Doc#: 0928229020 Fee: \$74.00 Eugene "Gene" Moore RHSP Fee:\$10.00 Cook County Recorder of Deeds Date: 10/09/2009 11:18 AM Pg: 1 of 6

Unit: (#36 - Country Club Hills) 4029 W. 16th St., Country Club Hills, Cook County, Illinois 60478

#### **MORTGAGOR'S AFFIDAVIT**

| STATE OF  | )    |
|-----------|------|
|           | ) SS |
| COUNTY OF | )    |

The undersigned, the President and <u>EXECUTIVE VICE PRESIDENT</u> of APPLELAND II, LLC, an Illinois limited liability company ("<u>Mortgagor</u>"), being first duly sworn upon their oath state that they are capable and authorized to make this Mortgagor's Affidavit and that:

- 1. Mortgagor, certain of Mortgagor's affiliates and Mortgagee (hereinafter defined) entered into that certain Amended and Restated Credit Agreement dated as of October 1, 2009 (the "Credit Agreement"). Capitalized terms used herein and not otherwise defined shall have the meaning set 101th in the Credit Agreement.
- 2. Mortgagor is the owner of good and marketable title in fee simple interest to all that certain real estate located in Cook County, Illinois, which is more particularly described in Exhibit "A", attached hereto and incorporated herein ("Real Estate").
- 3. Mortgagor has executed that certain Real Estate Mortgage and Security Agreement, as amended by that certain First Modification to Real Estate Mortgage and Security Agreement ("Mortgage"), in favor of BANK OF AMERICA, N.A. ("Mortgagee") securing the Obligations (as defined in the Credit Agreement) under the Credit Agreement, which Mortgage covers the Real Estate and the improvements thereon. The Mortgage has been duly executed by the Mortgagor pursuant to all recessary action on its part. The Mortgage remains an enforceable and binding obligation upon Mortgagor in accordance with its terms.
- 4. Mortgagor has the sole right to mortgage the Real Estate. The Mortgage is a valid lien on the Real Estate. There are no unsatisfied mortgages, judgments, liens, encumbrances or restrictions against the Real Estate or the improvements located thereon nor any contract which might in any manner create a lien thereon except the lien of the Mortgage, current real property taxes not delinquent, and the exceptions reflected by Title Insurance Policy No. LP-1304586, dated May 5, 2006, issued by First American Title Insurance Company ("Title Company"), as amended by that certain Date Down Endorsement (the "Endorsement") attached thereto.

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- 5. There are no matters pending against the Property that could give rise to a lien that would attach to the Property between the effective date of the Endorsement and the actual date of recordation of the documents to be insured hereunder.
- 6. No other person is in possession of any part of the Real Estate under color of title. The rights of Mortgagor to possession have never been questioned. The undersigned knows of no claim to title or possession of the Real Estate adverse to Mortgagor.
- Mortgagor states that neither it nor any other person has made any conveyance of or placed any encumbrance upon the Real Estate or made any contract for the sale thereof, nor has enyone ordered or caused any labor or materials, or both, to be furnished on the Real Estate, which has not been fully paid for, whereby a lien may thereafter be assessed against the same, and that there are no outstanding chattel mortgages or contracts, conditional bills of sale, retention of title agreements, or undisclosed easements, not shown of record affecting the Real Estate, and there are no outstanding claims, acts done or documents signed creating or tending to create a lien thereon.
- 8. The improvements are or once constructed shall be located within the bounds of the Real Estate, and are being used in compliance with all applicable building codes and zoning ordinances. No part of the Real Estate has been taken by condemnation nor is any condemnation proceeding now pending. There has been no objection from any party concerning location thereof.
- 9. There is no judgment or decree in any court of this State or of the United States against Mortgagor remaining unpaid or uncancelled of record. No proceedings in bankruptcy or insolvency have ever been instituted by or against Mortgagor. Mortgagor is not a party to any litigation or proceedings which might result in a lien upon the Real Estate or the improvements located thereon. Mortgagor is not obligated upon any bond payable whereby a lien hereafter might attach to the Real Estate or the improvements located thereon.
- 10. There are no tenants of the Real Estate or the improvements located thereon having a right to possession thereof, offsets or claims against the Mortgage.
- 11. All actions on the part of Mortgagor for the creation of the lien of the Mortgage have been taken. Mortgagor has no defenses, offsets or claims against the Mortgage.
- 12. Mortgagor is in every way capable of giving the Mortgage herein referred to as a prior and superior lien in, to and under the Real Estate. Mortgagor makes this Affidavit for the purpose of inducing Mortgagee, or its successors and assigns, to continue the credit facilities to Mortgagor and to induce Title Company to insure title to the Real Estate and the improvements located thereon and the relative priority of the lien of the Mortgage. The Mortgagor further states that, to the best of its knowledge, information and belief, all representations made to Mortgagee in connection with the Mortgage are true and correct.

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- 13. No part of the Real Estate is located in a flood hazard area as defined in the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, as amended (42 U.S.C. " 4001, et seq.).
- 14. That this affidavit is made to induce Mortgagee to provide financing secured by the Real Estate and improvements thereon, to induce an issuer of title insurance to issue its title policy insuring the security interest of said Mortgagee, and to induce the attorney certifying title to so certify, if applicable.
- 15. Each person in their capacity as an officer of the entity signing below indemnifies and agrees to save harmless the settlement agent and/or First American Title Insurance Company against any loss or expense, including attorneys fees, sustained as a result of the foregoing statements not being true and accurate.

(Remainder of page intentionally blank.)

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# **UNOFFICIAL COPY**

Dated: September 24, 2009

#### **MORTGAGOR**:

APPLELAND II, LLC, an Illinois limited liability company

R<sub>V</sub>.

Name: W. Curtis Smith

Title: President

By:

Name: James P. Borke

Title: EXECUTIVE VICE PRESIDENT

STATE OF Kentucky

COUNTY OF Kenton

) ss.

On this 33 day of September, 2009, before me personally appeared W. Curtis Smith to me known to be the President of APPLELAND II, LLC, on Illinois 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

Jame: Jessich I. Heh

My Commission Expires: November 28, 2009

(NOTARIAL SEAL)

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# **UNOFFICIAL COPY**

| STATE OF <u>TL</u> | )     |
|--------------------|-------|
| 1                  | ) ss. |
| COUNTY OF WILL     | )     |

On this 24 day of September, 2009, before me personally appeared James P. Borke to me known to be the FXECUTIVE VICE PRESIDENT of APPLELAND II, LLC, an Illinois 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 WIFREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature

A COUNTY CIEPTS OFFICE

My Commission Expires:

(NOTARIAL SEAL)

GARY DE GRAFI NIY COMMISSION EXPIRE FEBRUARY 6, 2012

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Unit #36 Country Club Hills, IL

### EXHIBIT "A"

Legal Description

Lot 11 of Gattling Country Club Hills Resubdivision being a Resubdivision of part of Gatting Country Club Hills Subdivision in the Northeast que ter 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 Indian Boundary line, and part of the Northeast Quarter of Section 27, Township 36 North, Range 13 East of the Third Indian Boundary line, according to the Plat thereof recorded June 9, 2004 as Document No. 0416145163, all in Cool County, Iffinois.

#### Parcel 2:

Non-Exclusive easement appurtenances and for the benefit of Parcel 1 as set forth and defined in the Entertainment Center Declaration recorded May 26, 1999 as Pocument No. 99509366, as amended by document Nos. 09184952 and 0417518062 and in the Development Dec aration recorded May 26, 1999 as document No. 99509367, as amended by Document Nos. 09184953 and 0417518061 and as created in the Plat of Gatting Country Club Hills Resubdivision recorded June 9, 2004 as Document No. 0416145163, or loress and egress, for pedestrain 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 Restrict one recorded March 15, 2005 as document No. des, all h. 0507433198 for ingress and egress, for pedestrain and vehicular a cees, all in Cook County, Tilinols.

PIN: 28-27-201-005-000

4029 W. 16<sup>th</sup> St.

Country Club Hills, Illinois 60478