

UNOFFICIAL COPY



RECORDING REQUESTED BY:

JPMorgan Chase Bank
Chase Tower
10 South Dearborn Street, 18th Floor
Chicago, Illinois 60603

Doc#: 0805834017 Fee: \$40.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 02/27/2008 09:10 AM Pg: 1 of 9

WHEN RECORDED MAIL TO:

Daniel Kohn, Esq.
Duane Morris LLP
227 West Monroe Street
Suite 3400
Chicago, Illinois 60606

(Space above this line for Recorder's Use)

FIRST AMENDMENT TO LOAN DOCUMENTS

THIS FIRST AMENDMENT TO LOAN DOCUMENTS (the "**Amendment**") dated as of February 27, 2008, by and between **RSD GALEWOOD, LLC**, an Illinois limited liability company ("**Borrower**") and **JPMORGAN CHASE BANK, N.A.**, a national banking association, its successors and its assigns ("**Lender**").

WITNESSETH:

WHEREAS, Borrower has executed and delivered to Lender (a) a Promissory Note dated October 5, 2006, payable to Lender in the maximum stated principal amount of Nineteen Million Three Hundred Fifteen Thousand and No/100 Dollars (\$19,315,000.00) (and any and all extensions and renewals thereof and substitutions or replacements therefor, sometimes hereinafter collectively referred to herein as the "**A & D Note**"), and (b) a Revolving Credit Note dated October 5, 2006, payable to Lender in the maximum stated principal amount of Seven Million and No/100 Dollars (\$7,000,000.00) (and any and all extensions and renewals thereof and substitutions or replacements therefor, sometimes hereinafter collectively referred to herein as the "**Revolving Credit Note**"; the A & D Note and the Revolving Credit Note are sometimes hereinafter collectively referred to as the "**Notes**"), pursuant to which Borrower promised to pay to Lender the aggregate principal sum of Twenty-Six Million Three Hundred Fifteen Thousand and No/100 Dollars (\$26,315,000.00) (the "**Loan**") (or so much thereof as may be outstanding) at the Maturity Date (as such term is defined in each of the Notes) or such earlier date as the Notes may be accelerated in accordance with the terms thereof, together with interest on the

UNOFFICIAL COPY

balance of principal from time to time outstanding and unpaid thereon at the rates and at the times specified in the Notes.

WHEREAS, pursuant to the terms of the Construction Loan Agreement dated as of October 5, 2006, by and between Borrower and Lender (the "Loan Agreement"), Lender made the loan described in the Notes, and Borrower's obligations thereunder are secured and/or evidenced by, among other things, (i) that certain Construction Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated October 5, 2006, from Borrower in favor of Lender, recorded with the Cook County Recorder of Deeds on October 13, 2006, as Document No. 0628610084 (the "**Mortgage**"), encumbering the real property described in **Exhibit A** attached hereto, (ii) that certain Environmental Indemnity Agreement dated as of October 5, 2006, from Borrower and Guarantors (as hereinafter defined), in favor of Lender (the "**Environmental Indemnity**"), and (iii) certain other loan documents related thereto (the "**Ancillary Loan Documents**"; the Mortgage, the Environmental Indemnity and the Ancillary Loan Documents, as such documents may be modified, amended or replaced from time to time, the "**Loan Documents**").

WHEREAS, Borrower has requested that Lender, among other things, increase the maximum principal amount available under the Revolving Credit Note to Seventeen Million Seven Hundred Thousand and No/100 Dollars (\$17,700,000.00).

WHEREAS, Lender has agreed to modify the Revolving Credit Note to reflect the aforesaid increase, provided, among other things, that Borrower executes this Amendment whereby the Loan Documents are modified to reflect, among other things, that the maximum principal amount of the Revolving Credit Note has been so increased, in accordance with the terms of the modification described above.

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, and for other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. The foregoing recitals are hereby incorporated by this reference into this Amendment.
2. Borrower and Lender agree that the principal amount of the Revolving Credit Note has been increased to Seventeen Million Seven Hundred Thousand and No/100 Dollars (\$17,700,000.00). To reflect such increase, any and all references in the Loan Documents to the maximum principal amount of the Revolving Credit Note are hereby replaced with Seventeen Million Seven Hundred Thousand and No/100 Dollars (\$17,700,000.00).
3. Borrower and Lender agree that the maximum principal amount of the Loan has been increased to Thirty-Seven Million Fifteen Thousand and No/100 Dollars (\$37,015,000.00). To reflect such increase, any and all references in the Loan Documents to the maximum principal amount of the Loan are hereby replaced with Thirty-Seven Million Fifteen Thousand and No/100 Dollars (\$37,015,000.00).

UNOFFICIAL COPY

4. Borrower and Lender agree that Borrower shall pay to Lender all the internal and external costs and expenses incurred by Lender in connection with this Amendment (including, without limitation, inside and outside attorneys, appraisal, appraisal review, closing, processing, title, filing, and recording costs, expenses, and fees).

5. The Loan Documents are ratified and affirmed by Borrower and shall remain in full force and effect as modified herein. Any property or rights to or interests in property granted as security in the Loan Documents shall remain as security for the Loan and the obligations of Borrower in the Loan Documents.

6. Borrower represents and warrants to Lender that:

(i) no default or event of default under any of the Loan Documents as modified herein, nor any event, that, with the giving of notice or the passage of time or both, would be a default or an event of default under any of the Loan Documents as modified herein has occurred and is continuing;

(ii) there has been no material adverse change in the financial condition or results from operations of Borrower or any other person whose financial statement has been delivered to Lender in connection with the Loan from the most recent financial statement received by Lender, and there has been no casualty, loss or material deterioration in the condition or value of any collateral security for the Loan;

(iii) each of the representations and warranties of Borrower in the Loan Documents is true and accurate as if made on the date hereof;

(iv) Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein;

(v) the Loan Documents as modified herein are the legal, valid, and binding obligation of Borrower, enforceable against Borrower in accordance with their terms; and

(vi) 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 Amendment and to perform the Loan Documents as modified herein. The execution and delivery of this Amendment 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 Amendment has been duly executed and delivered on behalf of Borrower.

7. Borrower covenants and agrees with Lender that:

(i) Borrower shall execute, deliver, and provide to Lender, and shall cause to be executed, delivered and provided to Lender, such additional agreements, documents, instruments, and resolutions as are reasonably required at any time by Lender;

UNOFFICIAL COPY

(ii) Borrower fully, finally, and forever releases and discharges Lender and its successors, assigns, directors, officers, employees, agents, and representatives from any and all of Borrower's actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity, whether now known or unknown to Borrower, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Lender in respect of the Loan or the Loan Documents and (ii) arising from events occurring prior to or contemporaneously with the date of this Amendment;

(iii) contemporaneously with the execution and delivery of this Amendment, Borrower shall cause to be executed and delivered to Lender (A) an Amended and Restated Revolving Credit Note of even date herewith from Borrower in favor of Lender; (B) that certain First Amendment to Promissory Note of even date herewith, (C) the Blocked Account Control Agreement dated of even date herewith; (D) that certain First Amendment to Loan Agreement dated of even date herewith (the "**First Amendment to Loan Agreement**"); (E) those certain Second Amendments and Reaffirmations of Guaranties dated of even date herewith from David Hoffman, Brian Hoffman, Todd Fishbein, Calvin Boender and Robert Finnigan (collectively "**Guarantors**") to Lender, (F) those certain Second Reaffirmations of Completion Guaranties dated of even date herewith, from Guarantors to Lender, and (G) that certain Disbursement and Rate Management Authorization and Instruction Agreement dated of even date herewith, from Borrower to Lender.

8. Borrower acknowledges and agrees that Lender shall not be bound by this Amendment until (a) Lender has executed and delivered this Amendment, (b) Borrower has performed all of the obligations of Borrower under this Amendment to be performed contemporaneously with the execution and delivery of this Amendment, (c) Guarantors have executed and delivered to Lender the applicable documents described in **Section 7(iii)** above, and (d) Borrower has provided to Lender, at Borrower's sole cost and expense, a date down endorsement to Lender's existing title policy related to the Project in form and substance reasonably acceptable to Lender.

9. Nothing herein contained shall impair the Loan Documents in any way, nor alter, waive, annul, vary nor affect any provision, condition or covenant therein contained except as expressly herein provided nor affect or impair any right, power or remedy of Lender, it being the intention of the parties hereto that the terms and provisions of the Loan Documents shall continue in full force and effect except as expressly modified in connection herewith. No provision of the Loan Documents as modified herein may be changed, discharged, supplemented, terminated, or waived except in a writing signed by the parties thereto.

10. This Amendment shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

11. No extension, change, modification or amendment of any kind or nature whatsoever, to or of this Amendment shall be made or claimed by

UNOFFICIAL COPY

Borrower, and no notice of any extension, change, modification or amendment, made or claimed by Borrower shall have any force or effect whatsoever unless the same shall be reduced to writing and signed by the parties.

12. This Amendment shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to conflicts of law principles.

13. This Amendment may be executed in one or more counterpart signature pages, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(Signature page follows.)

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have caused these presents to be signed as of the day and year first above written.

RSD GALEWOOD, LLC,
an Illinois limited liability company

By: Red Seal Development Corp.,
an Illinois corporation, its Manager

By: [Signature]
Its: VICE CHAIRMAN & CHIEF FINANCIAL OFFICER

LENDER:

JPMORGAN CHASE BANK, N.A., a national
banking association

By: [Signature]
Name: Marisa J. Olliges
Title: Vice President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Nada Popovic, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Brian Hoff, personally known to me to be the CFMie ch.r of Red Seal Development Corp., an Illinois corporation, the manager of RSD Galewood, LLC, an Illinois limited liability company, is 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 the said instrument as his free and voluntary act as CFMie ch.r of such corporation as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of February, 2008.

Nada Popovic
Notary Public

My commission expires: _____



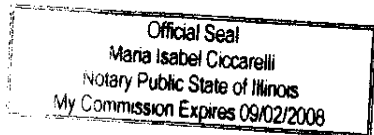
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I Maria Isabel Ciccarelli, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Marie J. Oluges, personally known to me as the VP of **JPMorgan Chase Bank, N.A.**, a national banking association, 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 acknowledged that as officer such of said entity, s/he signed and delivered the said instrument, and caused the seal of said entity to be affixed thereto, pursuant to authority given, as his/her free and voluntary act and as the free and voluntary act of said entity for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27th day of February, 2008.



Maria Isabel Ciccarelli
Notary Public

My commission expires: 9-2-08

PROPERTY OF COOK COUNTY CLERK'S OFFICE

