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Skagit County Auditor

\$81.00

4/17/2015 Page

1 of

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PREPARED BY AND UPON
RECORDATION RETURN TO:

Seyfarth Shaw LLP
620 Eighth Avenue
New York, New York 10018
Attention: Daniel Evans
AF# 201502200046

RECORDED DOCUMENTS MODIFICATION AGREEMENT

Grantor: **BFO FACTORY SHOPPES LLC,**
a Delaware limited liability company, as grantor
(Borrower)

Grantee 1: **STARWOOD MORTGAGE FUNDING II LLC,**
a Delaware limited liability company, as beneficiary
(Note A-1 Holder)

Grantee 2: **STARWOOD MORTGAGE FUNDING II LLC,**
a Delaware limited liability company, as beneficiary
(Note A-2 Holder)

Land Title and Escrow

Dated: As of April 2, 2015 **151169-**

Brief Legal Description: Lot 3, SP #BURL-1-92; Lots A & B, SP
#BURL-1-92; Ptn NE 1/4 NE 1/4, 7-34-4
E W.M.

Tax Account Nos./I.D. Nos.: 340407-1-002-0013/P24037
340407-1-002-0708/P101766
340407-1-002-0401/P24041

RECORDED DOCUMENTS MODIFICATION AGREEMENT

THIS RECORDED DOCUMENTS MODIFICATION AGREEMENT (this "Agreement"), dated as of the 2nd day of April, 2015, by and among STARWOOD MORTGAGE FUNDING II LLC, a Delaware limited liability company (together with its successors and assigns in interest, in its capacity as owner of Note A-1 (as defined below), "Note A-1 Holder"), STARWOOD MORTGAGE FUNDING II LLC, a Delaware limited liability company (together with its successors and assigns in interest, in its capacity as owner of Note A-2 (as defined below), "Note A-2 Holder" and, together with Note A-1 Holder, collectively, the "Note Holders"), and BFO FACTORY SHOPPES LLC, a Delaware limited liability company ("Borrower").

BACKGROUND

WHEREAS, pursuant to that certain Loan Agreement dated as of February 17, 2015 by and between Borrower, as borrower, and STARWOOD MORTGAGE CAPITAL LLC, a Delaware limited liability company ("Original Lender"), as lender, as the same may have been amended, restated, supplemented or otherwise modified (the "Loan Agreement"), Original Lender made a certain loan (the "Loan") to Borrower, which Loan was evidenced by, *inter alia*, a certain Promissory Note in the original principal amount of FIFTY FOUR MILLION SIX HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$54,675,000.00) dated February 17, 2015 from Borrower to Original Lender (the "Original Note");

WHEREAS, Original Lender assigned the Loan, the Original Note and all other documents evidencing and/or securing the Loan to Note A-1 Holder on February 18, 2015;

WHEREAS, the Original Note is secured by, *inter alia*, that certain (i) Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing from Borrower to Original Lender dated February 17, 2015 and recorded in the land records of Skagit County, Washington (the "Land Records") as Instrument No. 201502200046, as assigned by Original Lender to Note A-1 Holder by that certain Assignment of Security Instrument dated February 18, 2015 and recorded in the Land Records as Instrument No. 201502200049 (as amended, modified, supplemented and/or assigned, the "Mortgage"), and (ii) Assignment of Leases and Rents from Borrower to Original Lender dated February 17, 2015 and recorded in the Land Records as Instrument No. 201505500047, as assigned by Original Lender to Note A-1 Holder by that certain Assignment of Assignment of Leases and Rents dated February 18, 2015 and recorded in the Land Records as Instrument No. 201502200050 (as amended, modified, supplemented and/or assigned, the "Assignment");

WHEREAS, the Mortgage and Assignment pertain to that certain real property described on Exhibit A attached hereto (the "Property");

WHEREAS, concurrently herewith, Note A-1 Holder, Note A-2 Holder, Borrower and HORIZON GROUP PROPERTIES, INC., a Maryland corporation, entered into that certain Note Splitter and Loan Modification Agreement (the "Loan Modification Agreement"), pursuant to which, *inter alia*, the parties thereto amended all of the documents evidencing and/or securing

the Loan (collectively, the "Loan Documents"), and split, severed and divided the obligations evidenced by the Original Note into two (2) separate obligations (the "Note Split"), as follows: (i) a certain obligation in the original principal amount of \$28,000,000.00 to be due and payable by Borrower to Note A-1 Holder (the "A-1 Obligation"), and (ii) a certain obligation in the original principal amount of \$26,675,000.00 to be due and payable by Borrower to Note A-2 Holder (the "A-2 Obligation");

WHEREAS, in furtherance of the Note Split, Borrower executed and delivered two (2) separate promissory notes, as follows: (i) an amended and restated promissory note of even date herewith in the original principal amount of \$28,000,000.00 made by Borrower in favor of Note A-1 Holder and evidencing the A-1 Obligation ("Note A-1"), and (ii) an amended and restated promissory note of even date herewith in the original principal amount of \$26,675,000.00 made by Borrower in favor of Note A-2 Holder and evidencing the A-2 Obligation ("Note A-2", together with Note A-1, as any of the same may be amended, modified or supplemented, collectively, the "Notes");

WHEREAS, the Notes are intended to evidence the same obligations evidenced by the Original Note and are intended to be secured by the Mortgage and Assignment; and

WHEREAS, Borrower, Note A-1 Holder and Note A-2 Holder desire to enter into and record this Agreement to modify the Mortgage and Assignment of record.

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

1. GLOBAL MODIFICATIONS

A. All references to the Original Note and the other Loan Documents in the Mortgage or the Assignment shall be deemed to refer to such documents as modified and amended pursuant to the Loan Modification Agreement.

B. All references to the Original Lender in the Mortgage or the Assignment shall hereafter be deemed to be references to the Note Holders.

C. All references to the Mortgage or the Assignment in any of the Loan Documents shall be deemed to refer to the Mortgage and the Assignment as modified and amended hereby.

2. RATIFICATION

Except as expressly provided above, nothing in this Agreement shall affect or impair any of the rights or remedies provided to the Note Holders in the Mortgage, the Assignment or the other Loan Documents. Borrower confirms that any collateral for the "Obligations" (as defined in the Loan Agreement), including liens, security interests, mortgages, and pledges granted by Borrower, shall continue unimpaired and in full force and effect, and shall cover and secure all of

Borrower's existing and future Obligations to the Note Holders. In addition, except as expressly provided herein, nothing contained in this Agreement shall be construed as releasing Borrower from any of its obligations under the Mortgage, the Assignment or the other Loan Documents, and all of the Loan Documents remain in full force and effect. This Agreement shall in no event be construed as a novation of the Original Note. Except as expressly modified and amended hereby and pursuant hereto, the terms and provisions of the Mortgage and the Assignment, as set forth therein, remain in full force and effect without modification or amendment.

3.
MISCELLANEOUS

A. This Agreement shall bind and inure to the benefit of the successors and assigns of the Note Holders and shall bind the successors and assigns of Borrower.

B. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

C. Borrower shall promptly cause this Agreement to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice and fully to protect the liens and security interests created by the Mortgage and the Assignment. Note Holders will pay all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Agreement. Borrower acknowledges and agrees that the agreement of Note Holders pursuant to this Section 3(C) is not intended to, and does not, modify or amend the terms of the Loan Documents or establish a course of dealing with respect to the Loan.

D. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

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IN WITNESS WHEREOF, THIS RECORDED DOCUMENTS MODIFICATION
AGREEMENT has been executed by Borrower as of the day and year first above written.

BFO FACTORY SHOPPES LLC,
a Delaware limited liability company

By: 

Name: David Tinkham

Title: Vice President

[WA]

STATE OF ILLINOIS)
Michigan) SS:
COUNTY OF COOK)
Muskegon

On the 25th day of March, 2015, before me, the undersigned, personally appeared David Tinkham, Vice President of BFO Factory Shoppes, LLC personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Melanie J. Galarneau
Notary Public

MELANIE J. GALARNEAU
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF MUSKEGON
My Commission Expires August 27, 2019
Acting in the County of Muskegon

IN WITNESS WHEREOF, Note A-1 Holder, Note A-2 Holder and Borrower have caused this Agreement to be duly executed as of the date and year first above written.

BORROWER:

BFO FACTORY SHOPPES LLC,
a Delaware limited liability company

By: _____
Name: David Tinkham
Title: Vice President

NOTE A-1 HOLDER:

STARWOOD MORTGAGE FUNDING II LLC,
a Delaware limited liability company

By: _____
Name: Grace Chiang
Title: Senior Vice President

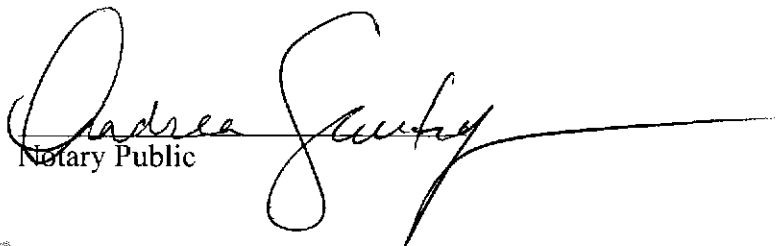
NOTE A-2 HOLDER

STARWOOD MORTGAGE FUNDING II LLC,
a Delaware limited liability company

By: _____
Name: Grace Chiang
Title: Senior Vice President

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the 30th day of March, 2015, before me, the undersigned, personally appeared Grace Chiang, Senior Vice President of STARWOOD MORTGAGE FUNDING II LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

ANDREA L. SANTIAGO
Notary Public, State of New York
No. 01SA6223300
Qualified in Westchester County
Commission Expires June 7, 2018

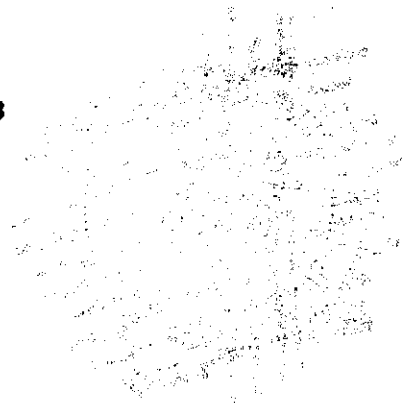


EXHIBIT A

LEGAL DESCRIPTION

PARCEL "A":

Lot 3, City of Burlington Short Plat No. 1-92 as approved July 18, 1989, and recorded July 27, 1992, in Volume 10 of Short Plats, page 105, under Auditor's File No. 9207270058, records of Skagit County, Washington; being a portion of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, W.M.,

Situate in the City of Burlington, County of Skagit, State of Washington.

PARCEL "B":

Parcel B, City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington; being a portion of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, W.M.

Situate in the City of Burlington, County of Skagit, State of Washington.

PARCEL "C":

Parcel A, City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington; being a portion of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, W.M.

Situate in the City of Burlington, County of Skagit, State of Washington.

PARCEL "D":

An easement for drainage, as acquired by document recorded under Auditor's File No. 8811230046, records of Skagit County, Washington, over and across the following described property:

The West 20 feet of Lot 3, City of Burlington Short Plat No. 37-76 as approved August 2, 1976, and recorded August 5, 1976, in Volume 1 of Short Plats, page 156, under Auditor's File No. 840316, records of Skagit County, Washington; being a portion of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 6, Township 34 North, Range 4 East, W.M.

Situate in the City of Burlington, County of Skagit, State of Washington.

PARCEL "E":

An easement acquired by instruments recorded November 23, 1988, under Auditor's File No. 8811230048, records of Skagit County, Washington, for ingress, egress, and utilities, over, under, and across a 36.00 foot strip of land lying 18.00 feet each side of the following described centerline:

Beginning at the Northeast corner of Section 7, Township 34 North, Range 4 East, W.M.; thence South 01°34'38" East, along the East line of said Section 7 a distance of 13.73 feet; thence South 86°59'04" West, 40.01 feet to the true point of beginning; thence continuing South 86°59'04" West, 56.99 feet to the beginning of a curve to the left having a radius of 170.00 feet; thence Southwesterly along said curve through a central angle of 66°32'00", an arc distance of 197.41 feet; thence South 20°27'04" West, 124.00 feet to the beginning of a curve to the right, having a radius of 273.00 feet; thence Southwesterly along said curve through a central angle of 71°07'06", an arc distance of 338.86 feet; thence North 88°25'50" West, 150.00 feet to the terminus point of said centerline. (Said easement being appurtenant to Parcels "B" and "C".)

Situate in the City of Burlington, County of Skagit, State of Washington.

PARCEL "F":

An easement for ingress, egress, and utilities over, under, and across that area delineated as "Access and Utility Easement" on the Easterly portion of Parcel "B" of City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington. (Said easement is appurtenant to Parcel "C".)

Situate in the City of Burlington, County of Skagit, State of Washington.

Tax Account Nos.: 340407-1-002-0013, 340407-1-002-0708 and 340407-1-002-0401