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Doc#: 0928229023 Fee: \$74.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/09/2009 11:43 AM Pg: 1 of 6

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

MORTGAGOR'S AFFIDAVIT

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The undersigned, the President and EXECUTIVE VICE PRESIDENT of APPLELAND II, LLC, an Illinois limited liability company ("Mortgagor"), 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 forth 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 necessary 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. NCS-56076-CHI-1, dated February 9, 2004, 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.
7. 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 anyone 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.)

Property of Cook County Clerk's Office

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Dated: September 24, 2009

**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

STATE OF Kentucky )  
 ) ss.  
 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, LLO, 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 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<sup>th</sup>, 2009

(NOTARIAL SEAL)

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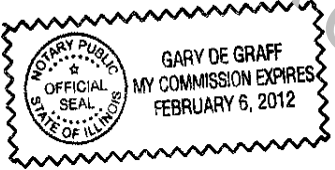
STATE OF IL )  
 ) ss.  
COUNTY OF Will )

On this 24 day of September, 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, 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 [Handwritten Signature]  
Name: Gary De Graff

My Commission Expires: \_\_\_\_\_

(NOTARIAL SEAL) 

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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 degree 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