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Doc#: 0918345114 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/02/2009 12:42 PM Pg: 1 of 9

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Wells Fargo Bank, National Association
Real Estate Group (AU #02955)
2030 Main Street, Suite 800
Irvine, CA 92614

Attn: Jeri Gehrler
Loan No: 104554

09 000 3 - R.W.N.T. & E, C.A.I.C

MODIFICATION AGREEMENT Cross-Default/Cross-Collateralization (Krispy Crème, Cook County)

THIS MODIFICATION AGREEMENT ("Agreement") is dated as of June 29, 2009, by and between Wells Fargo Bank, National Association ("Mortgagee") and PACIFIC GROUND LEASES I, LLC, a Delaware limited liability company ("Mortgagor").

RECITALS

- A. By the terms of that certain amended and restated loan agreement between Pivotal 650 California St., L.L.C., an Arizona limited liability company ("Pivotal Borrower"), as borrower, and Mortgagee, as lender, dated as of even date herewith (as modified, amended and/or supplemented from time to time, the "Other Loan Agreement"), and that certain amended and restated promissory note, dated as of even date herewith executed by Pivotal Borrower to the order of Mortgagee (as modified, amended and/or supplemented from time to time, the "Other Note"), and other "Loan Documents" described in the Other Loan Agreement (as modified, amended and/or supplemented from time to time, the "Other Loan Documents"), Mortgagee has agreed to amend and restate a loan to Pivotal Borrower in the revised principal amount of EIGHTY-ONE MILLION FOUR HUNDRED THOUSAND AND NO/100THS Dollars (\$81,400,000.00) (the "Other Loan"). Certain Deeds of Trust, as amended and modified, as described in the Other Loan Agreement, secure the Other Loan, a guaranty of the Other Loan, the Loan as hereinafter defined, or a guaranty of the Loan (collectively, the "Other Deeds of Trust") all of even date herewith.
- B. By the terms of that certain amended and restated loan agreement executed by Pivotal Borrower and Pacific Ground Leases I, LLC, a Delaware limited liability company ("Pacific Borrower") (Pivotal Borrower and Pacific Borrower are sometimes referred to as a "Borrower" and collectively as "Borrowers"), and Mortgagee, as lender, dated as of February 18, 2009 (as modified, amended and/or supplemented from time to time, the "Loan Agreement"), and that certain amended and restated promissory note of even date therewith executed by Borrowers to the order of Mortgagee (as modified, amended and/or supplemented from time to time, the "Note"), Mortgagee has made a loan to Borrowers in the principal amount of ONE HUNDRED SIX MILLION THREE HUNDRED FIFTY THOUSAND AND NO/100THS Dollars (\$106,350,000.00) (the "Loan") secured by, among other things, that certain mortgage (as modified, amended and/or supplemented from time to time, the "Mortgage") dated as of February 18, 2009, and recorded February 27, 2009, as Instrument No. 0905822137, in the Office of the Official Records of Cook County, Illinois. Capitalized terms used and not defined herein shall have the meanings given to them in the Loan Agreement.

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- C. By the terms of that certain Modification Agreement between Borrowers, as borrowers, and Mortgagee, as lender, dated as of even date herewith (as modified, amended and/or supplemented from time to time, the "Modification Agreement"), Borrowers and Mortgagee have amended the Loan Agreement, the Note and the other "Loan Documents" described in the Loan Agreement (as modified, amended and/or supplemented from time to time, the "Loan Documents").
- D. Mortgagor and Mortgagee have agreed to modify the Mortgage and certain Other Deeds of Trust to provide for cross-collateralization and cross-default of the obligations secured by the Mortgage with the obligations secured by certain Other Deeds of Trust.

THEREFORE, Mortgagor and Mortgagee agree as follows:

1. **AMENDMENT OF SECURED OBLIGATIONS.** Each reference in the Mortgage to the Loan Agreement, the Note or any of the other Loan Documents is hereby amended to be a reference to such Loan Agreement, Note or other Loan Document as amended by the Modification Agreement and the documents and instruments executed and delivered in connection with the Modification Agreement (collectively, together with the Modification Agreement, the "Modification Documents"). Without limiting the generality of the foregoing, the Mortgage is hereby amended to provide that, in addition to the Secured Obligations described in Section 2.1 of the Mortgage, the Mortgage also secures Mortgagor's obligations under the Loan Agreement, the Note and the other Loan Documents, as amended by the Modification Agreement, which also constitute Secured Obligations under the Mortgage.
2. **ADDITIONAL SECURITY - OTHER DEEDS OF TRUST.** In addition to the obligations secured by the Mortgage and described as "Secured Obligations" therein, the Mortgage shall also secure the following obligations of Mortgagor ("Other Secured Obligations"): (a) payment to Mortgagee of all sums at any time owing under that certain Repayment Guaranty (as modified, amended and/or supplemented from time to time, the "Other Guaranty") dated as of even date herewith, executed by Mortgagor in favor of Mortgagee under which Mortgagor guaranties, among other obligations, the obligations of Pivotal Borrower under the Other Note in the original principal amount of EIGHTY-ONE MILLION FOUR HUNDRED THOUSAND AND NO/100THS Dollars (\$81,400,000.00) evidencing the Other Loan pursuant to the Other Loan Agreement; and (b) payment and performance of any and all other obligations secured by any other Deed of Trust executed by Mortgagor securing any Secured Obligation or any Other Secured Obligation. The Other Secured Obligations shall constitute additional "Secured Obligations" under the Mortgage.
3. **ADDITIONAL SECURITY - DEED OF TRUST.** In addition to the obligations secured by each Other Deed of Trust executed by Mortgagor, such Other Deed of Trust shall secure the Guaranty.
4. **DEFAULT - OTHER DEED OF TRUST.** A Default under any of the Other Deeds of Trust, as defined therein, shall, at Mortgagee's option, constitute a Default under the Mortgage.
5. **DEFAULT - DEED OF TRUST.** A Default under the Mortgage, as defined therein, shall, at Mortgagee's option, constitute a Default under each of the Other Deeds of Trust.
6. **FORMATION AND ORGANIZATIONAL DOCUMENTS.** Mortgagor has previously delivered to Mortgagee all of the relevant formation and organizational documents of Mortgagor, of the partners or joint venturers of Mortgagor (if any), and of all guarantors of the loan (if any), and all such formation documents remain in full force and effect and have not been amended or modified since they were delivered to Mortgagee. Mortgagor hereby certifies that: (i) the above documents are all of the relevant formation and organizational documents of Mortgagor; (ii) they remain in full force and effect; and (iii) they have not been amended or modified since they were previously delivered to Mortgagee.

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7. **HAZARDOUS MATERIALS.** Without in any way limiting any other provision of this Agreement, Mortgagor expressly reaffirms as of the date hereof, and continuing hereafter: (i) each and every representation and warranty in the loan documents respecting "Hazardous Materials"; and (ii) each and every covenant and indemnity in the loan documents respecting "Hazardous Materials".
8. **WAIVER OF MARSHALLING RIGHTS.** Mortgagor waives all rights to have all or part of any property and collateral described in the Mortgage and/or in any of the Other Deeds of Trust (described in each of said deeds of trust and mortgages, respectively, as the "Subject Property"), marshalled upon any foreclosure of the Mortgage or any of the Other Deeds of Trust. Mortgagee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of the property and collateral described in the Mortgage or any Deed of Trust, as a whole or in separate parcels, in any order that Mortgagee may designate. Mortgagor makes this waiver for itself, and for all persons and entities claiming through or under Mortgagor, and for persons and entities who may acquire a lien on all or any part of any property and collateral described in the Mortgage or any Deed of Trust, or on any interest therein.
9. **WARRANTIES AND REPRESENTATIONS.** Mortgagor represents and warrants that the lien of each of the Mortgage and the Other Deeds of Trust is a first lien on the property described therein and covered thereby and that this Modification Agreement and the provisions of the Mortgage or any Deed of Trust will not cause intervening liens to become prior to the lien of the Mortgage or any other Deed of Trust. If any intervening lien exists or hereafter arises, Mortgagor shall cause the same to be released or subordinated to the lien of the Mortgage or any such Other Deed of Trust, without limiting any other right or remedy available to Mortgagee. Mortgagor further warrants that Mortgagor has no legal or equitable claim against any trustor or mortgagor named in the Mortgage or any Deed of Trust which would be prior to the lien of such Deed of Trust, or which would entitle Mortgagor to a judgment entitling Mortgagor to an equitable lien on all or any portion of that property prior in lien of such Mortgage or Deed of Trust.
10. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Modification Agreement and any document or instrument executed in connection herewith, all of the terms, covenants, and conditions contained in each of the Mortgage and the Other Deeds of Trust and any loan documents executed in connection therewith shall remain in full force and effect.
11. **EXECUTION IN COUNTERPART.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

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"MORTGAGOR"

Pacific Ground Leases I, LLC,
a Delaware limited liability company

By: Levine Investments Limited Partnership,
an Arizona limited partnership
Its: Member and Manager

By: KEIM, Inc.,
an Arizona corporation
Its: General Partner

By: 

William S. Levine, Chairman

Mortgagor's Address:
1702 East Highland Avenue, Suite 310
Phoenix, AZ 85016

Attn: William Levine

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

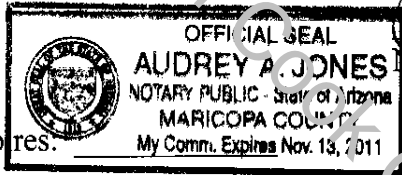
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STATE OF ARIZONA)
)SS.
COUNTY OF MARICOPA)

On this 2nd day of June, 2009, before me appeared William S. Levine, as Chairman of Keim, Inc., an Arizona corporation, the General Partner of Levine Investments Limited Partnership, an Arizona limited partnership, which is the sole member of Pacific Ground Leases I, LLC, a Delaware limited liability company, to me personally known, who, being by me duly sworn, did say that he is the Chairman of Keim, Inc., and that said instrument was signed and sealed on behalf of said entity and Pacific Ground Leases I, LLC, by authority of its members and/or managers and said William S. Levine acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and State aforesaid, the day and year first above written.



Audrey A. Jones
Notary Public

My terms expires.

County Clerk's Office

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STATE OF California

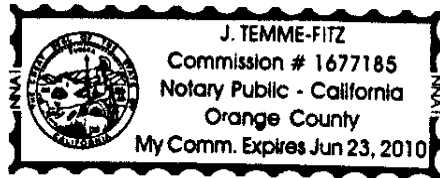
COUNTY OF Orange

On this 25th day of June, 2009 before me, J. Temme-Fitz a Notary Public in and for the State of CA, personally appeared Jamie Warner, personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

J. Temme-Fitz
Signature

My commission expires June 23, 2010



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Parcel 1:

Lot 4 in Rosemont Marketplace Second Addition, being a resubdivision of Rosemont Marketplace being a subdivision of part of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 32, Township 41 North, Range 12, East of the Third Principal Meridian, according to the plat thereof recorded April 06, 2001 as Document Number 0010278522 in the Village of Rosemont, Cook County, Illinois.

Parcel 2:

A non-exclusive Easement including but not limited to ingress and egress for the benefit of Parcel 1, as created and described in the Operation and Easement Agreement dated October 19, 2000 and recorded October 24, 2000 as Document 00834791 by and between Target Corporation, a Minnesota corporation and Ryan Companies, US, Inc., a Minnesota corporation and as amended by First Amendment to Operation and Easement Agreement recorded April 06, 2001 as Document 0010278524 and as amended by Second Amendment to Operation and Easement Agreement recorded April 15, 2004 as Document 0410642310 over the following described land:

Lot 1 in Rosemont Marketplace, being a subdivision of part of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 32, Township 41 North, Range 12, East of the Third Principal Meridian, in the Village of Rosemont, Cook County, Illinois.

Parcel 3:

A non-exclusive Easement for the benefit of Parcel 1, as created by Amended and Restated Easement Agreement dated August 12, 1999 and recorded September 08, 1999 as Document 99853687 by and between Fujisawa Healthcare, Inc. a Delaware corporation, Innskeeper RI General, L.P., a Virginia limited partnership and Steak N' Shake, an Indiana corporation for the purpose of pedestrian and vehicular ingress and egress and access over the following described land:

The East 13.00 Feet (measured at right angles) of Lot 3 in Rosemont Center Commercial Development Subdivision, being a subdivision of part of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 32, Township 41 North, Range 12, East of the Third Principal Meridian, according to the plat thereof recorded March 19, 1997 as Document 97189092, in Cook County Illinois.

Parcel 4:

A non-exclusive Easement for the benefit of Parcel 1, as created by Easement Agreement dated October 19, 2000 and recorded October 24, 2000 as Document 00834788 by and among Steak N' Shake, Inc., an Indiana corporation, Ryan Companies US, Inc., a Minnesota corporation and Target Corporation, a Minnesota corporation for the purpose of pedestrian and vehicular access over the following described land:

The East 13.00 Feet (measured at right angles) of Lot 3 in Rosemont Center Commercial Development Subdivision, being a subdivision of part of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 32, Township 41 North, Range 12, East of the Third Principal Meridian, according

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to the plat thereof recorded March 19, 1997 as Document 97189092, in Cook County, Illinois.

Permanent Tax / Assessor Parcel Number(s):

09-32-201-040

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A large, bold, black handwritten mark, possibly a signature or initials, is written over the diagonal watermark text. The mark consists of several thick, sweeping strokes that form a complex, abstract shape.