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Prepared by and to be Returned to:

Doc#: 1023133054 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/19/2010 10:56 AM Pg: 1 of 12

Amy L. Kurland
Seyfarth Shaw LLP
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603

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FIFTH MODIFICATION AGREEMENT

THIS FIFTH MODIFICATION AGREEMENT dated as of June 20, 2010 (this "**Agreement**") is entered into by and among **RS HOMES II LLC**, an Illinois limited liability company (the "**Borrower**"), **LR DEVELOPMENT COMPANY LLC**, a Delaware limited liability company doing business under the assumed name **Related Midwest LLC** (the "**Guarantor**") (the Borrower and the Guarantor being sometimes referred to herein collectively as the "**Borrower/Guarantor Parties**"), and **BANK OF AMERICA, N.A.**, a national banking association (the "**Lender**"), Successor by Merger to **LaSalle Bank National Association**, a national banking association ("**LaSalle**");

RECITALS

A. The Borrower/Guarantor Parties and LaSalle heretofore entered into the following documents (collectively, the "**Documents**"):

(i) Loan Agreement dated as of July 20, 2007 (the "**Loan Agreement**"), by and between the Borrower and LaSalle.

(ii) Promissory Note dated July 20, 2007 (the "**Note**"), from the Borrower to LaSalle in the principal amount of \$1,850,000.

(iii) Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of July 20, 2007, by the Borrower to and for the benefit of LaSalle, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on July 23, 2007, as Document No. 0720433227.

(iv) Assignment of Rents and Leases dated as of July 20, 2007, by the Borrower to and for the benefit of LaSalle, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on July 23, 2007, as Document No. 0720433228.

(v) Environmental Indemnity Agreement dated as of July 20, 2007, by the Borrower and the Guarantor to and for the benefit of LaSalle.

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(vi) Guaranty of Payment and Completion dated as of July 20, 2007 (the "**Guaranty**"), by the Guarantor to and for the benefit of LaSalle.

B. The Documents were previously modified and amended by the following documents (collectively, the "**Previous Modifications**"): (i) Modification Agreement dated as of January 20, 2008, by and among the Borrower/Guarantor Parties and LaSalle, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on March 12, 2008, as Document No. 0807245128, (ii) Second Modification Agreement dated as of October 20, 2008 (the "**Second Modification**"), by and among the Borrower/Guarantor Parties and the Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on June 2, 2009, as Document No. 0915334061, (iii) an unrecorded Third Modification Agreement dated as of October 19, 2009, by and among the Borrower/Guarantor Parties and the Lender, and (iv) an unrecorded Fourth Modification Agreement dated as of April 20, 2010 (the "**Fourth Modification**"), by and among the Borrower/Guarantor Parties and the Lender.

C. The Documents, as modified and amended by the Previous Modifications, encumber the real estate described in **Exhibit A** attached hereto and the personal property located thereon.

D. LaSalle was merged into the Lender effective as of October 17, 2008, and by virtue of such merger the Lender is the successor by merger to all of the rights and obligations of LaSalle under the Documents.

E. The parties desire to make certain modifications and amendments to the Documents, as modified and amended by the Previous Modifications, as more fully provided for herein, all as modifications, amendments and continuations of, but not as novations of, the Documents.

AGREEMENTS

In consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Recitals Part of Agreement; Defined Terms, References to Documents.

(a) The foregoing Recitals are hereby incorporated into and made a part of this Agreement.

(b) All capitalized terms used and not otherwise defined in this Agreement shall have the meanings set forth in the Loan Agreement.

(c) Except as otherwise stated herein, all references in this Agreement to any one or more of the Documents shall be deemed to include the previous modifications and amendments to the Documents provided for in the Previous Modifications, whether or not express reference is made to such previous modifications and amendments.

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Section 2. Extension of Maturity Date. The maturity date of the Loan and the Note was previously extended by the Fourth Modification from April 20, 2010 to June 20, 2010. The maturity date of the Loan and the Note, as previously extended by the Previous Modifications, is now hereby extended from June 20, 2010, to September 20, 2010, and all of the Documents, as modified and amended by the Previous Modifications, are hereby modified and amended accordingly. Without limitation on the generality of the foregoing, the date "June 20, 2010" is hereby changed to "September 20, 2010" each time it appears in the Documents, as modified and amended by the Previous Modifications, in reference to the maturity date of the Loan and the Note.

Section 3. Changes in Interest Rate. Section 2 of the Note, as amended by the Second Modification, is hereby modified and amended in its entirety to read as follows effective as of the date of this Agreement, with the existing Section 2 of the Note, as amended by the Second Modification, to remain in effect for periods prior to the date of this Agreement:

2. INTEREST RATE.

2.1 Interest Prior to Default.

(a) **BBA LIBOR Daily Floating Rate.** The unpaid principal balance of this Note from day to day outstanding which is not past due, shall bear interest at a fluctuating rate of interest per annum equal to the BBA LIBOR Daily Floating Rate (as defined below) for that day plus 400 basis points per annum. The "**BBA LIBOR Daily Floating Rate**" shall mean a fluctuating rate of interest per annum equal to the British Bankers Association LIBOR Rate ("**BBA LIBOR**"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by the Lender from time to time) as determined for each Business Day (as defined in the Loan Agreement) at approximately 11:00 a.m. London time two London Banking Days (as defined below) prior to the date in question, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a one month term, as adjusted from time to time in the Lender's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. A "**London Banking Day**" is a day on which banks in London are open for business and dealing in offshore dollars.

(b) **Alternative Rates.** The Lender may notify the Borrower if the BBA LIBOR Daily Floating Rate is not available for any reason, or if the Lender determines in good faith (which determination shall be conclusive, absent manifest error) that no adequate basis exists for determining the BBA LIBOR Daily Floating Rate, or that the BBA LIBOR Daily Floating Rate will not adequately and fairly reflect the cost to the Lender of funding the Loan, or that any applicable law or regulation or compliance therewith by the Lender prohibits or restricts or makes impossible the charging of interest based on the BBA LIBOR Daily Floating Rate. If the Lender so notifies the Borrower, then interest shall

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accrue and be payable on the unpaid principal balance of this Note at a fluctuating rate of interest equal to the Prime Rate of the Lender plus 200 basis points per annum, from the date of such notification by the Lender until the Lender notifies the Borrower that the circumstances giving rise to such suspension no longer exist, or until the maturity date of this Note (whether by acceleration, declaration, extension or otherwise), whichever is earlier to occur. The term "**Prime Rate**" means, on any day, the rate of interest per annum then most recently established by the Lender as its "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and the Lender may make various business or other loans at rates of interest having no relationship to such rate. Any change in the Prime Rate shall take effect at the opening of business on the day specified in the public announcement of a change in the Lender's Prime Rate. If the Lender (including any subsequent holder of this Note) ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported.

2.2 **Interest After Default.** From and after the Maturity Date or upon the occurrence and during the continuance of an Event of Default under this Note, interest shall accrue on the unpaid principal balance during any such period at an annual rate (the "**Default Rate**") equal to the BBA LIBOR Daily Floating Rate plus 900 basis points, or if an alternative rate is in effect pursuant to Section 2.1(b) hereof, then at a fluctuating rate of interest equal to the Prime Rate of the Lender plus 700 basis points per annum; provided, however, in no event shall the Default Rate exceed the maximum rate permitted by law. The interest accruing under this Section shall be immediately due and payable by the Borrower to the holder of this Note upon demand and shall be additional indebtedness evidenced by this Note.

2.3 **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. If any payment to be made by the Borrower hereunder shall become due on a day other than a day on which the Lender is open for the conduct of commercial banking business in Chicago, Illinois, such payment shall be made on the next succeeding day on which the Lender is so open for business, and such extension of time shall be included in computing any interest in respect of such payment.

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Section 4. Changes in Payment and Prepayment Terms.

(a) Section 3.1 of the Note is hereby modified and amended in its entirety to read as follows effective as of the date of this Agreement, with the existing Section 3.1 of the Note to remain in effect for periods prior to the date of this Agreement:

3.1. **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 July 1, 2010, and continuing on the first day of each month thereafter through and including the month in which the Maturity Date occurs, payments of 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 any of the Loan Documents shall be due and payable in full on the Maturity Date.

(b) Section 3.5 of the Note is hereby modified and amended in its entirety to read as follows effective as of the date of this Agreement, with the existing Section 3.5 of the Note to remain in effect for periods prior to the date of this Agreement:

3.5. **Principal Prepayments; No Reborrowing.** This Note may be prepaid, either in whole or in part, without penalty or premium, at any time and from time to time upon five (5) days prior notice to the Lender. No amount paid or prepaid on the principal of this Note may be borrowed again.

Section 5. Extension Fee. As a condition to the agreements of the Lender provided for in this Agreement, on the date of the execution and delivery of this Agreement, the Borrower shall pay to the Lender a non-refundable extension fee in the amount of \$2,500.

Section 6. Attachment to Note. The Lender may, and prior to any transfer by it of the Note shall, attach a copy of this Agreement to the original Note and place an endorsement on the original Note making reference to the fact that such attachment has been made.

Section 7. Representations and Warranties. The term "**Signing Entity**" as used in this Section means any entity (other than a Borrower/Guarantor Party itself) that appears in the signature block of any Borrower/Guarantor Party in this Agreement or any of the Documents, if any. In order to induce the Lender to enter into this Agreement, the Borrower/Guarantor Parties hereby represent and warrant to the Lender as follows as of the date of this Agreement and if different, as of the date of the execution and delivery of this Agreement:

(a) The Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, has all necessary power and authority to

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carry on its present business, and has full right, power and authority to enter into this Agreement and each of the Documents to which it is a party and to perform and consummate the transactions contemplated hereby and thereby.

(b) The Guarantor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, has all necessary power and authority to carry on its present business, and has full right, power and authority to enter into this Agreement and each of the Documents to which it is a party and to perform and consummate the transactions contemplated hereby and thereby.

(c) Each Signing Entity is duly organized, validly existing and in good standing under the laws of the State in which it is organized, has all necessary power and authority to carry on its present business, and has full right, power and authority to execute this Agreement and the Documents in the capacity shown in each signature block contained in this Agreement and the Documents in which its name appears, and such execution has been duly authorized by all necessary legal action applicable to such Signing Entity.

(d) This Agreement and each of the Documents has been duly authorized, executed and delivered by such of the Borrower/Guarantor Parties as are parties thereto, and this Agreement and each of the Documents constitutes a valid and legally binding obligation enforceable against such of the Borrower/Guarantor Parties as are parties thereto. The execution and delivery of this Agreement and the Documents and compliance with the provisions thereof under the circumstances contemplated therein do not and will not conflict with or constitute a breach or violation of or default under the organizational documents of any Borrower/Guarantor Party or any Signing Entity, or any agreement or other instrument to which any of the Borrower/Guarantor Parties or any Signing Entity is a party, or by which any of them is bound, or to which any of their respective properties are subject, or any existing law, administrative regulation, court order or consent decree to which any of them is subject.

(e) Except for the "**Current Default**" (as hereinafter defined) and except for the "**Shannon Litigation**" (as hereinafter defined), the Borrower/Guarantor Parties are in full compliance with all of the terms and conditions of the Documents to which they are a party, and no Default or Event of Default has occurred and is continuing with respect to any of the Documents.

(f) Except as relates to the Current Default, and except for the litigation titled "Cole Taylor Bank v. Arko Investments, Inc., LR Development Company LLC, Shannon Partners LLC, et al., Case No. 10-CH-18414 (the "**Shannon Litigation**")", there is no litigation or administrative proceeding pending or threatened seeking to restrain or enjoin the transactions contemplated by this Agreement or any of the Documents, or questioning the validity thereof, or in any way contesting the existence or powers of any of the Borrower/Guarantor Parties or any Signing Entity in which an unfavorable decision, ruling or finding in such cases would adversely affect the transactions contemplated by this Agreement or any of the Documents, or would result in any material adverse change in the financial condition, properties, business or operations of any of the Borrower/Guarantor Parties.

(g) The statements contained in the Recitals to this Agreement are true and correct.

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Section 8. Documents to Remain in Effect; Confirmation of Obligations; References. The Documents shall remain in full force and effect as originally executed and delivered by the parties, except as expressly modified and amended herein. In order to induce the Lender to enter into this Agreement, the Borrower/Guarantor Parties hereby (i) confirm and reaffirm all of their obligations under the Documents, as modified and amended herein; (ii) acknowledge and agree that the Lender, by entering into this Agreement, does not waive any existing or future default or event of default under any of the Documents, including, without limitation the event of default referred to in the notice of default dated June 3, 2010 from the Lender to the Borrower and the Guarantor (the "**Current Default**"), or any rights or remedies under any of the Documents, except as expressly provided herein; (iii) acknowledge and agree that the Lender has not heretofore waived any default or event of default under any of the Documents, or any rights or remedies under any of the Documents; and (iv) represent that they do not have knowledge of any defense, set-off or counterclaim to the payment or performance of any of their obligations under, or to the enforcement by the Lender of, the Documents, as modified and amended herein. All references in the Documents to any one or more of the Documents, or to the "Loan Documents," shall be deemed to refer to such Document, Documents or Loan Documents, as the case may be, as modified and amended by this Agreement. Notwithstanding the foregoing to the contrary, the Borrower/Guarantor Parties shall not be deemed or declared in default with respect to the fact that the Loan matured prior to full execution of this Agreement.

Section 9. Certifications, Representations and Warranties. In order to induce the Lender to enter into this Agreement, the Borrower/Guarantor Parties hereby certify, represent and warrant to the Lender that, subject to the fact that the Loan has matured and except for the specific facts underlying the Current Default and the Shannon Litigation, all certifications, representations and warranties contained in the Documents and in all certificates heretofore delivered to LaSalle and the Lender are true and correct as of the date of this Agreement and if different, as of the date of the execution and delivery of this Agreement, and, subject to the fact that the Loan has matured and except for the specific facts underlying the Current Default and the Shannon Litigation, all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Agreement and if different, as of the date of the execution and delivery of this Agreement.

Section 10. Entire Agreement; No Reliance. This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this Agreement other than as are herein set forth. The Borrower/Guarantor Parties acknowledge that they are executing this Agreement without relying on any statements, representations or warranties, either oral or written, that are not expressly set forth herein.

Section 11. Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

Section 12. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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Section 13. Amendments, Changes and Modifications. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

Section 14. Construction.

(a) The words “hereof,” “herein,” and “hereunder,” and other words of a similar import refer to this Agreement as a whole and not to the individual Sections in which such terms are used.

(b) References to Sections and other subdivisions of this Agreement are to the designated Sections and other subdivisions of this Agreement as originally executed.

(c) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(d) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

(e) The Borrower/Guarantor Parties and the Lender, and their respective legal counsel, have participated in the drafting of this Agreement, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Agreement.

Section 15. Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 16. Governing Law. This Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]

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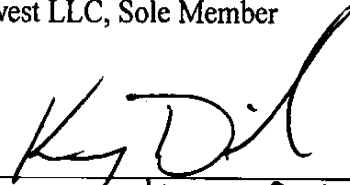
IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

RS HOMES II LLC


By ABLA Homes II LLC, Sole Member

By LR ABLA LLC, Manager

By LR Development Company LLC d/b/a/ Related Midwest LLC, Sole Member

By 
 Printed Name: Kerry Dickson
 Title: Senior Vice President

LR DEVELOPMENT COMPANY LLC, d/b/a Related Midwest LLC

By 
 Printed Name: Kerry Dickson
 Title: Senior Vice President


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STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

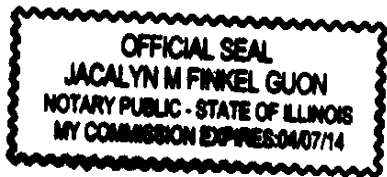
The foregoing instrument was acknowledged before me this 29th day of July, 2010, by Kerry Dickson, Senior Vice President of LR Development Company LLC, a Delaware limited liability company doing business under the assumed name Related Midwest LLC, the Sole Member of LR ABLA LLC, a Delaware limited liability company, the Manager of ABLA Homes II LLC, a Delaware limited liability company, the Sole Member of RS Homes II, an Illinois limited liability company, on behalf of said entities.





Printed Name: Jacalyn M Finkel Guon
Notary Public

STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 29th day of July, 2010, by Kerry Dickson, Senior Vice President of LR Development Company LLC, a Delaware limited liability company doing business under the assumed name Related Midwest LLC, on behalf of the company.




Printed Name: Jacalyn M Finkel Guon
Notary Public

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**BANK OF AMERICA, N.A., Successor by Merger to
LaSalle Bank National Association**

By *Evan J. Sitarski*
Evan J. Sitarski, Vice President

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this 29th day of July, 2010, by Evan J. Sitarski, Vice President of Bank of America, N.A., a national banking association, Successor by Merger to LaSalle Bank National Association, a national banking association, on behalf of the association.

Audrey Jackson
Printed Name Audrey Jackson
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

Parcel 1

Lots 67, 68, 69, 70, 71, 72 and 74 in Roosevelt Square Subdivision Phase Two, Plat One, being a subdivision of part of the East 1/2 of the Southwest 1/4 of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian, according to the plat thereof recorded July 20, 2007 as Document No. 0720115115, in Cook County, Illinois.

Permanent Tax Index Numbers:

17-17-333-008	17-17-333-022
17-17-333-009	17-17-333-023
17-17-333-010	17-17-333-024
17-17-333-011	17-17-333-025
17-17-333-012	17-17-333-026
17-17-333-013	17-17-333-027
17-17-333-015	17-17-333-028
17-17-333-016	17-17-333-029
17-17-333-017	17-17-333-030
17-17-333-018	17-17-333-031
17-17-333-019	17-17-333-032
17-17-333-020	17-17-333-033
17-17-333-021	

Address: 1018 South Lytle Street, Chicago, Illinois