

9



200404130106  
Skagit County Auditor  
4/13/2004 Page 1 of 9 3:33PM

UNOFFICIAL DOCUMENT

**Prepared By and Return To:**

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

CHICAGO TITLE SB-19585 ✓

**Document Title:**

**Third 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 Washington LLC, successor to Apple Northwest  
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 6 of document.**

**Assessor's Property Tax**

**Parcel/Account Number(s):**

**P23857/P119573**

**THIRD 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 THIRD MODIFICATION TO LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, AND FIXTURE FILING** (this "Agreement"), made effective as of the 5 day of ~~March~~ <sup>April</sup>, 2004, by and among **APPLE WASHINGTON LLC**, a Delaware limited liability company having its principal place of business at 6200 Oak Tree Boulevard, Suite 250, Independence, Ohio 44131 (the "Grantor"), 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: Anne Zeschke, 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 Deed of Trust (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 Deed of Trust (as herein defined)).

**W I T N E S S E T H:**

**WHEREAS**, Apple Northwest LLC, a Delaware limited liability company (the "Original Grantor"), and certain affiliates of Original Grantor, as borrowers (Original Grantor and such affiliates being collectively referred to as "Original 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 Original Borrowers' obligations under the Existing Loan Agreement, the Original Grantor 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 Deed of Trust");

**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 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);

C649329.3



200404130106

Skagit County Auditor

**WHEREAS**, the Original Grantor and the Agent amended the 2002 Deed of Trust 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 "May 2003 Modification");

**WHEREAS**, the Original Borrowers along with Apple Washington LLC, Apple Pennsylvania LLC, and B.T. Woodlipp, Inc. (each a new affiliate of Grantor) (hereinafter with the Original Borrowers collectively, the "Borrowers"), the Lenders and the Agent 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, which was further amended by Amendment and Consent Agreement No. 1 with respect to Amended and Restated Loan and Security Agreement ("Amendment No. 1") dated as of March 9, 2004;

**WHEREAS**, the Original Grantor transferred to Grantor all of its right, title and interest in and to the "Property" as defined in the 2002 Deed of Trust, and Grantor assumed the obligations of Original Grantor under the Ground Lease as defined in the 2002 Deed of Trust and under the 2002 Deed of Trust;

**WHEREAS**, the Original Grantor, the Grantor and the Agent amended the 2002 Deed of Trust to reflect the assumption of the obligations thereunder and the changes made in the Loan Agreement in that certain Second Modification to Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing dated as of October 23, 2003 and recorded as Instrument Number 200310290170 in the Office of the Recorder of Skagit County, Washington (the "October 2003 Modification"; the 2002 Deed of Trust as so modified by the May 2003 Modification and the October 2003 Modification being the "Original Deed of Trust");

**WHEREAS**, the Borrowers, the Lender and the Agent have entered into that certain Amendment Agreement No. 2 with respect to the Amended and Restated Loan and Security Agreement ("Amendment No. 2") dated as of March 31, 2004, pursuant to which, among other things, the aggregate amount of the Loans (as defined in the Original Deed of Trust) has been amended to be \$104,120,000 (the Existing Loan Agreement as amended and restated by the Amended and Restated Loan and Security Agreement and as amended by Amendment No. 1 and Amendment No. 2 and as it may hereafter be extended, amended, modified, supplemented or amended and restated from time to time, the "Loan Agreement");

**WHEREAS**, pursuant to Amendment No. 1 and Amendment No. 2, Grantor and the other Borrowers have executed and delivered to the Lenders promissory notes in replacement of, and substitution for, certain promissory notes previously executed and delivered in connection with the Loan Agreement; and

**WHEREAS**, upon the request of the Agent, the Grantor has executed and delivered this Agreement to modify the Original Deed of Trust as herein provided;

**NOW, THEREFORE**, the Grantor 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 Deed of Trust.** The Original Deed of Trust shall be, and the same hereby is, modified and amended to provide as follows:

(a) The first recital "A." set forth on page 1 of the Original Deed of Trust 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 Existing Loan Agreement, as amended and restated by said Amended and Restated Loan and Security Agreement as amended by Amendment and Consent Agreement No. 1 dated March 9, 2004 and by Amendment Agreement No. 2 dated March 31, 2004, together with any and all further 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 \$104,120,000 (collectively, the "Loans").

(b) All references to the "Loan Agreement" in the Original Deed of Trust shall hereafter be to the "Loan Agreement" as redefined in subsection (a) above.

(c) All references to the "Loans" in the Original Deed of Trust shall hereafter be to the "Loans" as redefined in subsection (a) above.

(d) The second recital "B." commencing on page 1 of the Original Deed of Trust 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 \$97,500,000, 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").

(e) All references to the "Notes" in the Original Deed of Trust shall hereafter be to the "Notes" as redefined in subsection (d) above.

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

3. **Miscellaneous.**

(a) The Grantor acknowledges that the lien of the Deed of Trust secures the Obligations as defined in the Loan Agreement.

(b) The Grantor 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 in replacement of, and in substitution for, the promissory notes previously delivered pursuant to the Existing Loan Agreement and the Loan Agreement shall not be construed as a novation and shall not affect, diminish or abrogate Grantor's liability under the Deed of Trust or the priority of the Deed of Trust; (iii) modifications to the Original Deed of Trust set forth in this Agreement do not constitute a novation; and (iv) the modifications made pursuant to Amendment No. 1 and Amendment No. 2 do not constitute a novation.

(c) Except as specifically amended, extended or modified herein, all other covenants, terms and conditions of the Original Deed of Trust shall remain in full force and effect, and the Grantor 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 Grantor 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 Deed of Trust except as amended hereby, or affect or impair any rights, power or remedies under the Obligations, the Original Deed of Trust, or any of the other Loan Documents. Grantor 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.

**GRANTOR:**

**APPLE WASHINGTON LLC**,  
a Delaware limited liability company

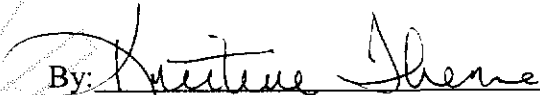
By: \_\_\_\_\_

  
Lorn M. Cortina  
Executive Vice President

**AGENT:**

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

By: \_\_\_\_\_

  
Kristine Thennes  
Vice President



ACKNOWLEDGEMENT

STATE OF California )  
COUNTY OF San Francisco ) ss.

*California P.K.* On this 29 day of March, 2004, 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.

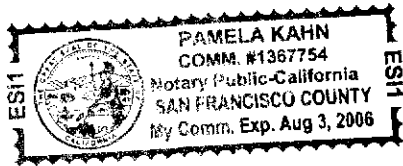
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Pamela Kahn  
Signature of the Notary  
Print Name: PAMELA KAHN

Notary Public for the State of California residing at the City of Greenbrae  
~~San Francisco~~

My Appointment Expires: 8.3.2006

[Notary Seal]



ACKNOWLEDGEMENT

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

On this 30 day of March, 2004, 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: 2/1/05

[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.



200404130106  
Skagit County Auditor

4/13/2004 Page

9 of

9 3:33PM