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Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 10/09/2009 11:17 AM Pg: 1 of 9

Cross Reference:

Document recorded as Instrument
#0612510084, Cook County,
Illinois records

**FIRST MODIFICATION OF
REAL ESTATE MORTGAGE AND SECURITY AGREEMENT**

This FIRST MODIFICATION OF REAL ESTATE MORTGAGE AND SECURITY AGREEMENT (the "Modification Agreement") is made and entered into as of the 24th day of September, 2009, with an effective date of October 1, 2009, by and between APPLELAND II, LLC, an Illinois limited liability company, with a mailing address at 741 Centre View Blvd, Suite 100, Crestview Hills, Kentucky 41017 (herein, together with its successors and assigns, called "Mortgagor") and BANK OF AMERICA, N.A., a national banking association (herein, together with its successors and assigns, called "Mortgagee"), with a mailing address at 600 Peachtree Street NE, 13th Floor, Mail Code GA1-006-13-20, Atlanta, Georgia 30308, Attn: Credit Products Officer, Restaurant Finance Group.

WITNESSETH:

WHEREAS, Mortgagor, AppleIllinois, L.L.C. (successor by merger to AppleIllinois II, LLC) and Mortgagee entered into that certain Loan and Security Agreement dated April 12, 2001, as amended by that certain First Amendment to Loan and Security Agreement dated November 16, 2001; that certain Second Amendment to Loan and Security Agreement dated March 22, 2002; that certain Third Amendment to Loan and Security Agreement dated July 26, 2002; that certain Fourth Amendment to Loan and Security Agreement dated July 31, 2003; that certain Fifth Amendment to Loan and Security Agreement dated January 20, 2004; that certain Sixth Amendment to Loan and Security Agreement dated August 30, 2004; that certain Seventh

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Amendment to Loan and Security Agreement dated October 12, 2004; that certain Eighth Amendment to Loan and Security Agreement dated August 26, 2005; that certain Ninth Amendment to Loan and Security Agreement dated May 3, 2006; that certain Tenth Amendment to Loan and Security Agreement dated May 5, 2006; that certain Eleventh Amendment to Loan and Security Agreement dated September 19, 2006; and that certain Twelfth Amendment to Loan and Security Agreement dated August 2, 2007 (the "Existing Loan Agreement"), pursuant to which the Mortgagee agreed to provide the Mortgage with a loan or loans as described therein;

WHEREAS, the obligations under the Existing Loan Agreement are secured by that certain REAL ESTATE MORTGAGE AND SECURITY AGREEMENT from Mortgagor to Mortgagee, recorded on May 5, 2006 in the real estate records of Cook County, Illinois as Instrument #0612510084 (hereafter, together with all amendments and modifications, the "Mortgage") encumbering certain property described therein;

WHEREAS, the Existing Loan Agreement has been amended and restated as set forth in the Master Loan Agreement (hereinafter defined);

WHEREAS, Mortgagor and Mortgagee have agreed to amend the Mortgage as hereinafter provided.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereby agree as follows:

A. MODIFICATIONS TO MORTGAGE.

1. The Mortgage is hereby modified and amended by deleting the second paragraph on page 1 commencing with the word "WHEREAS" in its entirety and simultaneously inserting in lieu thereof the following paragraph:

"WHEREAS, Mortgagor, AppleIllinois, L.L.C. (successor by merger to AppleIllinois II, LLC), C.J. Apple I, Inc., C.J. Apple II, Inc., C.J. Apple III, Inc. and Curtis James Investments, as borrowers (collectively, the "Borrowers"), and Mortgagee, as lender, have entered into that certain Amended and Restated Credit Agreement dated as of October 1, 2009 (as may be amended, supplemented, consolidated, replaced, renewed, extended or otherwise modified from time to time, the "Master Loan Agreement"), which amends and restates in its entirety that certain Loan and Security Agreement dated April 13, 2001, as amended. Pursuant to the Master Loan Agreement, the Lender has made certain loans to the Borrowers (collectively, the "Loan") and the Borrowers have executed and delivered to Mortgagee those certain note or notes evidencing Borrowers' obligation to repay the Loan (collectively, the "Note")."

2. The Mortgage is hereby modified and amended by deleting the paragraph in the Mortgage that commences with the words "THIS INSTRUMENT IS A MORTGAGE" that begins at the bottom of page 3 and continues on the top of page 4 in its entirety and simultaneously inserting in lieu thereof the following paragraph:

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“THIS INSTRUMENT IS A MORTGAGE pursuant to the laws of the State of Illinois governing such instruments, and is also a security agreement granting a present and continuing security interest and security title in the portion of the Premises constituting personal property or fixtures, and a financing statement filed as a fixture filing, pursuant to Uniform Commercial Code of the state of Illinois. The obligations secured by this Mortgage are comprised at any time of the following: (i) the full and punctual payment by Mortgagor and the Borrowers when due of (a) all principal of and interest on the Loan and the Note; and (b) all other amounts payable by Mortgagor and the Borrowers pursuant to the Master Loan Agreement, the Note or any other document or instrument evidencing or securing the Loan (together with the Master Loan Agreement, the Note and this Mortgage, the “Loan Documents” or individually a “Loan Document”); (ii) the full and punctual payment when due of all amounts payable by Mortgagor and the Borrowers under this Mortgage, including, without limitation, indemnification obligations and advances made pursuant to the Loan Documents; (iii) the performance and observance by Mortgagor and the Borrowers of each other term, covenant, agreement, requirement, condition and other provision to be performed or observed by Mortgagor and the Borrowers under any Loan Document; (iv) the performance and observance by Mortgagor and the Borrowers of each other term, covenant, agreement, requirement, condition and other provision to be performed or observed by Mortgagor and the Borrowers under all amendments, supplements, consolidations, replacements, renewals, extensions or other modifications of the foregoing, in each case whether now existing or hereafter arising; (v) any and all other indebtedness, liabilities and obligations of every nature whatsoever (whether or not otherwise secured or to be secured) of Mortgagor and the Borrowers (whether as maker, endorser, surety, guarantor or otherwise) to Mortgagee and/or Mortgagee's affiliates, whether now existing or hereafter created or arising or now owned or howsoever hereafter acquired by Mortgagee and/or Mortgagee's affiliates, whether such indebtedness, liabilities and obligations are or will be joint or several, direct or indirect, absolute or contingent, liquidated or unliquidated, matured or unmatured, including, but not limited to, any letter of credit issued by Mortgagee for the account of Mortgagor and the Borrowers; together with all expenses, attorneys' fees, paralegals' fees and legal assistants' fees incurred by Mortgagee and/or Mortgagee's affiliates in the preparation, execution, perfection or enforcement of any document relating to any of the foregoing; (vi) all obligations of the Mortgagor and the Borrowers under any Related Treasury Management Arrangements (as defined in the Master Loan Agreement); and (vii) all obligations of the Mortgagor and the Borrowers under any Related Swap Contract (as defined in the Master Loan Agreement) to which Mortgagee or its affiliates are a party shall be deemed to be liabilities of the Mortgagor and the Borrowers (“Liabilities”), and Mortgagee or affiliate of Mortgagee party to any such Related Swap Contract shall be deemed to be a Mortgagee hereunder with respect to such Liabilities; provided, however, that such obligations shall cease to be Liabilities at such time, prior to the Facility Termination Date (as defined below), as such Person (as defined in the Master Loan Agreement) (or affiliate of such Person)

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shall cease to be a “Lender” under the Master Loan Agreement. The obligations shall include, without limitation, any interest, costs, fees and expenses which accrue on or with respect to any of the foregoing, whether before or after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of Mortgagor and the Borrowers. The obligations and indebtedness which this Mortgage is given to secure are hereinafter sometimes collectively called the “Indebtedness”.

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) the Mortgagor and the Borrowers shall have permanently terminated the credit facilities under the Loan Documents by final payment in full of all Outstanding Amounts (as defined in the Master Loan Agreement), together with all accrued and unpaid interest and fees thereon; (b) the obligations and liabilities of the Borrowers and each other Loan Party (as defined in the Master Loan Agreement) under all Related Swap Contracts (as defined in the Master Loan Agreement) shall have been fully, finally and irrevocably paid and satisfied in full and the Related Swap Contracts shall have expired or been terminated, or other arrangements satisfactory to the counterparties shall have been made with respect thereto; and (c) the Borrowers and each other Loan Party (as defined in the Master Loan Agreement) shall have fully, finally and irrevocably paid and satisfied in full all of their respective obligations and liabilities arising under the Loan Documents, including the Obligations (as defined in the Master Loan Agreement) (except for future Obligations consisting of continuing indemnities and other contingent Obligations of the Borrowers or any Loan Party that may be owing to the Mortgagee or any of its affiliates pursuant to the Loan Documents and expressly survive termination of the Master Loan Agreement or any other Loan Document).”

3. The Mortgage is hereby modified and amended by deleting from the second line of Section 2.1 of the Mortgage the words and figures “any Guarantor” and simultaneously inserting in lieu thereof the words and figures “any of the Borrowers”.

4. The Mortgage is hereby modified and amended by deleting from the first line, the third line, the ninth line, the thirteenth and fourteenth lines of Section 2.2 the words and figures “Mortgagor, or any Guarantor” in their entirety and simultaneously inserting in lieu thereof the words and figures “Mortgagor or any of the Borrowers”.

5. The Mortgage is hereby modified and amended by deleting from the second and third lines, the fifth line and the seventh line of Section 2.3 the words and figures “Mortgagor, or any Guarantor” in their entirety and simultaneously inserting in lieu thereof the words and figures “Mortgagor or any of the Borrowers”.

6. The Mortgage is hereby modified and amended by deleting from the second line of Section 2.4 the words and figures “Mortgagor, or any Guarantor” in their entirety and simultaneously inserting in lieu thereof the words and figures “Mortgagor or any of the Borrowers”.

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7. The Mortgage is hereby modified and amended by deleting from the first line of Section 2.8 the words and figures "Mortgagor or any Guarantor" in their entirety and simultaneously inserting in lieu thereof the words and figures "Mortgagor or any of the Borrowers".

8. The Mortgage is hereby modified and amended by deleting from Section 4.6 of the Mortgage the notices addresses for Mortgagee in their entirety and simultaneously inserting in lieu thereof the following notice addresses:

"To Mortgagee: Bank of America, N.A.
600 Peachtree Street NE, 13th Floor
Mail Code GA1-006-13-20
Atlanta, Georgia 30308
Attn: Credit Products Officer, Restaurant
Finance Group

with a copy to: Morris, Manning and Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326
Attn: Frederick C.C. Boyd, III, Esq."

B. MISCELLANEOUS.

1. Successors and Assigns. This Modification Agreement shall be binding upon and inure to the benefit of Mortgagor and Mortgagee, and their respective successors, assigns and legal representatives.

2. Full Force and Effect. Except as expressly modified hereby, all terms and provisions of the Mortgage shall remain in full force and effect and are hereby ratified and affirmed by Mortgagor.

3. Modification. Except as hereby modified and amended, the Mortgage shall remain in full force and effect and unchanged.

4. Novation. The parties hereto agree that this Modification Agreement shall not constitute a novation of any obligation secured by the Mortgage.

5. Counterparts. This Modification Agreement may be executed in multiple counterparts each of which shall be deemed to be an original and all such counterparts together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, Mortgagor and Mortgagee have caused this Modification Agreement to be executed under seal as of the date set forth above.

MORTGAGOR:

APPLELAND II, LLC, an Illinois limited liability company

By: *W. Curtis Smith*
 Name: W. Curtis Smith
 Title: President

By: *James P. Borke*
 Name: James P. Borke
 Title: EXECUTIVE VICE PRESIDENT

[COMPANY SEAL]

STATE OF Kentucky §
 COUNTY OF Kenton §

On this 23 day of September, 2009, before me personally appeared W. Curtis Smith to me known to be the President of APPLELAND II LLC, an Illinois limited liability company, the limited liability company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that (s)he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature *Jessica L. Hehman*
 Name: Jessica L. Hehman

My Commission Expires: November 28, 2009

(NOTARIAL SEAL)

(Acknowledgements continued on following page)

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STATE OF IL §

COUNTY OF Cook §

On this 24 day of Sept, 2009, before me personally appeared James P. Borke to me known to be the EXECUTIVE VICE PRESIDENT of APPLELAND II, LLC, an Illinois limited liability company, the limited liability company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that (s)he was authorized to execute said instrument.

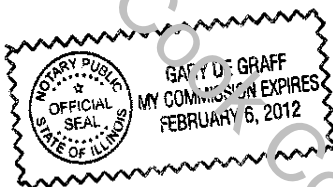
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature _____

Name: Gary DeGraff

My Commission Expires: _____

(NOTARIAL SEAL)

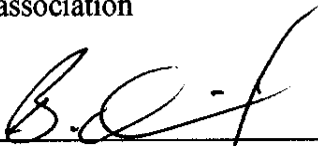


(Signatures continued on following page)

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MORTGAGEE:

BANK OF AMERICA, N.A., the national banking association


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

[BANK SEAL]

STATE OF GEORGIA §
 §
COUNTY OF Fulton §

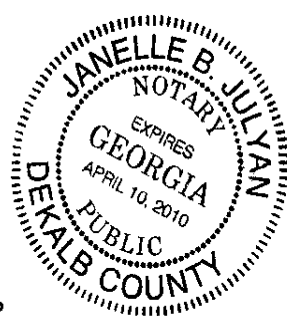
On this 24 day of September, 2009, before me personally appeared Bobby R. Oliver, Jr. to me known to be a Managing Director of BANK OF AMERICA, N.A., the national banking association that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said national banking association, for the uses and purposes therein mentioned, and on oath stated that (s)he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature 
Name: Janelle B. Julian

My Commission Expires: 4/10/2010

(NOTARIAL SEAL)



This Instrument prepared by and when recorded, return to:

Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road
Atlanta, GA 30326
Attn: Frederick C. C. Boyd, III, Esq.

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Unit #36
Country Club Hills, IL

EXHIBIT "A"

Legal Description

Parcel 1:

Lot 11 of Getting Country Club Hills Resubdivision being a Resubdivision of part of Getting 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 Getting 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.

PIN: 28-27-201-005-000

4029 W. 16th St.
Country Club Hills, Illinois 60478