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97174802

## SECOND ASSIGNMENT OF RENTS AND LESSOR'S INTEREST IN LEASES

THIS AGREEMENT is made as of this 12th day of March, 1997 by **AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO**, a national banking association, not personally, but solely as Trustee under Trust Agreement dated November 1, 1996 and known as Trust Number 122304-05 ("Trustee") and **RSD STONEGATE, L.L.C.**, an Illinois limited liability company beneficiary of Trustee ("Beneficiary") (Trustee and Beneficiary are collectively called "Assignor") to **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, a \_\_\_\_\_ corporation ("Assignee").

### WITNESSETH:

Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, transfers, sets over and assigns to Assignee, the entire interest in and to any and all leases and subleases (including all extensions and renewals thereof), now or hereafter existing (the "Leases"), and any and all rents, issues, income and profits, of and from that certain real estate located in the Village of Northbrook, County of Cook, State of Illinois and legally described in Exhibit A attached hereto and made a part hereof, and all buildings, structures and improvements now or hereafter constructed thereon (the "Premises").

### THIS ASSIGNMENT OF RENTS IS GIVEN TO SECURE:

(a) Payment by Trustee of the indebtedness evidenced by, and observance and performance by Trustee of each and every one of the covenants, terms, conditions and agreements contained in a certain Second Mortgage Note of even date herewith (the "Note") in the principal sum of ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,750,000.00) made by Trustee and delivered to Assignee simultaneously with the execution and delivery of this Assignment; and

(b) Observance and performance by Assignor of the covenants, terms, conditions and agreements contained in this Assignment, the Note, the Security Agreement and Assignment of Beneficial Interest of even date herewith made by Beneficiary to Assignee, the

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Second Mortgage (the "Mortgage") of even date herewith made by Trustee to Assignee and creating a mortgage lien on the Trustee's fee simple interest in the Premises, the Environmental Indemnity Agreement of even date herewith made by David A. Hoffman and Brian Hoffman (collectively, "Guarantor"), the Continuing Guarantee of even date herewith made by Guarantor, the Security Agreement of even date herewith made by Assignor to Assignee, the Certificate of Representations and Warranties of even date herewith made by Trustee and Guarantor and such other documents executed in connection with the Note (collectively, the "Loan Documents").

AND TRUSTEE HEREBY COVENANTS, AGREES AND REPRESENTS AND BENEFICIARY HEREBY COVENANTS, AGREES, REPRESENTS AND WARRANTS AS FOLLOWS:

1. Representations of Assignor. Trustee represents and Beneficiary represents and warrants to Assignee that:

(a) This Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor has not heretofore made any other assignment of its entire or any part of its interest in and to any or all of the Leases, or any or all of the rents, issues, income or profits assigned hereunder or entered into any agreement to subordinate any of the Leases, or Assignor's right to receive any of the rents, issues, income or profits assigned hereunder; and

(c) Assignor has not heretofore executed any instrument or performed any act which may or might prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation.

2. Covenants of Assignor. Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) Assignor shall not enter into any Lease on less favorable terms than the previous lease or approve, consent or acquiesce to any sublease, written or oral, for all or any portion of the Premises without the prior written consent of Assignee;

(b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and shall not do or suffer to be done anything to impair the security thereof, or, without the express written consent of Assignee, (i) release the liability of any tenant thereunder, or (ii) permit any tenants thereunder to withhold the payment of rent or to make monetary advances and offset the same against future rentals, or (iii) permit any tenant thereunder to claim a total or partial eviction, or (iv) permit any tenant thereunder to terminate or cancel any Lease;

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(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all of the Leases, or any or all rents, issues, income or profits assigned hereunder without the prior written consent of Assignee;

(e) Assignor shall not alter, modify or change the terms and provisions of any Lease on less favorable terms than the existing lease or give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease) or approval, required or permitted by such terms and provisions, or cancel or terminate any Lease without the prior written consent of Assignee;

(f) Assignor shall not accept a surrender of any Lease, or convey or transfer, or suffer or permit a conveyance or transfer of, the Premises demised under any Lease or any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder;

(g) Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or suffer to be done anything which would terminate any such guaranty as a matter of law, without the prior written consent of Assignee;

(h) Assignor shall not waive or excuse the obligation to pay rent under any Lease;

(i) Assignor shall enforce the Leases and all rights and remedies of the lessor thereunder in case of default thereunder by any tenant;

(j) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or of any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including attorneys' fees, in any such action or proceeding in which Assignee may appear;

(k) Assignor shall give prompt notice to Assignee of any notice of any default on the part of the lessor with respect to any Lease received from any tenant or guarantor thereunder; and

(l) Assignor shall enforce the observance and performance of each and every covenant, term, condition and agreement contained in each and every Lease to be observed and performed by the tenant(s) thereunder.

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3. Rights Prior to Default. So long as Assignor is not in default hereunder, Assignor shall have the right to collect at the time, but not more than thirty (30) days in advance, of the date provided for the payment thereof, all rents, issues, income or profits assigned hereunder (other than security or similar deposits), and to retain, use and enjoy the same. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

4. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" for purposes of this Assignment:

(a) Failure by Trustee to pay any installment of the principal sum of the Note and/or any interest thereon when due under the Note;

(b) Breach of any representation, warranty, covenant or agreement made by Assignor in this Assignment;

(c) Any misrepresentation made by Assignor or Guarantor in any of the Loan Documents; and

(d) Any other event of default under the Note or any of the Loan Documents, subject to any applicable cure period contained therein.

5. Rights and Remedies Upon Default. At any time upon or following the occurrence of any one or more Events of Default, Assignee may at its option and without any obligation to do so, without in any way waiving such Event or Events of Default, without notice to or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor from any obligation hereunder, and with or without bringing any action or proceeding:

(a) Declare a default under the Guarantee and enforce all rights and remedies available to Assignor under the Guarantee and Loan Documents secured thereby;

(b) Enter upon and take possession of the Premises, either in person or by an agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs and replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act or acts which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect and give acquittances for all rents, issues, income or profits of or from the Premises, and pursue all remedies for enforcement of the Leases and all of the lessor's rights therein or thereunder, provided that, for such purpose, this Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice thereafter to pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the

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covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided, further, that Assignor will facilitate in all reasonable ways Assignee's collection of such rents, issues, income or profits, and upon request will execute written notices to the tenants under the Leases thereafter to pay all such rents and other amounts to Assignee; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary or proper, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at an annual rate equal to the Default Rate (as defined in the Note) and shall be secured by this Assignment.

6. Application of Proceeds. All sums collected and received by Assignee out of the rents, issues, income or profits of the Premises following the occurrence of any one or more Events of Default shall be applied as follows:

(a) First, to reimbursement of Assignee for and of all expenses of: taking and retaining possession of the Premises; managing the Premises and collecting the rents, issues, income or profits thereof; therefrom, including, without limitation, salaries, fees or wages of a managing agent and such other employees as Assignee may deem necessary or proper, and attorneys' fees; operating and maintaining the Premises, including without limitation, taxes, charges, claims, assessments, water rents, sewer rents and other liens, and premiums for any insurance provided for in the Mortgage; and the cost of all alterations, renovations, repairs or replacements of or to the Premises which Assignee may deem necessary or proper, with interest thereon at the Default Rate;

(b) Second, to reimbursement of Assignee for and of all sums expended by Assignee pursuant to Paragraph 5(d) hereof to make any payment or do any act required herein of Assignor, together with interest thereon at the Default Rate;

(c) Third, to reimbursement of Assignee for and of all other sums with respect to which Assignee is indemnified pursuant to Paragraph 7 hereof, together with interest thereon at the Default Rate;

(d) Fourth, to reimbursement of Assignee for and of all other sums expended or advanced by Assignee pursuant to the terms and provisions of, or constituting additional indebtedness under, any of the Loan Documents, with interest thereon at the Default Rate;

(e) Fifth, to the payment of all accrued and unpaid interest on the principal sum of the Note;

(f) Sixth, to the payment of the unpaid balance of the principal sum of the Note; and

(g) Seventh, any balance remaining to Assignor, its successors and assigns.

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7. Limitation of Assignee's Liability. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises following the occurrence of any one or more Events of Default or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of any one or more Events of Default. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenants, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify Assignee for, and to hold Assignee harmless of or from, any and all liability, loss or damage which Assignee may or might incur under any Lease or under or by reason of this Assignment and of or from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions or agreements contained in any Lease. Should Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions or agreements contained in any Lease upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger.

8. Non-Waiver. Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the guaranties thereof or any of the Loan Documents; this Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments; and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

9. Further Assurances. Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, such general or specific assignments of such Leases as Assignee may designate), and shall do or cause to be done such further acts, as Assignee may request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.

10. First Lien. This Assignment shall be subject and subordinate to that certain Construction Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement ("First Lien") of even date herewith by and between Assignor and American National Bank and Trust Company of Chicago ("ANB"), and such other related documents executed by Assignor to ANB to secure the First Lien, until such time as the First Lien has been satisfied or released.

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11. Severability. The invalidity or unenforceability of any particular provision of this Assignment shall not affect the other provisions, and this Assignment shall be construed in all respects as if such invalid or unenforceable provision were not contained herein.

12. Benefit. This Assignment is binding upon Assignor, its successors and assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns.

13. Written Modifications. This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

14. Duration. This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations evidenced or secured hereby and by the other Loan Documents.

15. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

16. Trust Exculpation. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of American National Bank and Trust Company of Chicago hereunder, while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of American National Bank and Trust Company of Chicago are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by American National Bank and Trust Company of Chicago or for the purpose of or with the intention of binding American National Bank and Trust Company of Chicago personally, and this instrument is executed and delivered by American National Bank and Trust Company of Chicago not in its own right, but solely in the exercise of the powers conferred upon it as Trustee under Trust Agreement dated November 1, 1996 and known as Trust Number 122304-05; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against American National Bank and Trust Company of Chicago on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of American National Bank and Trust Company of Chicago in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released by Assignee.

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STATE OF ILLINOIS        )  
                                      )        SS.  
COUNTY OF COOK        )

I, VICTORIA McELROY Notary Public in and for said County, in the State aforesaid, do hereby certify that TODD FISHER VICE-PRESIDENT of RSD Stonegate Corp., an Illinois corporation, manager of RSD STONEGATE, L.L.C., an Illinois limited liability company, who is 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 he signed and delivered the said instrument at his own free and voluntary act and as the free and voluntary act of RSD STONEGATE, L.L.C. for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 12TH day of March, 1997.

*Victoria C. McElroy*  
NOTARY PUBLIC



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

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STATE OF ILLINOIS        )  
                                  )     SS.  
COUNTY OF COOK        )

I, MARK DEGRAZIA, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that GREGORY S. KASPRZYK VICE President of American National Bank and Trust Company of Chicago, not personally, but solely as Trustee and \_\_\_\_\_ Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE President and \_\_\_\_\_ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank, not personally, but as Trustee aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 13<sup>th</sup> day of March, 1997.



A handwritten signature in dark ink, appearing to be "MD", written over a horizontal line.

NOTARY PUBLIC

(SEAL)

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

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## EXHIBIT "A"

### LEGAL DESCRIPTION

Lots 1 through 126, inclusive, in The Stonegate Subdivision, being a Subdivision in the Northwest 1/4 of Section 20 and the Southwest 1/4 of Section 17, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 04-17-300-156; 04-20-100-024; 04-20-100-026;  
04-20-100-027; 04-20-100-028; 04-20-100-030

COMMON ADDRESS: Lots 1 through 126, inclusive, in Stonegate Subdivision,  
Northbrook, Illinois

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