

# UNOFFICIAL COPY



Doc#: 0612510087 Fee: \$36.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/05/2006 10:33 AM Pg: 1 of 7

*The Talon Group# / 304586 596*

## ASSIGNMENT OF PURCHASE PRICE

THIS ASSIGNMENT OF PURCHASE PRICE (this "Assignment") is made this 30 day of MAY 2006, collectively by AppleILLINOIS, L.L.C. and AppleLAND II, LLC, each Illinois limited liability companies (hereinafter collectively referred to as the "Assignor") in favor of BANK OF AMERICA, N.A., a national banking association ("Assignee");

WITNESSETH: That

WHEREAS, Assignor is indebted to Assignee (the "Loan") in accordance with, among other instruments, that certain promissory note, wherein Assignor promises to pay to Assignee the principal sum of Six Million Five Hundred Thirty Seven Thousand Two Hundred Seventy and 68/100 Dollars (\$6,537,270.68)(the "Assignor Note"); and

WHEREAS, Assignor intends to utilize a portion of the funds advanced by Assignee under the Loan to purchase property located in Country Club Hills, Cook County, Illinois and described on Exhibit "A", attached hereto (the "Property"); and

WHEREAS, pursuant to the terms of that certain Franchise Agreement to be entered into between Applebee's International, Inc., franchisor (the "Franchisor"), and Assignor (also known as "Franchisee"), Franchisor is given the option to purchase the Property upon the occurrence of certain conditions set forth in the Franchise Agreement pursuant to the terms set forth therein; and

WHEREAS, because the rights of Franchisor under the Franchise Agreement shall not be subordinated to Assignee's lien created under Assignor Note, Assignee has requested and Assignor has agreed to execute and deliver this Assignment to Assignee as a condition precedent to Assignee closing the Loan pursuant to which Assignor shall, among other things, assign any and all of its rights, title and interest in and to any sums to be paid by Franchisor to Assignor under the Franchise Agreement to Assignee

NOW THEREFORE, for and in consideration of the economic benefits to be derived by Assignor from the funding of the Loan by Assignee, the sum of Ten and No/100 Dollars (\$10.00)

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and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto intending to be legally bound hereby, agree as follows:

1. DEFINITIONS. Capitalized terms used herein shall have the meanings ascribed to them in the Franchise Agreement, unless otherwise defined herein.
2. ASSIGNMENT OF PURCHASE PRICE. Effective as of even date herewith, Assignor hereby transfers, assigns and sets over to Assignee all of Assignor's right, title and interest in and to any and all sums paid by Franchisor to Assignor pursuant to the terms of the Franchise Agreement, regardless of whether such sums are in cash, cashier's check or by wire transfer of immediately available funds, including, without limitation, any earnest money deposit paid and any and all funds paid as the purchase price. For the avoidance of doubt, "purchase price" shall mean and include, as the case may be, any and all sums paid by Franchisor on account of the Property and on account of all other verifiable costs and expenses, incurred and paid by Assignor relating to the planning, designing and constructing of the building and other improvements on the Property, including engineering and/or architectural fees, costs of permits, tap fees and impact fees. Notwithstanding the foregoing, this Assignment is for the purpose of securing the repayment of the Loan to Assignee, and upon the full repayment thereof of all principal, interest and other charges, this Assignment and all rights of Assignee hereunder shall cease and terminate.
3. NO ASSUMPTION OF RESPONSIBILITY. Notwithstanding Assignee's receipt of the sums described in Section 2 hereof, Assignee shall not be responsible for, nor shall Assignee assume any liability, responsibility or obligation of Assignor under the Franchise Agreement.

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IN WITNESS WHEREOF, Borrower has caused these presents to be executed under seal on the date hereinabove written.

**BORROWER:**

AppleILLINOIS, L.L.C., an Illinois limited liability company

By: W. Curtis Smith  
W. Curtis Smith, Manager/Member

By: James P. Borke  
James P. Borke, Manager/Member

By: \_\_\_\_\_  
J. Timothy Brugh, Manager/Member

[COMPANY SEAL]

AppleLAND II, LLC, an Illinois limited liability company

By: W. Curtis Smith  
W. Curtis Smith, Manager/Member

By: James P. Borke  
James P. Borke, Manager/Member

By: \_\_\_\_\_  
J. Timothy Brugh, Manager/Member

[COMPANY SEAL]

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IN WITNESS WHEREOF, Borrower has caused these presents to be executed under seal on the date hereinabove written.

**BORROWER:**

AppleILLINOIS, L.L.C., an Illinois limited liability company

By: \_\_\_\_\_  
W. Curtis Smith, Manager/Member

By: \_\_\_\_\_  
James P. Borko, Manager/Member

By: \_\_\_\_\_  
J. Timothy Brugh, Manager/Member

[COMPANY SEAL]

Apple AND II, LLC, an Illinois limited liability company

By: \_\_\_\_\_  
W. Curtis Smith, Manager/Member

By: \_\_\_\_\_  
James P. Borko, Manager/Member

By: \_\_\_\_\_  
J. Timothy Brugh, Manager/Member

[COMPANY SEAL]

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This Instrument was prepared by and upon recording mail to:

Catherine P. Powell, Esquire  
Tatum Levine & Powell, LLP  
1199 Oxford Road, N.E.  
Atlanta, Georgia 30306

## ACKNOWLEDGMENT

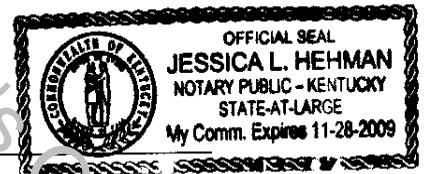
STATE OF Kentucky } SS.  
COUNTY OF Keeton

Jessica L. Hehman a Notary Public, in and for and residing in said County and State, DO HEREBY CERTIFY that W. Curtis Smith, James P. Borke, and J. Timothy Brugh, Managers/Members of AppleLLINOIS, L.L.C., an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said company for the uses and purposes set forth therein.

Given under my hand and notarial seal this 1<sup>st</sup> day of May, 2006.

Jessica L. Hehman  
Notary Public

My Commission Expires: \_\_\_\_\_



[NOTARY SEAL]

[ACKNOWLEDGMENTS CONTINUED ON FOLLOWING PAGE]

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STATE OF Kentucky } SS.  
COUNTY OF Kenton }

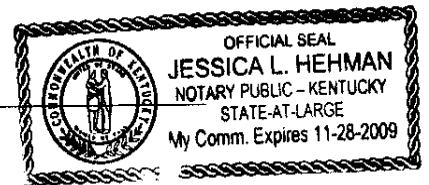
I, Jessica L. Hehman, a Notary Public, in and for and residing in said County and State, DO HEREBY CERTIFY that W. Curtis Smith, James P. Borke, and J. Timothy Brugh, Managers/Members of AppleLAND II, LLC, an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said company for the uses and purposes set forth therein.

Given under my hand and notarial seal this 1<sup>st</sup> day of May, 2006.

Jessica L. Hehman  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]



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## EXHIBIT A

### LEGAL DESCRIPTION

Parcel 1:

Lot 11 of Gatling Country Club Hills Resubdivision being a Resubdivision of part of Gatling Country Club Hills Subdivision in the Northeast quarter of Section 27, Township 36 North, Range 13, East of the Third Principal Meridian, South of the Indian Boundary line, and part of the Northeast Quarter of Section 27, Township 36 North, Range 13 East of the Third Principal Meridian, South of the Indian Boundary line, according to the Plat thereof recorded June 9, 2004 as Document No. 0416145163, all in Cook County, Illinois.

Parcel 2:

Non-Exclusive easement appurtenant to and for the benefit of Parcel 1 as set forth and defined in the Entertainment Center Declaration recorded May 26, 1999 as Document No. 99509366, as amended by document Nos. 09184952 and 0417518062 and in the Development Declaration recorded May 26, 1999 as document No. 99509367, as amended by Document Nos. 09184953 and 0417518061 and as created in the Plat of Gatling Country Club Hills Resubdivision recorded June 9, 2004 as Document No. 0416145163, for ingress and egress, for pedestrian and vehicular access, all in Cook County, Illinois.

Parcel 3:

Non-Exclusive and Exclusive easements appurtenant to and for the benefit of Parcel 1 as set forth and defined in the Declaration Of Easements, Covenants, Conditions And Restrictions recorded March 15, 2005 as document No. 0507433198 for ingress and egress, for pedestrian and vehicular access, all in Cook County, Illinois.

Property of Cook County Clerk's Office