



200307280294
Skagit County Auditor

7/28/2003 Page 1 of 7 2:54PM

After Recording Return to:

**Helms Mulliss & Wicker PLLC
(Elizabeth W. Goode)
201 North Tryon Street
Charlotte, North Carolina 28202**

Document Title:	Modification to Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing
Reference Number(s) of Documents Amended:	Instrument No. 200301080089
Grantor(s):	Apple Northwest LLC
Grantee(s):	Bank of America, N.A., as Agent
Legal Description:	<i>Complete legal description is on page 6 of document.</i>
Assessor's Property Tax	<i>Pln 4 to Cascademall BSP</i>
Parcel/Account Number(s):	P23857/P119573

MODIFICATION TO LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, AND FIXTURE FILING

**RECORDED AS INSTRUMENT NUMBER 200301080089
SKAGIT COUNTY, WASHINGTON RECORDER**

THIS MODIFICATION TO LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, AND FIXTURE FILING (this "Agreement"), made effective as of the 28th day of May, 2003, by and among **APPLE NORTHWEST LLC**, a Washington limited liability company having its principal place of business at 225 Bush Street, San Francisco, California 94104 (herein called "Mortgagor), and **BANK OF AMERICA, N.A.**, a national banking association having an address of IL1 231-08-30, 231 S. LaSalle Street, Chicago, Illinois 60697, Attention: Laura Schmuck, acting in its capacity as agent pursuant to the Loan Agreement described below (in such agency capacity and as the successor in such capacity to Fleet Business Credit, LLC ("Fleet") as hereinafter described, together with its successors, the "Agent")) for the Lenders (as defined in the Loan Agreement referred to below). Bank of America, N.A., acting in its capacity as Agent under the Original Mortgage (as herein defined) and herein, is the successor to Fleet Business Credit, LLC pursuant to the provisions set forth in Section 10.13(a) of the Loan Agreement which provide for the replacement of the Agent and pursuant to the resignation letter from Fleet dated March 11, 2003, the Appointment of Successor Agent, and the Agreement and Acceptance of Appointment effective as of the date hereof. (All capitalized terms used herein without definition are as defined in the Loan Agreement or the Original Mortgage (as herein defined)).

WITNESSETH:

WHEREAS, Mortgagor and certain affiliates of Mortgagor, as borrowers (Mortgagor and such affiliates being collectively referred to as "Borrowers"), the Lenders and Bank of America, N.A. (as the successor to Fleet in its capacity as Agent) are parties to that certain Loan and Security Agreement dated as of November 9, 2001 (said Loan Agreement, together with any and all amendments, renewals, extensions for any period, increases or rearrangements thereof, being the "Loan Agreement");

WHEREAS, to secure the Borrowers' obligations under the Loan Agreement, the Mortgagor executed and delivered to Fleet, in its capacity as Agent for the benefit of itself and the Lenders, a Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing dated as of December 10, 2002 recorded as Instrument Number 200301080089 in the Office of the Recorder of Skagit County, Washington (the "Original Mortgage");

WHEREAS, pursuant to the resignation letter from Fleet dated March 11, 2003, the Appointment of Successor Agent and the Agreement and Acceptance of Appointment, effective as of the date hereof, Fleet has resigned as the Agent under and as defined in the Loan Agreement, and Bank of America, N.A. has been appointed, and has accepted its appointment, as successor Agent thereunder with the consent of the Lenders (all references to the "Agent" hereinafter shall be to Bank of America, N.A., in its capacity as such Agent); and

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WHEREAS, upon the request of the Agent, the Mortgagor has executed and delivered this Agreement to modify the Original Mortgage as herein provided;

NOW, THEREFORE, the Mortgagor and the Agent, in consideration of the premises, the mutual covenants and conditions contained in the Loan Agreement, and the sum of One Dollar (\$1.00) to each in hand paid by the Agent, receipt of which is hereby acknowledged, do hereby agree as follows:

1. **Modifications to Mortgage.** The Original Mortgage shall be, and the same hereby is, modified and amended to provide as follows:

(a) The "Agent" identified in the first full paragraph of the Original Mortgage is hereby amended to be **BANK OF AMERICA, N.A.**, a national banking association with an address of IL1 231-08-30, 231 S. LaSalle Street, Chicago, Illinois 60697, Attention: Laura Schmuck, in its capacity as Agent ("Agent") for the Lenders (as "Lenders" is defined in the Loan Agreement referred to herein). Bank of America, N.A. is the successor Agent under the Loan Agreement, having succeeded to Fleet Business Credit, LLC, effective as of May 28, 2003.

(b) All references in the Original Mortgage to Fleet Business Credit, LLC in its capacity as Agent are hereby amended to be Bank of America, N.A., in its capacity as Agent.

2. **References to Mortgage.** All references to the "Mortgage" herein shall hereinafter be to the Original Mortgage as modified by this Agreement and as further amended, modified, restated, supplemented, extended or renewed from time to time.

3. **Miscellaneous.**

(a) The Mortgagor acknowledges that the lien of the Mortgage secures the Obligations as defined in the Loan Agreement.

(b) The Mortgagor and the Agent acknowledge and agree that the amendments and modifications to the Original Mortgage set forth in this Agreement do not constitute a novation.

(c) Except as specifically amended, extended or modified herein, all other covenants, terms and conditions of the Original Mortgage shall remain in full force and effect, and the Mortgagor hereby acknowledges and confirms its obligations thereunder.

(d) This Agreement shall bind and inure to the benefit of the parties hereto, and their successors and assigns.

(e) The Mortgagor agrees that nothing herein contained shall impair the security now held or the Obligations, nor shall anything contained herein waive, annul, vary or affect any provision, condition, covenant or agreement contained in the Original Mortgage except as amended hereby, or affect or impair any rights, power or remedies



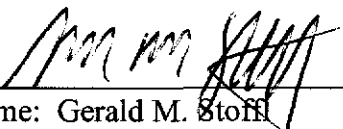
under the Obligations, the Original Mortgage, or any of the Loan Documents. Mortgagor further agrees that the Agent reserves all rights and remedies it may have as against all parties liable for repayment of the indebtedness set forth above evidenced by the Obligations.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their names, in duplicate originals, this the day and year first above written.

MORTGAGOR:

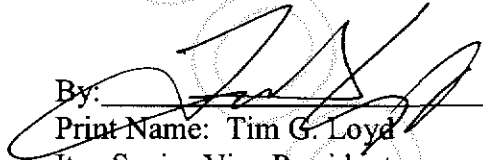
APPLE NORTHWEST LLC,
a Washington limited liability company

By: **APPLE AMERICAN GROUP, LLC**, its sole member

By: 
Print Name: Gerald M. Stoff
Its: Chief Financial Officer

AGENT:

BANK OF AMERICA, N.A., as Agent
a national banking association

By: 
Print Name: Tim G. Loyd
Its: Senior Vice President



ACKNOWLEDGEMENT

STATE OF OHIO)
COUNTY OF Cuyahoga) ss.

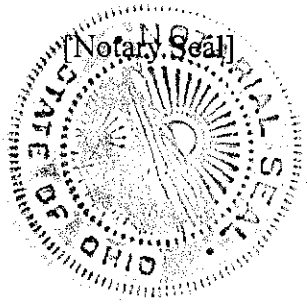
On this 11 day of July 2003, before me, a Notary Public in and for the aforesaid State of OHIO personally appeared Gerald M. Stoffl, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Chief Financial Officer of APPLE AMERICAN GROUP, LLC, the sole member of APPLE NORTHWEST LLC, a Washington limited liability company, to be the free and voluntary act and deed of APPLE AMERICAN GROUP, LLC, as the sole member of APPLE NORTHWEST LLC, for the uses and purposes mentioned in the instrument.

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

Nancy L. Bole
Signature of the Notary
Print Name: Nancy L. Bole

NANCY L. BOLE
Notary Public, State of Ohio, Cuyahoga County
My Commission Expires 07-07-07

Notary Public for the State of OHIO residing at Cuyahoga City
My Appointment Expires: 07-07-07



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ACKNOWLEDGEMENT

STATE OF Georgia)
) ss.
COUNTY OF Gwinnett)

On this 24 day of June 2003, before me, a Notary Public in and for the aforesaid State of Georgia personally appeared Tim G. Loyd, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Senior Vice President of BANK OF AMERICA, N.A., to be free and voluntary act and deed of said bank for the uses and purposes mentioned in the instrument.

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

Toby Kronick
Signature of the Notary
Print Name: Toby Kronick

Notary Public for the State of ~~Washington~~ ^{Georgia} residing at 3377 Remembrance Tr
Lawrenceville, GA 30044

My Appointment Expires: Notary Public, Gwinnett County, Georgia
My Commission Expires February 17, 2006

[Notary Seal]

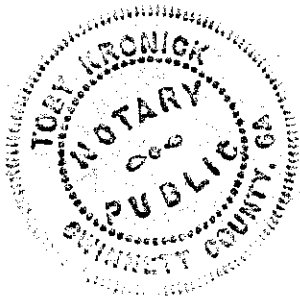


EXHIBIT A
LEGAL DESCRIPTION

PARCEL A

THAT PORTION OF LOT 6, "CASCADE MALL BINDING SITE PLAN" AS RECORDED ON OCTOBER 19, 1989 IN VOLUME 8 OF SHORT PLATS, PAGES 170 THROUGH 180, INCLUSIVE, UNDER AUDITOR'S FILE NO. 8910190065, RECORDS OF SKAGIT COUNTY WASHINGTON, BEING IN A PORTION OF THE SOUTHEAST OF THE NORTHEAST AND THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 34 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 5 OF SAID BINDING SITE PLAN, ALSO BEING THE NORTHEAST CORNER OF SAID LOT 6, THENCE SOUTH $0^{\circ}32'18''$ EAST, ALONG THE EAST LINE OF SAID LOT 6 AND THE WEST MARGIN OF BURLINGTON BOULEVARD AS SHOWN ON SAID BINDING SITE PLAN, A DISTANCE OF 1299.30 FEET; THENCE AT A RIGHT ANGLE SOUTH $89^{\circ}27'42''$ WEST, 77.05 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH $89^{\circ}27'42''$ WEST, 130.16 FEET; THENCE NORTH $13^{\circ}00'35''$ WEST, 10.58 FEET; THENCE NORTH $0^{\circ}32'18''$ WEST, 28.18 FEET; THENCE NORTH $89^{\circ}27'42''$ EAST, 14.41 FEET; THENCE NORTH $0^{\circ}32'18''$ WEST 38.64 FEET; THENCE NORTH $89^{\circ}27'42''$ EAST, 118.04 FEET TO A POINT WHICH LIES NORTH $0^{\circ}32'18''$ WEST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH $0^{\circ}32'18''$ EAST 77.15 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B

NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS AND PARKING AS DESCRIBED AND SET FORTH IN THAT DOCUMENT ENTITLED DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS MADE BY PAN PACIFIC DEVELOPMENT, INC., RECORDED JULY 21, 1989 UNDER AUDITOR'S FILE NO. 8907210046 AND AMENDED BY INSTRUMENTS RECORDED UNDER AUDITOR'S FILE NOS. 9710300078, 9805080072 AND 9902240173.

SITUATE IN THE CITY OF BURLINGTON, COUNTY OF SKAGIT, STATE OF WASHINGTON.



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