



200310290170

Skagit County Auditor

10/29/2003 Page

1 of

11 3:37PM

Prepared By and Return To:

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

CHICAGO TITLE CO.
SB-19585

Document Title:

**Second 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 and Apple Washington LLC

Grantee(s):

Bank of America, N.A., as Agent

Legal Description:

Abbreviated Form:

Portion of Lot 6, Cascade Mall Binding Site Plan, 8/170

Additional Legal:

Complete legal description is on page 10 of document.

Assessor's Property Tax

Parcel/Account Number(s):

P23857/P119573

SECOND 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 SECOND MODIFICATION TO LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, AND FIXTURE FILING (this "Agreement"), made effective as of the 23rd day of October, 2003, by and among **APPLE NORTHWEST LLC**, a Washington limited liability company having its principal place of business at 6200 Oak Tree Boulevard, Suite 250, Independence, Ohio 44131 (herein called "Original Mortgagor"), **APPLE WASHINGTON LLC**, a Delaware limited liability company having its principal place of business at 6200 Oak Tree Boulevard, Suite 250, Independence, Ohio 44131 (herein called "Apple Washington" and collectively with Original Mortgagor, the "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 administrative 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 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 May 28, 2003. (All capitalized terms used herein without definition are as defined in the Loan Agreement (as herein redefined) or the Original Mortgage (as herein defined)).

WITNESSETH:

WHEREAS, Original Mortgagor and certain affiliates of Original Mortgagor, as borrowers (Original Mortgagor and such affiliates being collectively referred to as "Borrowers"), the lenders party thereto 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 being the "Existing Loan Agreement");

WHEREAS, to secure the Borrowers' obligations under the Existing Loan Agreement, the Original 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 "2002 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 May 28, 2003, Fleet has resigned as the Agent under and as defined in the Existing Loan Agreement, and Bank of America, N.A. has been appointed, and has accepted its appointment, as



200310290170

Skagit County Auditor

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);

WHEREAS, the Original Mortgagor and the Agent amended the 2002 Mortgage to reflect the change in the Agent in that certain Modification to Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of May 28, 2003 and recorded as Instrument Number 200307280294 in the Office of the Recorder of Skagit County, Washington (the 2002 Mortgage as so modified being the "Original Mortgage");

WHEREAS, the existing Borrowers along with Apple Washington (collectively hereinafter, the "Borrowers"), the Lenders and the Agent have entered into that certain Amended and Restated Loan and Security Agreement dated as of October 23, 2003 to amend and restate the Existing Loan Agreement (the Existing Loan Agreement as so amended and restated by the Amended and Restated Loan and Security Agreement and as the Amended and Restated Loan and Security Agreement may hereafter be extended, amended, modified, supplemented or amended and restated from time to time, the "Loan Agreement"), pursuant to which the aggregate principal amount of the "Loans" (as defined in the Original Mortgage) has been amended to be \$109,120,000;

WHEREAS, pursuant to the Loan Agreement, Mortgagor and the other Borrowers have executed and delivered to the Lenders promissory notes in replacement of, and substitution for, the promissory notes executed and delivered in connection with the Existing Loan Agreement;

WHEREAS, the Original Mortgagor has transferred to Apple Washington all of its right, title and interest in and to the "Property" as defined in the Original Mortgage, and Apple Washington has assumed the obligations of Original Mortgagor under the Ground Lease as defined in the Original Mortgage and has agreed to assume the Obligations under the Original Mortgage as herein provided; and

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. **Assumption.** Apple Washington hereby assumes all obligations of the Grantor as defined in the Original Mortgage arising under the Original Mortgage and agrees to be personally liable to the Agent and the Lenders in accordance with the Original Mortgage and other Loan Documents executed by Apple Northwest in connection therewith.



200310290170
Skagit County Auditor

10/29/2003 Page 3 of 11 3:37PM

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

(a) The "Grantor" identified in the box on the first page of the Original Mortgage and in the introductory paragraph of the Original Mortgage is hereby amended to be as follows:

APPLE WASHINGTON LLC, a Delaware limited liability company, with an address of 6200 Oak Tree Boulevard, Suite 250, Independence, Ohio 44131 and **APPLE NORTHWEST LLC**, a Washington limited liability company with an address of 6200 Oak Tree Boulevard, Suite 250, Independence, Ohio 44131, collectively, as grantor.

(b) All references to the "Grantor" in the Original Mortgage shall hereafter be to the "Grantor" as redefined in subsection (a) above.

(c) The first recital "A." set forth on page 1 of the Original Mortgage is hereby amended to delete the second sentence of such recital and to insert the following sentence in lieu thereof:

Grantor and certain affiliates of Grantor, as borrowers (Grantor and such affiliates being collectively referred to as "**Borrowers**"), Agent and Lenders are parties to that certain Amended and Restated Loan and Security Agreement dated as of October 23, 2003, which is an amendment and restatement of that certain Loan and Security Agreement (the "Existing Loan Agreement") dated as of November 9, 2001 (said Amended and Restated Loan and Security Agreement, together with any and all amendments, renewals, extensions for any period, modifications, supplements, increases or rearrangements thereof or further amendments and restatements referred to as the "Loan Agreement") pursuant to which Lenders have agreed, subject to the terms thereof, to make loans to Borrowers in the aggregate principal amount not to exceed \$109,120,000 (collectively, the "Loans").

(d) All references to the "Loan Agreement" in the Original Mortgage shall hereafter be to the "Loan Agreement" as redefined in subsection (c) above.

(e) All references to the "Loans" in the Original Mortgage shall hereafter be to the "Loans" as redefined in subsection (c) above.

(f) All references to the "Lenders" in the Original Mortgage shall hereafter be to the "Lenders" as defined in the Loan Agreement.

(g) The second recital "B." commencing on page 1 of the Original Mortgage is hereby amended and restated in its entirety as follows:

B. To evidence the AI3 Assumed Debt (as defined in the Loan Agreement), Apple American Limited Partnership of Indiana executed and



delivered certain promissory notes dated as of October 10, 1997 in the aggregate principal amount of \$6,620,000.00 (the "AI3 Notes"), which AI3 Notes are finally due and payable no later than November 1, 2007. The obligations under the AI3 Assumed Debt and the AI3 Notes have been assumed by one or more of the Borrowers.

To evidence the other Loans and pursuant to the Loan Agreement, Grantor and the other Borrowers have executed and delivered to Lenders certain promissory notes in the aggregate principal amount of \$102,500,000, certain of which notes are executed and delivered in substitution for, and replacement of, those certain promissory notes issued in connection with the Existing Loan Agreement (the "Loan Notes"; the Loan Notes and the AI3 Notes, together with any and all renewals, extensions for any period, increases or rearrangements and replacements thereof, being collectively referred to as the "Notes").

(h) All references to the "Notes" in the Original Mortgage shall hereafter be to the "Notes" as redefined in subsection (g) above.

(i) A new section 34 is hereby inserted into the Original Mortgage as follows:

34. **Related Swap Contracts.** All obligations of the Borrowers under or in respect of Related Swap Contracts (which are not prohibited under the terms of the Loan Agreement) to which any Lender or any Affiliate of any Lender is a party, shall be deemed to be Obligations secured hereby, and each Lender or Affiliate of a Lender party to any such Related Swap Contract shall be deemed to be a secured party hereunder with respect to such Obligations; provided, however, that such obligations shall cease to be Obligations at such time, prior to the Facility Termination Date (as defined below), as such Person (or Affiliate of such Person) shall cease to be a "Lender" under the Loan Agreement.

No Person who obtains the benefit of any Lien by virtue of the provisions of this Section shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Property (including the release or impairment of any Property) other than in its capacity as a Lender and only to the extent expressly provided in the Loan Documents. Each secured party not a party to the Loan Agreement who obtains the benefit of this Deed of Trust by virtue of the provisions of this Section shall be deemed to have acknowledged and accepted the appointment of the Agent pursuant to the terms of the Loan Agreement, and that with respect to the actions and omissions of the Agent hereunder or otherwise relating hereto that do or may affect such secured party, the Agent and each Agent-Related Person shall be entitled to all the rights, benefits and immunities conferred under Article IX of the Loan Agreement. "Facility Termination Date" means the first date on which each of the following conditions is satisfied: (a) no Revolving Credit Commitment or Term Loan Commitment exists under the Loan Agreement,



(b) no Loan or any other Obligation which exists under any Loan Document remains outstanding and (c) no Letter of Credit remains outstanding.

(j) A new section 35 is hereby inserted into the Original Mortgage as follows:

35. **Conveyance.** The conveyance of the Property to the Trustee contained herein shall be for the benefit of the Agent acting on behalf of itself and the Lenders. Grantor further grants to the Agent for the benefit of itself and the Lenders a security interest in each item of Property which constitutes personal property pursuant to the provisions of the Code.

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

4. **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 (i) the amendment and restatement of the Existing Loan Agreement pursuant to the Loan Agreement does not constitute a novation of such Loan Agreement or the indebtedness described therein; (ii) the issuance of new Notes pursuant to the Loan and Security Agreement in replacement of, and in substitution for, the promissory notes previously delivered pursuant to the Existing Loan Agreement shall not be construed as a novation and shall not affect, diminish or abrogate Mortgagor's liability under the Mortgage or the priority of the Mortgage; and (iii) modifications to the Original Mortgage set forth in this Agreement do not constitute a novation. The obligations of Apple Northwest and Apple Washington under the Mortgage shall be joint and several.

(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 other 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.




UNOFFICIAL DOCUMENT

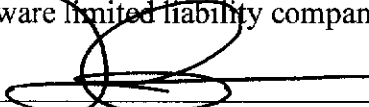
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their names, in duplicate originals, this the day and year first above written.

MORTGAGOR:

APPLE NORTHWEST LLC,
a Washington limited liability company

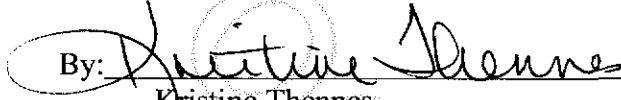
By: 
Lorin M. Cortina
Executive Vice President

APPLE WASHINGTON LLC,
a Delaware limited liability company

By: 
Lorin M. Cortina
Executive Vice President

AGENT:

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

By: 
Kristine Thennes
Vice President



200310290170
Skagit County Auditor

10/29/2003 Page 7 of 11 3:37PM

ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this 21st day of October, 2003, before me, a Notary Public in and for the aforesaid State of Illinois personally appeared Lorin M. Cortina, 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 Executive Vice President of APPLE NORTHWEST LLC, a Washington limited liability company, to be the free and voluntary act and deed of APPLE NORTHWEST LLC, for the uses and purposes mentioned in the instrument.

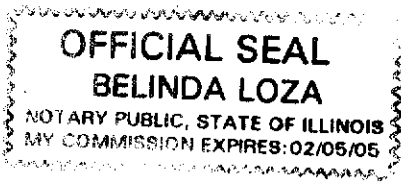
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Belinda Loza
Signature of the Notary
Print Name: Belinda Loza

Notary Public for the State of Illinois residing at Chicago

My Appointment Expires: 02/05/05

[Notary Seal]



200310290170
Skagit County Auditor

ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

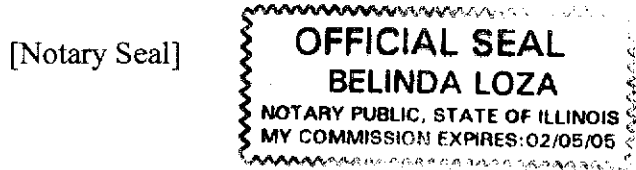
On this 21st day of October, 2003, before me, a Notary Public in and for the aforesaid State of Illinois personally appeared Lorin M. Cortina, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Executive Vice President of APPLE WASHINGTON LLC, a Delaware limited liability company, to be the free and voluntary act and deed of APPLE WASHINGTON 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.

Belinda Loza
Signature of the Notary
Print Name: Belinda Loza

Notary Public for the State of Illinois residing at Chicago

My Appointment Expires: 02/05/05



ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this 26th day of October, 2003, before me, a Notary Public in and for the aforesaid State of Illinois personally appeared Kristine Thennes, 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 she was authorized to execute the instrument, and acknowledged it as a Vice President of BANK OF AMERICA, N.A., to be the 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.

Maria Paggao
Signature of the Notary
Print Name: _____

Notary Public for the State of Illinois residing at Chicago

My Appointment Expires: _____

[Notary Seal]



200310290170
Skagit County Auditor

10/29/2003 Page 10 of 11 3:37PM

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°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°27'42" WEST, 77.05 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°27'42" WEST, 130.16 FEET; THENCE NORTH 13°00'35" WEST, 10.58 FEET; THENCE NORTH 0°32'18" WEST, 28.18 FEET; THENCE NORTH 89°27'42" EAST, 14.41 FEET; THENCE NORTH 0°32'18" WEST 38.64 FEET; THENCE NORTH 89°27'42" EAST, 118.04 FEET TO A POINT WHICH LIES NORTH 0°32'18" WEST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 0°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.



200310290170

Skagit County Auditor