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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2009 SEP 16 AM 8:56

MICHAEL A. BROWN
RECORDER

After recording please return to:

2009 063122

Schain, Burney, Ross & Citron, Ltd.
222 North LaSalle Street
Suite 1910
Chicago, Illinois 60601

Attention: Courtney E. Mayster

**FOURTH MODIFICATION OF MORTGAGE
AND OTHER SECURITY DOCUMENTS**

THIS FOURTH MODIFICATION OF MORTGAGE AND OTHER SECURITY DOCUMENTS ("Modification") is made and entered into as of June 6, 2009, by **OLTHOF HOMES - LAKE HILLS, LLC**, an Indiana limited liability company ("**Borrower**") with a mailing address at 8051 Wicker Avenue, Suite A, St. John, Indiana, 46373, to the order of **MB FINANCIAL BANK, N.A.** (together with its successors and assigns, including each and every holder from time to time of the Notes hereinafter described, "**Lender**") with a mailing address at 6111 North River Road, Rosemont, Illinois, 60018, Attention: Vincent G. Laughlin.

RECITALS:

WHEREAS, Borrower and Lender have entered into an Amended and Restated Loan Agreement dated April 6, 2006 ("**Loan Agreement**") whereby Lender has heretofore made a loan (the "**Loan**") to Borrower in the total principal amount of Eleven Million Three Hundred Eighteen Thousand and 00/100 Dollars (\$11,318,000.00); and

WHEREAS, as of the date hereof, the outstanding principal balance of the Loan is Two Million One Hundred Thirteen Thousand and 00/100 Dollars (\$2,113,000.00); and

WHEREAS, the Loan is evidenced by a: (i) Land Acquisition Mortgage Note in the amount Three Million Two Hundred Sixty Four Thousand and 00/100 Dollars (\$3,264,000.00), all as more specifically set forth in said Land Acquisition Mortgage note dated December 3, 2004 (the "**Phase 1 Acquisition Note**"); (ii) Mortgage Note in the amount of Three Million Three Hundred Eighty Five Thousand and 00/100 Dollars (\$3,385,000.00), all as more specifically set forth in said Mortgage Note dated April 6, 2006 (the "**Phase 2 Acquisition Note**"); (iii) Model Home Mortgage Note in the amount of One Million One Hundred Thirty Five Thousand and 00/100 Dollars (\$1,135,000.00), all as more specifically set forth in said Model Home Mortgage Note dated December 3, 2004 (the "**Model Note**"); and (iv) Presold and Spec Home Mortgage Note in the amount of Three Million Five Hundred Thirty Four Thousand and 00/100 Dollars (\$3,534,000.00), all as more specifically set forth in said Presold and Spec Home Mortgage Note dated December 3, 2004 (the "**Construction**")

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Note”). The Phase 1 Acquisition Note, the Phase 2 Acquisition Note, the Model Note and the Construction Note are collectively referred to herein as the “Notes”; and

WHEREAS, the Notes are secured by, among other things, a Mortgage, Assignment of Leases and Rents, and Security Agreement dated as of the December 8, 2004, by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Lake County, Indiana, on December 20, 2004, as Document No. 2004107725, as modified by that Modification of Mortgage and Other Security Documents dated as of December 13, 2004, by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Lake County, Indiana, on December 20 2004, as Document No. 2004107727 and as further modified by that Second Modification of Mortgage and Other Security Documents dated as of April 6, 2006, by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Lake County, Indiana, on April 18, 2006, as Document No. 2006031663 and as further modified by that Third Modification of Mortgage and Other Security Documents dated as of April 6, 2009, by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Lake County, Indiana, on _____, 2009, as Document No. _____ (collectively, the “Mortgage”), and a Guaranty of Payment dated as of December 3, 2004, by OD, Limited Partnership, an Indiana limited partnership, and OD Enterprises, Inc., an Indiana corporation, jointly and severally (collectively, “Guarantor”) in favor of Lender, as reaffirmed from time to time (the “Guaranty”); and any and all other instruments and documents executed by or on behalf of Borrower and delivered to Lender in connection with the Loan, which are hereinafter collectively referred to as the “Other Security Documents”; and

WHEREAS, the collateral for the Mortgage is the real property legally described in Exhibit “A”, which is attached hereto and made a part hereof; and

WHEREAS, Borrower desires that the Loan be modified to extend the Maturity Date (as defined therein) of the Phase 2 Acquisition Note among other things; and

WHEREAS, the parties desire to modify and amend the Loan as provided herein and as a condition to such modification, Lender is requiring: (i) this Modification; (ii) an Amendment to Mortgage Note dated of even date herewith executed by Borrower (the “Note Amendment”) whereby the Maturity Date of the Phase 2 Acquisition Note is extended as provided above; and (iii) a Consent and Reaffirmation of Guarantors executed by Guarantor (“Guaranty Modification”) whereby the Guaranty is modified to secure the Note as modified by the Note Amendment.

NOW, THEREFORE, for and in consideration of Ten and 00/100 Dollars (\$10.00) in hand paid, the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Incorporation of Recitals**. The aforesaid recitals are hereby incorporated into this Modification by reference as if fully set forth in this Paragraph 1. Wherever the terms and conditions of this Modification conflict with the terms and conditions of the Mortgage, the terms and

conditions of this Modification shall control. In all other respects the parties do hereby ratify and declare to be in full force and effect the terms and conditions of the Mortgage and the Other Security Documents.

2. **Modification of Mortgage and Other Security Documents.** The Mortgage is hereby modified as follows:

- a. to provide that final payment for all sums due under the Phase 2 Acquisition Note shall be due and payable on **September 5, 2009**.
- b. by deleting the paragraph commencing with "TO SECURE" on the first (1st) page thereof in its entirety and substituting therefore the following:

"TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the repayment of the indebtedness evidenced by that certain Acquisition and Development Loan Note dated June 28, 2006 made by **COVINGTON DEVELOPMENT, LLC**, an Indiana limited liability company in the original principal amount of **Three Million Three Hundred Thousand and 00/100 Dollars (\$3,300,000.00)**, as may be modified from time to time, with interest thereon; the repayment of the indebtedness evidenced by that certain Presold & Spec Home Loan Note dated June 28, 2006 made by **COVINGTON DEVELOPMENT, LLC**, an Indiana limited liability company in the original principal amount of **Two Million Eight Hundred Fifty Thousand and 00/100 Dollars (\$2,850,000.00)**, as may be modified from time to time, with interest thereon; the repayment of the indebtedness evidenced by that certain Presold & Spec Home Loan Note dated June 20, 2007 made by **ROCKWELL DEVELOPMENT, LLC**, an Indiana limited liability company in the original principal amount of **Three Million Six Hundred Sixty Five Thousand and 00/100 Dollars (\$3,665,000.00)**, as may be modified from time to time, with interest thereon; the repayment of the indebtedness evidenced by that certain Model Home Loan Note dated June 20, 2007 made by **ROCKWELL DEVELOPMENT, LLC**, an Indiana limited liability company in the original principal amount of **Seven Hundred Seventy Two Thousand Four Hundred and 00/100 Dollars (\$772,400.00)**, as may be modified from time to time, with interest thereon; the repayment of the indebtedness evidenced by that certain Mortgage Note dated January 4, 2006 made by **THE PRESERVE DEVELOPMENT, LLC**, an Indiana limited liability company in the original principal amount of **One Million Two Hundred Twenty Two Thousand Six Hundred Fifty and 00/100 Dollars (\$1,222,650.00)**, as may be modified from time to time, with interest thereon; the payment of all charges provided herein and all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements contained herein and in the Note, all future advances and all other indebtedness of Mortgagor to Lender whether now or hereafter existing (collectively, the "**Secured Indebtedness**" or "**Indebtedness**") and also in consideration of Ten Dollars (\$10.00), the receipt and sufficiency of which is

acknowledged, Mortgagor does hereby convey, grant, mortgage and warrant to Lender the real estate ("**Real Estate**") located in the County of Lake, State of Indiana, described on Exhibit "A" attached hereto, subject only to covenants, conditions, easements and restrictions set forth on Exhibit "B", if any, ("**Permitted Encumbrances**")."

3. **Modification of Loan Agreement.** The Loan Agreement is hereby modified as follows:

a. to provide that the "**Due Date**" shall hereinafter refer to "**September 5, 2009**"

b. by adding the following as additional "Defaults" to Section 9.1 thereof:

"k. Any "Default" or "Event of Default" under any documents evidencing or securing: (1) that that certain loan dated June 28, 2006 made by **COVINGTON DEVELOPMENT, LLC**, an Indiana limited liability company in the original principal amount of **Three Million Three Hundred Thousand and 00/100 Dollars (\$3,300,000.00)**, as may be modified from time to time; (2) that certain loan dated June 28, 2006 made by **COVINGTON DEVELOPMENT, LLC**, an Indiana limited liability company in the original principal amount of **Two Million Eight Hundred Fifty Thousand and 00/100 Dollars (\$2,850,000.00)**, as may be modified from time to time; (3) that certain loan dated June 20, 2007 made by **ROCKWELL DEVELOPMENT, LLC**, an Indiana limited liability company in the original principal amount of **Three Million Six Hundred Sixty Five Thousand and 00/100 Dollars (\$3,665,000.00)**, as may be modified from time to time; (4) that certain loan dated June 20, 2007 made by **ROCKWELL DEVELOPMENT, LLC**, an Indiana limited liability company in the original principal amount of **Seven Hundred Seventy Two Thousand Four Hundred and 00/100 Dollars (\$772,400.00)**, as may be modified from time to time; or (5) that certain loan dated January 4, 2006 made by **THE PRESERVE DEVELOPMENT, LLC**, an Indiana limited liability company in the original principal amount of **One Million Two Hundred Twenty Two Thousand Six Hundred Fifty and 00/100 Dollars (\$1,222,650.00)**, as may be modified from time to time."

4. **References to Note.** From and after the date hereof (i) the Mortgage, the Assignment and the Other Security Documents shall be deemed to secure the Phase 2 Acquisition Note as modified by the Note Amendment; and (ii) any and all references in the Mortgage or the Other Security Documents to the "Note" shall be deemed to refer to the Phase 2 Acquisition Note as modified by the Note Amendment.

5. **References to Loan Documents and Guaranty.** Any and all references in the Notes, the Mortgage and the Other Security Documents to the "Loan Documents" shall from and after the date hereof be deemed to refer to such Loan Documents as modified by this Modification: and any and all references in the Notes, the Mortgage and the Other Security Documents to the

“Guaranty” shall from and after the date hereof be deemed to refer to the Guaranty as modified by the Guaranty Modification.

6. **Reaffirmation of Representations and Warranties.** Mortgagor hereby reaffirms as true and correct in all respects, as of the date hereof, any and all representations and warranties contained in the Mortgage and the Other Security Documents.

7. **Reaffirmation of Covenants.** Mortgagor does hereby reaffirm and agree to perform all of the terms, covenants, conditions and obligations applicable to such parties as set forth in the Mortgage and the Other Security Documents as herein modified.

8. **Governing Law.** The rights and duties of the parties hereunder shall be construed, enforced and governed according to the laws of the State of Illinois, without reference to the conflict of laws principles of said State, all except insofar as the same relates to matters of foreclosure and title to which the laws of the State in which the Property is situated shall govern. The parties hereby consent and irrevocably waive all objections to the jurisdiction and venue and convenience of forum of any court of general and competent jurisdiction located within the County of Cook, State of Illinois with respect to any legal proceeding arising out of or connected with this Agreement and agree that the mailing to their address(es) by registered mail, of any legal process shall constitute lawful and valid service of process in any proceeding, suit, or controversy. The parties shall bring any legal proceeding arising out of or connected with this Agreement only in the Federal or State courts located in the County of Cook, State of Illinois, which courts shall apply the laws as aforesaid. In the event that either party institutes any legal proceeding in any court other than a court located in the County of Cook, State of Illinois, that party shall assume all of the costs incurred in transferring said proceeding to a court located in the County of Cook, State of Illinois, including but not limited to the other party's attorney's and paralegal fees. Notwithstanding anything in this Agreement to the contrary, venue for any action relating to the title or foreclosure proceedings of the Collateral shall lie in Lake County, Indiana, the place of location of such collateral.

In the event that any provision or clause of this Modification, the Notes or any of the Other Security Documents conflicts with applicable law, or is adjudicated to be invalid or unenforceable, same shall not affect other provisions of this Modification, the Note Amendment, the Consent and Reaffirmation or any of the Other Security Documents which can be given effect without the conflicting provision, and to this end the provisions of this Modification, the Note Amendments, the Consent and Reaffirmation or any of the Other Security Documents are declared to be severable and the validity or enforceability of the remainder of the Loan Document in question shall be construed without reference to the conflicting, invalid or unenforceable clause or provision.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Modification to be executed pursuant to authority duly granted as of the date and year first written above.

OLTHOF HOMES – LAKE HILLS, LLC,
an Indiana limited liability company

By: OD Enterprises, Inc.,
an Indiana corporation
Its: Manager

By: [Signature]
Name: SCOT OLTHOF
Title: TREASURER

STATE OF INDIANA)
)
COUNTY OF LAKE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Scot Olthof, personally known to me to be the ~~President~~ Treasurer of OD Enterprises, Inc., an Indiana corporation, which is the Manager of Olthof Homes – Lake Hills, LLC, an Indiana limited liability company, and 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 severally acknowledged that as the ~~President~~ Treasurer, he signed and delivered said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to the authority given by the Board of of said corporation, as his 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 31st day of JULY, 2009.

My Commission Expires: July 31, 2014



Notary Public

DEREK ROEDA

Notary Public, State of Indiana
SEAL
Derek Roeda
My Commission Expires July 31, 2014