



Doc#: 0928229022 Fee: \$52.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/09/2009 11:42 AM Pg: 1 of 9

Cross Reference:

Document recorded as Instrument  
#0404039071, 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 24<sup>th</sup> 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, 13<sup>th</sup> 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

1719 River Oaks Dr., Calumet City, Cook County, Illinois 60409 (#30 - Calumet City)

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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 Mortgagor agreed to provide the Mortgagee 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 February 9, 2004 in the real estate records of Cook County, Illinois as Instrument #0404039071 (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 hereto 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 and third lines of Section 2.1 of the Mortgage the words and figures “Apple ILLINOIS II, LLC, W. Curtis Smith, James P. Borke, Jerome D. Kreger, J. Timothy Brugh, or Archie Iodice” 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 and second lines, the fourth and fifth lines, the eleventh and twelfth lines, and the sixteenth, seventeenth and eighteenth lines of Section 2.2 the words and figures “Mortgagor, Apple ILLINOIS II, LLC, W. Curtis Smith, James P. Borke, Jerome D. Kreger, J. Timothy Brugh, or Archie Iodice” 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 sixth and seventh, and the ninth and tenth lines of Section 2.3 the words and figures “Mortgagor, Apple ILLINOIS II, LLC, W. Curtis Smith, James P. Borke, Jerome D. Kreger, J. Timothy Brugh, or Archie Iodice” in their entirety and simultaneously inserting in lieu thereof the words and figures “Mortgagor or any of the Borrowers”.

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6. The Mortgage is hereby modified and amended by deleting from the second and third lines of Section 2.4 the words and figures "Mortgagor, Apple ILLINOIS II, LLC, W. Curtis Smith, James P. Borke, Jerome D. Kreger, J. Timothy Brugh, or Archie Iodice" in their entirety and simultaneously inserting in lieu thereof the words and figures "Mortgagor or any of the Borrowers".

7. The Mortgage is hereby modified and amended by deleting from the first and second lines of Section 2.8 the words and figures "Mortgagor, Apple ILLINOIS II, LLC, W. Curtis Smith, James P. Borke, Jerome D. Kreger, J. Timothy Brugh, or Archie Iodice" 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, 13<sup>th</sup> 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.



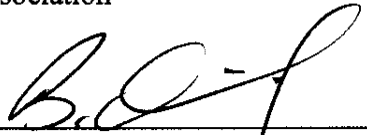




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**MORTGAGEE:**

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

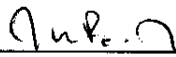
By:   
Name: Bobby R. Oliver, Jr.  
Title: Managing Director

[BANK SEAL]

STATE OF GEORGIA §  
  §  
COUNTY OF Fulton §

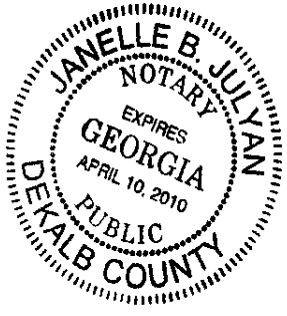
On this 21 day of September, 2009, before me personally appeared Bobby R. Oliver, Jr. to me known to be a Managing Director of BANK OF AMERICA, N.A., the national banking association that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act 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 #30  
Calumet City, IL

## EXHIBIT "A"

### Legal Description

Parcel 1:

That part of Lot 7 in the Final Plat of Oakview Shopping Center Subdivision, being a subdivision of part of the Northwest quarter of Section 24, and part of the resubdivision of Lot 2 in River Oaks West Unit No. 2, being a subdivision of part of the Northeast quarter of Section 24, all in Township 36 North, Range 14 East of the third principal meridian, according to the plat of said Oakview Shopping Center subdivision recorded October 6, 1992 as document 92743693 described as follows:

beginning at the northeast corner of Lot 7; thence South 0 degrees 07 minutes 08 seconds West, along the east line of said Lot 7, 454.71 feet to the southeast corner of said lot 7; thence north 89 degrees 52 minutes 52 seconds west, along the south line of said lot 7, 198.36 feet; thence North 0 degrees 07 minutes 08 seconds east 119.81 feet to a point of curve; thence along a curve to the right, tangent to the last described line, having a radius of 200.0 feet, an arc length of 82.64 feet to a point of tangency; thence north 23 degrees 47 minutes 41 seconds east, 64.09 feet to a point of curve; thence along a curve to the left tangent to the last described line, having a radius of 150.0 feet, an arc length of 61.98 feet to a point of tangency; thence north 0 degrees 07 minutes 08 seconds east, 140.61 feet to a point on the north line of said lot 7 thence south 86 degrees 25 minutes 36 seconds east along the North line of said lot 7 81.85 feet to an angle point in said lot 7, thence south 89 degrees 51 minutes 43 seconds east, along the North line of said lot 7, 61.46 feet to the point of beginning, in Cook County Illinois

Parcel 2:

Easement for the benefit of parcel 1 for ingress and egress as contained in grant recorded August 12, 1992 as document 92599324 and amendments thereto recorded as documents 92753015, 93074470, 93074472, 97537138 and 0335745100.

PIN: 29-24-200-070-0000  
1719 River Oaks Drive  
Calumet City, Illinois 60409