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## RECORDING REQUESTED BY:

JPMorgan Chase Bank  
Chase Tower  
10 South Dearborn Street, 18<sup>th</sup> Floor  
Chicago, Illinois 60603



0902818022

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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/28/2009 11:42 AM Pg: 1 of 11

## WHEN RECORDED MAIL TO:

Daniel Kohn, Esq.  
Duane Morris LLP  
190 South LaSalle Street  
Suite 3700  
Chicago, Illinois 60603

(Space above this line for Recorder's Use)

## SECOND AMENDMENT TO LOAN DOCUMENTS

**THIS SECOND AMENDMENT TO LOAN DOCUMENTS** (this "Amendment") dated as of December 31, 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) (the "**Original A & D Note**", which Original A & D Note has been amended and restated by that certain First Amended and Restated Promissory Note dated June 26, 2008, payable to Lender in the maximum stated principal amount of Five Million Eight Hundred Fifty-Two Thousand One Hundred Fifty-Five and No/100 Dollars (\$5,852,155.00)(and any and all extensions and renewals thereof and substitutions or replacements therefor, sometimes hereinafter collectively referred to herein as the "**Existing 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)(the "**Original Revolving Credit Note**", which Original Revolving Credit Note has been amended and restated by that certain Amended and Restated Revolving Credit Note dated February 27, 2008, payable to Lender in the maximum stated principal amount of Seventeen Million Seven Hundred Thousand and No/100 Dollars (\$17,700,000.00)(the availability under such note having automatically reduced to Seven Million and No/100 Dollars

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(\$7,000,000.00)(the **"First Replacement Revolving Credit Note"**), which First Replacement Revolving Credit Note has been amended and restated by that certain Second Amended and Restated Revolving Credit Note dated June 26, 2008, payable to Lender in the maximum stated principal amount of Thirteen Million Five Hundred Thousand and No/100 Dollars (\$13,500,000.00)(the **"Second Replacement Revolving Credit Note"**), which Second Replacement Revolving Credit Note has been amended and restated by that certain Line of Credit Note dated as of September 22, 2008, payable to Lender, in the maximum stated principal amount of Eleven Million Thirty-Three Thousand and No/100 Dollars (\$11,033,000.00)( and any and all extensions and renewals thereof and substitutions or replacements therefor, sometimes hereinafter collectively referred to herein as the **"Existing Line of Credit Note"**); the Existing Line of Credit Note, together with the Existing A & D Note, are sometimes hereinafter collectively referred to as the **"Existing Notes"**), pursuant to which Borrower promised to pay to Lender the original aggregate principal sum of Twenty-Six Million Three Hundred Fifteen Thousand and No/100 Dollars (\$26,315,000.00)(which aggregate amount was thereafter first increased to Thirty-Seven Million One Hundred Fifteen Thousand and No/100 Dollars (\$37,015,000.00), then later decreased to Nineteen Million Three Hundred Fifty-Two Thousand One Hundred Fifty-Five and No/100 Dollars (\$19,352,155.00), and then thereafter decreased to Sixteen Million Eight Hundred Eighty-Five Thousand One Hundred Fifty-Five and No/100 Dollars (\$16,885,155.00)) (the **"Loan"**) (or so much thereof as may be outstanding) at the Maturity Date (as such term is defined in each of the Existing Notes) or such earlier date as the Existing Notes may be accelerated in accordance with the terms thereof, together with interest on the balance of principal from time to time outstanding and unpaid thereon at the rates and at the times specified in the Existing Notes.

**WHEREAS**, pursuant to the terms of the Construction Loan Agreement dated as of October 5, 2006, by and between Borrower and Lender, which Construction Loan Agreement was amended by (a) that certain First Amendment to Construction Loan Agreement dated as of December 11, 2007, by and between Borrower and Lender, (b) that certain Second Amendment to Construction Loan Agreement dated as of February 2, 2008, by and between Borrower and Lender, (c) that certain Third Amendment to Construction Loan Agreement dated as of April 29, 2008, by and between Borrower and Lender, (d) that certain Fourth Amendment to Construction Loan Agreement dated as of June 26, 2008, by and between Borrower and Lender, and (e) that certain Fifth Amendment to Construction Loan Agreement dated as of September 22, 2008, by and between Borrower and Lender (as modified, amended and/or restated from time to time, sometimes hereinafter collectively referred to herein as the **"Loan Agreement"**), Lender made the Loan described in the Existing 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 (as modified, amended and/or restated from time to time, including without limitation, as amended by (A) that certain First Amendment to Loan Documents dated as of February 27, 2008, by and between Borrower and Lender (the **"First Amendment"**), and (B) that certain Second Amendment to Construction Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated as of June 26, 2008, by and between Borrower and Lender, said Construction Mortgage as so modified, amended and/or restated sometimes hereinafter collectively referred to herein as the **"Mortgage"**), encumbering the real property described in **Exhibit A** attached hereto, (ii) that

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certain Environmental Indemnity Agreement dated as of October 5, 2006, from Borrower and Guarantors (as hereinafter defined), in favor of Lender (as modified, amended and/or restated from time to time, including without limitation, the First Amendment, sometimes hereinafter collectively referred to herein as the "**Environmental Indemnity**"), and (iii) certain other loan documents related thereto (as modified, amended and/or restated from time to time, including without limitation, the First Amendment, sometimes hereinafter collectively referred to herein as 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, among other things, that Lender agree to replace and substitute (a) the Existing Line of Credit Note and (b) the Existing A&D Note with a Consolidated Promissory Note of even date herewith, payable to Lender, in the maximum stated principal amount of Twelve Million Nine Hundred Forty Thousand Ninety-Seven and 41/100 Dollars (\$12,940,097.41) (the "**Consolidated Note**"), which Consolidated Note (i) replaces both of the Existing Notes and is the only remaining note evidencing the Loan under the Loan Agreement, (ii) contains interest rates which are different than those contained in the Existing Notes, (iii) contains a Maturity Date of June 30, 2009, and (iv) eliminates the existence of separate tranches therein.

**WHEREAS**, Borrower has further requested that Lender agree to modify the Loan Documents to, among other things, (a) reflect that the Existing Notes have been replaced and substituted by the Consolidated Note, and (b) reflect that the maximum stated aggregate principal amount of the Loan has been decreased to Twelve Million Nine Hundred Forty Thousand Ninety-Seven and 41/100 Dollars (\$12,940,097.41).

**WHEREAS**, Lender has agreed to modify the Loan Documents to reflect the aforesaid replacement and substitution for the Existing Notes with the Consolidated Note, and the reduction of the maximum stated aggregate principal amount of the Loan to Twelve Million Nine Hundred Forty Thousand Ninety-Seven and 41/100 Dollars (\$12,940,097.41), all in accordance with the terms of this Amendment.

**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 maximum stated aggregate principal amount of the Loan has been decreased from Sixteen Million Eight Hundred Eighty-Five Thousand One Hundred Fifty-Five and No/100 Dollars (\$16,885,155.00) to Twelve Million Nine Hundred Forty Thousand Ninety-Seven and 41/100 Dollars (\$12,940,097.41). To reflect such decrease in the maximum stated principal amount of the Loan, any and all references in the Loan Documents to a maximum stated principal amount of the Loan in the amount of "Sixteen Million Eight Hundred Eighty-Five Thousand One

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Hundred Fifty-Five and No/100 Dollars (\$16,885,155.00)" are hereby deleted and replaced with the amount "Twelve Million Nine Hundred Forty Thousand Ninety-Seven and 41/100 Dollars (\$12,940,097.41)."

3. Borrower and Lender agree that the Existing Notes have been replaced and substituted by the Consolidated Note. To reflect such replacement, Borrower and Lender agree that:

- (a) Any and all references in the Loan Documents to (i) the "Revolving Credit Note", (ii) the "A&D Note", (iii) the "Note", and (iv) the "Notes" shall hereafter refer to the Consolidated Note as defined herein. Borrower and Lender agree that the Consolidated Note is the only remaining Note (as defined in the Loan Documents) evidencing the Loan;
- (b) Any and all references in the Loan Documents to the maximum stated principal amount of the Consolidated Note shall hereinafter refer to the amount Twelve Million Nine Hundred Forty Thousand Ninety-Seven and 41/100 Dollars (\$12,940,097.41); and
- (c) Any and all references in the Loan Documents to (i) the "Maturity Date" and (ii) "Maturity Dates" shall hereby refer to the maturity date of the Consolidated Note, which, as of the date hereof, has been established to be June 30, 2009.

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;



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(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;

(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, (A) 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 (B) 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) the Consolidated Note; (B) that certain Sixth Amendment to Loan Agreement dated of even date herewith (the **"Sixth Amendment to Loan Agreement"**); (C) those certain Sixth Reaffirmations of Guaranty Agreements dated of even date herewith from David Hoffman, Brian Hoffman and Todd Fishbein (collectively **"Guarantors"**) to Lender, and (D) those certain Sixth Reaffirmations of Completion Guaranty and Agreements dated of even date herewith, from Guarantors 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 (as

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defined in the Loan Documents) 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 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.

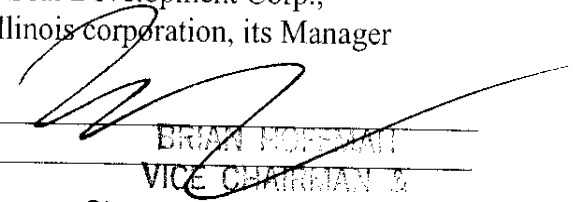
(Signature page follows.)

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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:   
Its: BRIAN HOFFMANN  
VICE CHAIRMAN &  
CHIEF FINANCIAL OFFICER

**LENDER:**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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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: \_\_\_\_\_  
Its: \_\_\_\_\_

**LENDER:**

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

By: Maria I. Olliges  
Name: Maria I. Olliges  
Title: Vice President



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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 Hoffman, personally known to me to be the  
V. Chairman & CFO 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 V. Chairman & CFO  
 of such corporation as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26<sup>th</sup> day of January, 2009.

Nada Popovic  
 Notary Public



My commission expires: \_\_\_\_\_

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STATE OF ILLINOIS

)

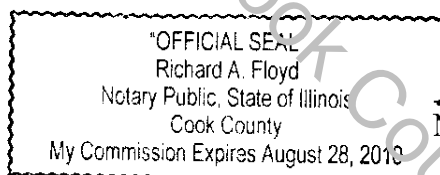
) SS.

COUNTY OF COOK

)

I Richard Floyd, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Maria Olliges, personally known to me as the Vice President 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 26 day of January, 2009.



Richard A. Floyd  
Notary Public

My commission expires: 8-28-2010

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## EXHIBIT A

Lots 1, 2, 3, 7, 16, 19, 20, 21, 25, 28, 33, 38, 39, 43, 53, 59, 63, 64, 67, 68, 88, 89, 90, 96, 102, 108, 111, 112, 115 to 123, 124, 127, 128, 130, 136, 152, 156 in the Galewood Residential Subdivision being a subdivision of the Southwest Quarter of Section 33, Township 40 North, Range 13 East of the Third Principal Meridian according to the plat thereof, recorded March 29, 2007 as document number 0708815072 in Cook County, Illinois.

Together with:

UNITS A AND P-1 IN THE ENCLAVE AT GALEWOOD CROSSINGS LOT 10 CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED TRACT OF LAND: LOT 10 IN GALEWOOD RESIDENTIAL SUBDIVISION BEING A SUBDIVISION OF THE SOUTHWEST ¼ OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0822510008; TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN COOK COUNTY, ILLINOIS

Together with:

UNITS B AND P-2 IN THE ENCLAVE AT GALEWOOD CROSSINGS LOT 36 CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED TRACT OF LAND: LOT 36 IN GALEWOOD RESIDENTIAL SUBDIVISION BEING A SUBDIVISION OF THE SOUTHWEST ¼ OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0807716030; TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN COOK COUNTY, ILLINOIS.

Together with:

UNITS B AND P-2 IN THE ENCLAVE AT GALEWOOD CROSSINGS LOT 154 CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED TRACT OF LAND: LOT 154 ALL IN GALEWOOD RESIDENTIAL SUBDIVISION BEING A SUBDIVISION OF THE SOUTHWEST ¼ OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0827018082; TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN COOK COUNTY, ILLINOIS

**PINs:** A part of each of the following: 13-33-300-018, 13-33-300-023, 13-33-300-024, 13-33-300-036, 13-33-300-037, 13-33-310-001, 13-33-310-002

Common Address: 1840 North Laramie, Chicago, Illinois