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Doc#: 0701744091 Fee: \$50.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/17/2007 03:33 PM Pg: 1 of 14

## WHEN RECORDED MAIL TO:

Kristin L. Brown  
Lawyers Title Insurance Corporation  
1850 N. Central Ave. Suite 300  
Phoenix, AZ 85004

Lawyers Unit #11344 Case# 10955854  
5 ref

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DO NOT REMOVE THIS COVER SHEET. IT IS NOW PART OF THE RECORDED DOCUMENT.

DOCUMENT TO BE RECORDED:

AMENDATORY AGREEMENT

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**PLEASE CROSS REFERENCE TO:**

See Schedule I, attached hereto

**AMENDATORY AGREEMENT**

THIS AMENDATORY AGREEMENT (this "Agreement"), is made effective as of January 9, 2007, between SHAMROCK COMPANY, an Illinois corporation, SHAMROCK TBC, INC., an Illinois corporation, and MCGUE FAMILY, L.L.C, an Illinois limited liability company (collectively, the "Borrower"), and BANK OF AMERICA, N.A. ("Lender");

**WITNESSETH:**

WHEREAS, Borrower is indebted to Lender (the "Loan") in accordance with the terms of, among other documents, that certain Consolidated, Amended and Restated Reducing Revolver Promissory Note dated December 22, 2005, as the same has been and may hereafter be amended from time to time (as amended, the "Note"); and

WHEREAS, the Loan is: (a) governed by the terms and conditions of the Note and of that certain Consolidated, Amended and Restated Loan and Security Agreement dated December 22, 2005, by and between Borrower, Lender, and the "Guarantor" (defined therein), as amended from time to time (as amended, the "Loan Agreement") (capitalized terms used herein shall have the meanings ascribed to them in the Loan Agreement, unless otherwise defined herein), and (b) secured by, among other Loan Documents, each of the following Loan Documents, all dated December 22, 2005: (i) that certain Consolidated, Amended and Restated Real Estate Mortgage and Security Agreement, made by Borrower in favor of Lender, and recorded in the Cook County, Illinois records at the Document No. listed on Schedule I, attached hereto and by this reference incorporated herein and made a part hereof, as the same has been and hereafter is amended from time to time (as amended, the "Mortgage"), (ii) Consolidated, Amended and Restated Assignments of Lessor's Interest in Leases, made by Borrower in favor of Lender and recorded at the Document No. listed on Schedule I, attached hereto, as the same has been and hereafter is amended from time to time (as amended, the "Lessor's Assignment"), and (iii) security agreements, uniform commercial code financing statements, guarantees and other Loan Documents

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executed by Borrower and Guarantor in favor of Lender from time to time, all of which Loan Documents encumber Collateral and the Homewood Collateral Location operated by Borrower as a KFC Restaurant; and

WHEREAS, Borrower desires to sell to GE CAPITAL FRANCHISE CORPORATION ("Landlord"), its fee simple interest in the Homewood Collateral Location (hereinafter called the "Homewood Sale Leaseback Collateral Location"), in exchange for the granting by Landlord to Borrower of a leasehold interest in and to the Homewood Sale Leaseback Collateral Location to be evidenced by that certain (i) Memorandum of Lease which shall be recorded on or about even date herewith in the Cook County, Illinois records, and (ii) Lease Agreement, each dated on or about even date herewith by and between Landlord and Borrower (the Homewood Sale Leaseback Collateral Location Lease")(such transaction is hereinafter referred to as the "Sale Leaseback Transaction"); and

WHEREAS, as a condition precedent to Lender's consent to the Sale Leaseback Transaction, Lender has required, among other items, that (i) Borrower pledge to Lender its leasehold interest in and to the Homewood Sale Leaseback Collateral Location, instead of its fee simple interest in and to the Homewood Sale Leaseback Collateral Location which was heretofore pledged by Borrower to, and secured by, Lender, and (ii) Borrower execute and deliver all Loan Documents necessary to evidence such amendment (collectively, the "Loan Modification"), including, without limitation, this Amendatory Agreement, and that certain Second Amendment to the Consolidated, Amended and Restated Loan and Security Agreement dated of even date herewith, by and between Borrower, Lender and the Guarantors (the "Second Amendment");

WHEREAS, Borrower and Lender desire to enter into this Agreement for purposes of memorializing their mutual understandings regarding the Loan Modifications;

NOW THEREFORE, for and in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00), in hand paid by Lender to Borrower and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **AMENDMENT TO THE LOAN AGREEMENT.** Effective as of even date herewith, the Loan Agreement has been modified by the Second Amendment.

2. **AMENDMENTS TO MORTGAGE.** Effective of even date herewith, the Mortgage described on Schedule I, attached hereto has been and is hereby amended as follows:

2.1 By amending **Schedule I- Schedule of Leases** to the Mortgage, by adding thereto the new lease described on Schedule III, attached hereto and by this reference incorporated herein and made a part hereof, so that from and after the date hereof, the Mortgage shall evidence that with respect to the Homewood Sale Leaseback Collateral Location only (in addition to the existing leasehold Collateral Locations set forth in each

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Mortgage) Lender shall have and hold a leasehold interest (and no longer a fee simple interest) in and to the Homewood Sale Leaseback Collateral Location.

2.2 By amending any and all references in the Mortgage to the Loan Agreement to mean and refer to the Loan Agreement, as amended by the Second Amendment.

2.3 By amending any and all references set forth in the Mortgage to "Lease Assignment", "Lessee's Assignment", "Assignment", and/or "Assignment of Rents" so that from and after the date hereof, such references shall mean and refer to the "Lessor's Assignment" and "Lessee's Assignment", all as amended by this Agreement.

3. **AMENDMENTS TO LESSOR'S ASSIGNMENT AND LESSEE'S ASSIGNMENT.** Effective as of even date herewith, each of the Lessor's Assignment and Lessee's Assignment has been and is hereby amended as follows:

3.1 By deleting from each Lessor's Assignment for Cook County, Illinois (i) the description of the Homewood Sale Leaseback Collateral Location set forth in the table set forth on page one of the Lessor's Assignment, and (ii) the legal description for the Homewood Sale Leaseback Collateral Location attached thereto as Exhibit A, so that from and after the date hereof, the Lessor's Assignment will no longer encumber, nor govern or control, the Homewood Sale Leaseback Collateral Locations.

3.2 By amending the Lessee Assignment for Cook County, Illinois by: (i) adding to the table set forth on page one of each Lessee Assignment, the description of the Homewood Sale Leaseback Collateral Locations set forth on Schedule II to this Agreement, (ii) adding the legal description for the Homewood Sale Leaseback Collateral Location which is attached to this Agreement as Schedule II, as Exhibit "A's" to the Lessee Assignment, and (iii) adding the description of the Homewood Sale Leaseback Collateral Location Lease set forth on Schedule III attached to this Agreement to the end of Schedule I to the Lease Assignment, so that from and after the date hereof, the Homewood Sale Leaseback Collateral Location shall be encumbered by, and governed and controlled by, in addition to the other Loan Documents, the Lessee Assignment.

3.3 By amending any and all references in each Lessor's Assignment and in each Lessee's Assignment to the Loan Agreement to mean and refer to the Loan Agreement as amended by the Second Amendment.

3.4 By amending any and all references set forth in each Lessor's Assignment and in each Lessee's Assignment to "Consolidated Mortgage", "Mortgage and Security Agreement" or "Mortgage", so that from and after the date hereof, such references shall mean and refer to the "Mortgage", all as amended by this Agreement.

4. **AMENDMENTS TO OTHER LOAN DOCUMENTS.** Effective as of even date herewith, the other Loan Documents have been and are hereby amended as follows:

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4.1 By amending any and all references in the other Loan Documents to the Loan Agreement to mean and refer to the Loan Agreement, as amended by the Second Amendment.

4.2 By amending any and all references set forth in the other Loan Documents to "Consolidated Mortgage", "Mortgage and Security Agreement" or "Mortgage", and to "Lease Assignment", "Lessee's Assignment", "Assignment", and/or "Assignment of Rents" so that from and after the date hereof, such references shall mean and refer to the "Mortgage", the "Lessor's Assignment", and the "Lessee's Assignment", all as amended by this Agreement.

5. **BORROWER'S ESTOPPEL.** As a material inducement to Lender to enter into this Agreement, Borrower hereby warrants, represents and certifies to Lender as follows:

5.1 As of the date hereof, Borrower has no defenses, offsets or counterclaims as against the indebtedness and Obligations evidenced and secured by the Loan Documents.

5.2 To the best knowledge and belief of Borrower, the Loan Agreement, the Note, the Mortgage, the Lessor's Assignment, the Lessee's Assignment, and the other Loan Documents, as amended hereby and by the Second Amendment, all are in all respects the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms and free from all infirmities, defenses or counterclaims of any nature whatsoever. To the best knowledge and belief of Borrower, Lender is not in default or breach of any of its obligations to Borrower under the Loan Agreement, Note, the Mortgage, the Lessor's Assignment, the Lessee's Assignment nor the other Loan Documents, all as amended hereby and by the Second Amendment.

5.3 To the best knowledge and belief of Borrower, after giving effect to the Loan Modifications, no Event of Default has occurred and continues to exist nor has any event, state of facts or other condition occurred, which with notice or the passage of time or both, would constitute an Event of Default under the Loan Documents.

6. **NO OTHER CHANGE.** Except as herein expressly amended and except as provided in the Second Amendment, each and every term, condition, warranty and provision of the Loan Agreement, the Note, the Mortgage, the Lessor's Assignment, the Lessee's Assignment, and all other Loan Documents shall remain in full force and effect, and such are hereby ratified, confirmed and approved by the parties hereto. Nothing herein shall be construed to alter or affect the priority of the lien or title created by the Loan Documents, it being the expressly declared intention of the parties hereto that no novation of the Loan Documents be created hereby.

7. **BINDING EFFECT.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, successors, legal representatives and assigns.

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8. **COUNTERPART EXECUTION.** This Agreement may be executed in one or more counterparts and the signature of any party to any counterpart may be appended to any other counterpart, all of which counterparts when taken together shall equal one Agreement.


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IN WITNESS WHEREOF, Borrower and Lender, each has executed this Agreement under seal, effective as of the day and year first written above.


**BORROWER:**

SHAMROCK COMPANY

By:   
Name: Stephen C. McGue  
Title: President


[CORPORATE SEAL]

SHAMROCK TBC, INC.

By:   
Name: Stephen C. McGue  
Title: President

[CORPORATE SEAL]


MCGUE FAMILY, L.L.C.

By:   
Name: Stephen C. McGue  
Title: Manager

[COMPANY SEAL]

**LENDER:**

BANK OF AMERICA, N.A.

By:   
Name: Bobby R. Oliver, Jr.  
Title: Managing Director

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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

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A large, stylized handwritten signature in black ink, consisting of several vertical, sweeping strokes, is positioned over the diagonal watermark text.



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## ACKNOWLEDGMENT

STATE OF Illinois } SS.  
COUNTY OF DuPage }

I, Patricia Romanelli, a Notary Public, in and for and residing in said County and State, DO HEREBY CERTIFY that Stephen C. McGue, President of Shamrock Company, an Illinois corporation, 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 22<sup>nd</sup> day of December, 2006.

Patricia L Romanelli

Notary Public



My Commission Expires: 1-27-07

[NOTARY SEAL]

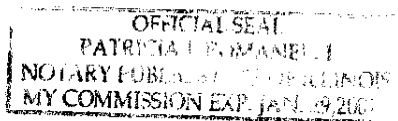
STATE OF Illinois } SS.  
COUNTY OF DuPage }

I, Patricia L Romanelli, a Notary Public, in and for and residing in said County and State, DO HEREBY CERTIFY that Stephen C. McGue, President of Shamrock TBC, Inc., an Illinois corporation, 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 22<sup>nd</sup> day of December, 2006.

Patricia L Romanelli

Notary Public



My Commission Expires: 1-29-2007

[NOTARY SEAL]

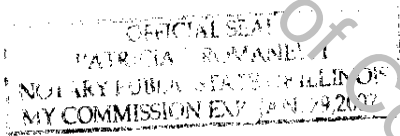
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STATE OF Illinois } SS.  
COUNTY OF DuPage }

I, Patricia L. Romanelli, a Notary Public, in and for and residing in said County and State, DO HEREBY CERTIFY that Stephen C. McGue, Member of McGue Family, 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 29<sup>th</sup> day of December 2006.

Patricia L. Romanelli  
Notary Public



My Commission Expires: 1-29-2007

[NOTARY SEAL]

STATE OF Georgia } SS.  
COUNTY OF DeKalb }

I, CATHERINE POWELL, a Notary Public, in and for and residing in said County and State, DO HEREBY CERTIFY that Ed by R. Oliveric, Manager Director of Bank of America, N.A., a national banking association, 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 5<sup>th</sup> day of January, 2007.

Catherine Powell  
Notary Public

My Commission Expires CATHERINE P. POWELL  
Notary Public - State of Georgia  
DeKalb County  
My Commission Expires Mar. 22, 2008

[NOTARY SEAL]

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## SCHEDULE I LIST OF LOAN DOCUMENTS

Homewood	17505 S. Halsted Ave., Homewood, IL 60430	Cook	<ul style="list-style-type: none"> <li>i. Consolidated, Amended and Restated Real Estate Mortgage and Security Agreement recorded 12/30/06 as Document No. 0536445111 (which consolidated, amended and restated that certain Real Estate Mortgage originally recorded at Document No. 0432434109)</li> <li>ii. Assignment of Lessor's Interest in Lease recorded 12/30/05 as Document No. 0536445112 (which restated that certain Assignment originally recorded at Document No. 0432434110)</li> <li>iii. Assignment of Purchase Price recorded 11/19/04 at file Document No. 0432434111</li> <li>iv. Financing Statements: Cook County: 0432434113</li> </ul>
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## SCHEDULE II

### SALE LEASEBACK LOCATION

	<u>PROPERTY</u>	<u>ADDRESS</u>	<u>COUNTY</u>
1.	Homewood	17505 S. Halsted Ave., Homewood, IL 60430	Cook

See following page for Exhibit A – Legal Description

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**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**HOMEWOOD**

**EXHIBIT A**

McGue Property

LOT 6 IN PARK PLACE PLAZA RESUBDIVISION, BEING A RESUBDIVISION OF THE PARK PLACE PLAZA, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 19, 1995 AS DOCUMENT NUMBER 95329596, EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY: BEGINNING AT THE MOST NORTHERLY NORTHWEST CORNER OF LOT 6 IN THE PARK PLACE PLAZA SUBDIVISION AFORESAID; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 41 MINUTES 10 SECONDS EAST ALONG THE NORTH LINE OF LOT 6, A DISTANCE OF 48.87 FEET; THENCE SOUTH 63 DEGREES 41 MINUTES 11 SECONDS WEST, 55.79 FEET TO THE WEST LINE OF LOT 6; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID WEST LINE 22.12 FEET TO THE SOUTHERLY NORTHWEST CORNER OF LOT 6; THENCE NORTH 21 DEGREES 32 MINUTES 43 SECONDS EAST ALONG SAID WEST LINE, 3.09 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 29-33-100-049-0000

PROPERTY ADDRESS: 17505 S. Halsted Avenue, Homewood, Illinois 60430

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Together with all rights, title, interests, benefits, easements, appurtenances arising under, out of, or with respect to, and under that certain Easement Agreement dated ~~October~~ <sup>December 8,</sup> 2006, by and between McGue Family, L.L.C., an Illinois limited liability company, and Homewood Associates, L.L.C., an Illinois limited liability company, and recorded at Document No.       , Cook County, Illinois Records - <sup>recorded</sup> ~~recorded~~ 1-17-07,   
0701744087

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## SCHEDULE III

### SCHEDULE OF NEW LEASE TO BE ADDED TO SCHEDULE I OF EACH MORTGAGE AND LESSEE'S ASSIGNMENT

1. Lease Agreement dated on or about even date herewith, by and between GE Capital Franchise Finance Corporation, as landlord, and Shamrock Company, as Tenant relating to the Homewood KFC Restaurant described above.

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