY

(vi) If the Lender determines in good faith (which determination shall be conclusive, absent manifest error) prior to the commencement of any Interest Period that (A) the making or maintenance of any LIBOR Loan would violate any applicable law, rule, regulation or directive, whether or not having the force of law, (B) United States dollar deposits in the principal amount, and for periods equal to the Interest Period, of any LIBOR Loan are not available in the London Interbank Eurodollar market in the ordinary course of business, (C) by reason of circumstances affecting the London Interbank Eurodollar market, adequate and fair means do not exist for ascertaining the LIBOR Rate to be applicable to the relevant LIBOR Loan, (D) the LIBOR Rate does not accurately reflect the cost to the Lender of a LIBOR Loan, or (E) an Event of Default (as hereinafter defined) has occurred and is continuing or any event or circumstance exists which, with the giving of notice or passage of time, would constitute an Event of Default, the Lender shall promptly notify the Borrower thereof and, so long as any of the foregoing conditions continue, the Lender will have no obligation to accept an election by the Borrower for a LIBOR Loan, and each existing LIBOR Loan, at the Borrower's option, shall be (1) converted to a Prime Loan on the last Business Day of the then existing Interest Period, or (2) due and payable on the last Business Day of the then existing Interest Period, without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower.

(vii) If, after the date hereof, a Regulatory Change (as hereinafter defined) shall, in the reasonable determination of the Lender, make it unlawful for the Lender to make or maintain any LIBOR Loans, the Lender will have no obligation to accept an election by the Borrower for a LIBOR Loan. In addition, at the Borrower's option, each existing LIBOR Loan shall be immediately (A) converted to a Prime Loan on the last Business Day of the then existing Interest Period or on such earlier date as required by law, or (B) due and payable on the last Business Day of the then existing Interest Period or on such earlier date as required by law, all without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower. As used herein, "Regulatory Change" shall mean the introduction of, or any change in any applicable law, treaty, rule, regulation or guideline or in the interpretation or administration thereof by any governmental authority or any central bank or other fiscal, monetary or other authority having jurisdiction over the Lender or its lending office.

(viii) If any Regulatory Change (whether or not having the force of law) shall (a) impose, modify or deem applicable any assessment, reserve, special deposit or similar requirement against assets held by, or deposits in or for the account of, or loans by, or any other acquisition of funds or disbursements by, the Lender; (b) subject the Lender or any LIBOR Loan to any tax, duty, charge, stamp tax or fee, or change the basis of taxation of payments to the Lender of principal or interest due from the Borrower hereunder (other than a change in the taxation of the overall net income of the Lender); or (c) impose on the Lender any other condition regarding any LIBOR

UNOFFICIAL COPY

Loan or the Lenders' funding thereof, and the Lender shall determine (which determination shall be conclusive, absent manifest error) that the result of the foregoing is to actually increase the cost to the Lender of making or maintaining any LIBOR Loans or to reduce the amount of principal or interest received by the Lender hereunder on any LIBOR Loan, then the Borrower shall pay to the Lender, on demand, such additional amounts as the Lender shall from time to time determine are sufficient to compensate and indemnify the Lender for such increased costs or reduced amounts (the "LIBOR Indemnification Costs").

2.2 Interest Calculation. *Interest on this Note shall be calculated on the basis of a 360-day year and the actual number of days elapsed in any portion of a month in which interest is due.*

2.3 Principal and Interest. *Payments of principal and interest due under this Note, if not sooner declared to be due in accordance with the provisions hereof, shall be made as follows:*

(a) *Commencing on January 1, 2007, and continuing on the first business day of each month thereafter through and including the month in which the Maturity Date occurs, all accrued and unpaid interest on the principal balance of this Note outstanding from time to time shall be due and payable.*

(b) *The unpaid principal balance of this Note, if not sooner paid or declared to be due in accordance with the terms hereof, together with all accrued and unpaid interest thereon and any other amounts due and payable hereunder or under the Mortgage, the Additional Collateral or the Other Loan Documents, shall be due and payable in full on the Maturity Date."*

3. Amendment to Mortgage. *The Mortgage is hereby amended as follows:*

(a) *In Paragraph B of the Recitals the date "April 30, 2009" is deleted, and the phrase "April 30, 2009, subject to extension to October 30, 2009" is substituted in its place.*

(b) *Paragraphs C, and D of the Recitals are hereby deleted in their entirety, and the following is substituted in their place:*

"C. Fox River-Northwest, LLC, an Illinois limited liability company ("Fox River Borrower"), and Mortgagee have entered into a certain Construction Loan Agreement of even date herewith (the "Fox River Loan Agreement" or "Other Loan Agreement") for construction of a small retail center located on real estate in Fox River Grove, Illinois (the "Fox River Property"). The Fox River Loan Agreement provides for a loan from Mortgagee to Fox River Borrower in the maximum amount of TWO MILLION TWO HUNDRED TWENTY FIVE THOUSAND ONE HUNDRED SEVENTY SEVEN AND 12/100 DOLLARS (\$2,225,177.12) (the "Fox River Loan"). As evidence of the indebtedness incurred under the Fox River Loan Agreement, Fox River Borrower has executed and delivered to Mortgagee a

UNOFFICIAL COPY

certain note of even date herewith (the "Fox River Note"), made payable to the order of and delivered to Mortgagee, in and by which Fox River Note Fox River Borrower promises to pay the said principal sum of the Fox River Loan and interest at the rate and in installments as provided in the Fox River Note, with a final payment of the balance due on April 30, 2009, subject to extension to October 30, 2009, or such earlier date as may be provided in such Fox River Note. All of said principal and interest are made payable at such place as the Holders may from time to time in writing appoint, and in absence of such appointment, then at the offices of Mortgagee in Chicago, Illinois.

D. Mortgagee has extended to Romeoville-Weber LLC, an Illinois limited liability company, and Romeoville-Weber II LLC, an Illinois limited liability company (individually and collectively, "Romeoville Borrower"), a loan in the maximum amount of \$1,497,375 (the "Romeoville Loan") for the purposes of refinancing certain property located in Romeoville, Illinois (the "Romeoville Property"). Romeoville Borrower has executed and delivered to Mortgagee a certain note dated as of May __, 2008 (the "Romeoville Note"), made payable to the order of and delivered to Mortgagee, in and by which Romeoville Note, Romeoville Borrower promises to pay the said principal sum of the Romeoville Loan and interest at the rate and in installments as provided in the Romeoville Note, with a final payment of the balance due on April 30, 2009, subject to extension to October 30, 2009, or such earlier date as may be provided in such Romeoville Note. All of said principal and interest are made payable at such place as the Holders may from time to time in writing appoint, and in absence of such appointment, then at the offices of Mortgagee in Chicago, Illinois.

(c) In the first paragraph of the section titled "Agreements", the phrase "*(collectively, the "Indebtedness")*," is inserted following the phrase "Letters of Credit".

(d) At the beginning of the first sentence of Section 23, the phrase "*Subject to the provisions of Section 42 below,*" is inserted.

(e) The following new Section 42 is inserted:

"Release Price. *Provided that no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, shall have occurred and be continuing, Mortgagee shall release the premises from the lien of the Mortgage in connection with the sale of the premises to a bona fide third party purchaser upon payment by Mortgagor to Mortgagee of the greater of the following (the "Release Price"):*

- a) An amount equal to ninety-four percent (94%) of the gross sale price of the premises pursuant to a sale contract for the premises entered into between Mortgagor and a bona fide third party purchaser; or*
- b) Four Million Eight Hundred Thousand and 00/100 Dollars (\$4,800,000.00);*

The payment due hereunder shall due and payable in full at the closing of the sale of the premises, and shall be applied against the principal amount of the Indebtedness. The provisions of this Section 42 shall not apply to a judicial sale of the premises, a refinancing of

UNOFFICIAL COPY

the Loan or to a conveyance in lieu of foreclosure. Notwithstanding the release of the premises from the lien of this Mortgage pursuant to this Section 42, such payment shall not constitute payment in full of the Indebtedness, and the Loan Agreement, the Note, the Guaranty and the other Loan Documents, and all of Mortgagor's and Guarantor's respective obligations thereunder, shall remain in full force and effect in accordance with their respective terms."

4. **Extension Option.** Borrower may at its option ("Extension Option") extend the Loan Maturity Date to October 30, 2009 (the "Extended Maturity Date"), upon satisfaction of the following conditions precedent (the "Extension Requirements"):

(i) Borrower shall give written notice to Lender of its exercise of the Extension Option ("Extension Notice") no later than sixty (60) days prior to the Initial Maturity Date (as defined in the Note).

(ii) RT 4 (as defined in the Fox River Loan Documents) shall have made the RT 4 Payment (as defined in the Fox River Loan Documents) to Lender.

(iii) Stevensville (as defined in the Fox River Loan Documents) shall have made the Stevensville Payment (as defined in the Fox River Loan Documents) to Lender.

(iv) Borrower shall have sold the Land and paid the Release Price to Lender, as set forth in Section 42 of the Mortgage.

(v) Lender shall have obtained, at Borrower's sole cost and expense, an appraisal of the Land satisfactory and addressed to Lender prepared by a certified or licensed appraiser who is approved by Lender in its sole discretion.

(vi) Lender shall have obtained, at Romeoville Borrower's sole cost and expense, an appraisal of the Romeoville Property satisfactory and addressed to Lender prepared by a certified or licensed appraiser who is approved by Lender in its sole discretion.

(vii) Borrower shall have deposited into the Interest Reserve Pledge Account a sum equal to three (3) months of monthly payments of interest due on the principal balance of the Loan as a reserve for the payment of monthly payments of interest due on the principal balance of the Loan outstanding from time to time.

(viii) Fox River Borrower shall have deposited into its interest reserve pledge account a sum equal to three (3) months of monthly payments of interest due on the principal balance of the Fox River Loan as a reserve for the payment of monthly payments of interest due on the principal balance of the Fox River Loan outstanding from time to time.

(ix) Romeoville Borrower shall have deposited into its interest reserve pledge account a sum equal to three (3) months of monthly payments of interest

UNOFFICIAL COPY

due on the principal balance of the Romeoville Loan as a reserve for the payment of monthly payments of interest due on the principal balance of the Romeoville Loan outstanding from time to time.

(x) Borrower shall have paid Lender an extension fee equal to .25% of then then-current outstanding principal balance of the Loan.

(xi) Fox River Borrower shall have paid Lender an extension fee equal to .25% of then then-current outstanding principal balance of the Fox River Loan.

(xii) Romeoville Borrower shall have paid Lender an extension fee equal to .25% of then then-current outstanding principal balance of the Romeoville Loan.

(xiii) As of the date of Lender's receipt of the Borrower's Extension Notice and as of the Initial Maturity Date, no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, shall have occurred and be continuing.

Provided all of the foregoing conditions have been satisfied, the Loan Maturity Date shall be extended to the Extended Maturity Date, and all references in the Note and the other Loan Documents to the Loan Maturity Date shall be deemed references to the Extended Maturity Date. The extension of the Loan Maturity Date shall not impair Lender's ability to accelerate the maturity of the Loan in accordance with the Note or any one or more of the other Loan Documents.

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

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

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

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

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

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

UNOFFICIAL COPY

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

6. **Intentionally Deleted.**

7. **Reaffirmation of Guaranties.** Guarantor ratifies and affirms the Guaranties and agrees that the Guaranties are in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranties are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranties continue to be the valid and binding obligation of Guarantor, enforceable in accordance with their terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranties.

8. **Reaffirmation of Assignment of Distributions.** Guarantor and Ridge ratify and affirm the Assignment of Distributions and agree that the Assignment of Distributions is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor and Ridge in the Assignment of Distributions are, as of the date hereof, true and correct and neither Guarantor nor Ridge knows of any default thereunder. The Assignment of Distributions continues to be the valid and binding obligation of Guarantor and Ridge, enforceable in accordance with its terms and neither Guarantor nor Ridge has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Assignment of Distributions.

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

10. **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, Guarantor or Ridge merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor, Ridge and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor, Ridge 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

UNOFFICIAL COPY

intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

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

(d) Borrower, Guarantor, Ridge 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, Guarantor, Ridge 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 "Loan Agreement", the "Note", the "Mortgage", the "Pledge Agreement", or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement, the Note, the Mortgage, the Pledge Agreement, 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, Guarantor's and Ridge's obligations under this Agreement.

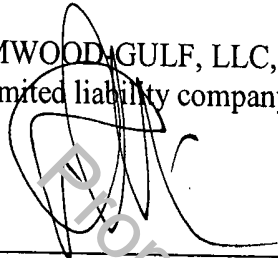
[Signatures Follow]

UNOFFICIAL COPY

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


BORROWER:

STREAMWOOD GULF, LLC, an Illinois limited liability company


By: 
One of its Managers


LENDER:

BANK OF AMERICA, N.A., a national banking association

By: 
Name: Evan J. Sitariski
Title: Vice President

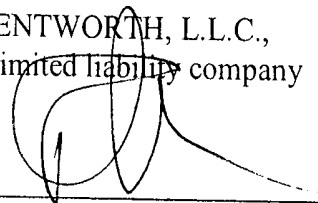
GUARANTORS:


Thomas Morabito, individually


Evan Oliff, individually

RIDGE:

RIDGE-WENTWORTH, L.L.C., an Illinois limited liability company

By: 
One of its Managers

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I Danita Swider, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Evan Sitauski, Vice President of Bank of America, N.A., 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 31st day of December, 2008.



Danita L Swider
Notary Public

My Commission Expires: _____

of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss.
COUNTY OF Cook)

I Deborah M Woodrum, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Immo Morabito, Morgan of Streamwood-Gulf, LLC, 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 9 day of December, 2008.

[Signature]
"OFFICIAL SEAL"
Deborah M. Woodrum
Notary Public, State of Illinois
My Commission Expires 10/30/11

My Commission Expires: _____

STATE OF ILLINOIS)
) ss.
COUNTY OF Cook)

I Deborah M Woodrum, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Immo Morabito, Morgan of RIDGE-WENTWORTH, L.L.C., 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 9 day of December, 2008.

[Signature]
"OFFICIAL SEAL"
Deborah M. Woodrum
Notary Public, State of Illinois
My Commission Expires 10/30/11

My Commission Expires: _____

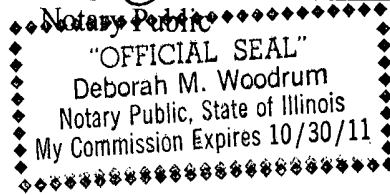
UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss.
COUNTY OF Cook)

I Deborah M Woodrum, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Thomas Morabito and Evan Oliff are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, and appeared before me this day in person and acknowledged that they signed and delivered 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 9 day of December, 2008.

My Commission Expires:



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LAND

PARCEL 1:

LOTS 1 AND 2 IN THE FINAL PLAT OF WILLOW POND MARKETPLACE SUBDIVISION PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 41 NORTH RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1, AS SET FORTH IN THE DECLARATION OF EASEMENTS AND COVENANTS RECORDED OCTOBER 3, 1989 AS DOCUMENT 89467463, FOR THE PURPOSE OF CONSTRUCTING A CURB CUT AND FOR INGRESS AND EGRESS TO AND FROM THE PRIVATE ROAD KNOWN AS GULF KEYS ROAD, IN, OVER UNDER ACROSS, ALONG, THROUGH AND UPON A PORTION OF GULF KEYS ROAD INDICATED BY THE CROSS-HATCHINGS ON THE PLAN ATTACHED AS "EXHIBIT C" AND "EXHIBIT D" TO SAID DOCUMENT, AND SHOWN ON THE SURVEY PREPARED BY COMPASS LAND SURVEYING AND MAPPING DATED JANUARY 21, 2004 PROJECT NO. 8811-03 AND LAST REVISED FEBRUARY 23, 2004 AND ALSO SHOWN ON THE SITE PLAN PREPARED BY COMPASS CONSULTING GROUP, LTD. DATED JULY 18, 2003 PROJECT NO. 03-035.

Address: 1070 South Sutton Road, Streamwood, Illinois

PIN: ~~06-28-201-129-0000~~

06-28-201-182

06-28-201-183

06-28-205-030