

Prepared By and Return To:

Chicago Title Insurance Company
171 N. Clark St., ML03ND
Chicago, IL 60601
Attn: Jeff Hale



200511040042
Skagit County Auditor

11/4/2005 Page 1 of 10 9:18AM

CHICAGO TITLE B19585

Document Title: Fifth 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 9 of document.

Assessor's Property Tax Parcel/Account Number(s): P23857/P119573

FIFTH 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 FIFTH MODIFICATION TO LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, AND FIXTURE FILING (this "Agreement"), made effective as of the 1 day of November, 2005, 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 Initial 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) were parties to that certain Loan and Security Agreement dated as of November 9, 2001 (said Loan Agreement being the "Initial Loan Agreement");

WHEREAS, to secure the Original Borrowers' obligations under the Initial 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 resigned as the Agent under and as defined in the Initial Loan Agreement, and Bank of America, N.A. was appointed, and accepted its appointment, as

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successor Agent thereunder with the consent of the Lenders parties thereto (all references to the "Agent" hereinafter shall be to Bank of America, N.A., in its capacity as such Agent);

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 Grantor, Apple Pennsylvania LLC, and B.T. Woodlipp, Inc. (hereinafter with the Original Borrowers and each Subsidiary of AAG that becomes a Borrower pursuant to Section 2.17 of the Loan Agreement collectively, the "Borrowers"), the Lenders parties thereto 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 Initial 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, by 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, by that certain Amendment Agreement No. 3 with respect to the Amended and Restated Loan and Security Agreement ("Amendment No. 3") dated as of October 1, 2004, and by that certain Amendment Agreement No. 4 with respect to the Amended and Restated Loan and Security Agreement ("Amendment No. 4") dated as of February 3, 2005;

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"), in that certain Third Modification to Amended and Restated Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing dated as of April 5, 2004, and recorded as Instrument Number 200404130106 in the aforesaid Office (the "April 2004 Modification") and in that certain Fourth Modification to Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing dated as of October 1, 2004, and recorded as Instrument Number 200410060050 in the aforesaid Office (the "October 2004 Modification"; the 2002 Deed of Trust as so modified by the May 2003 Modification, the October 2003 Modification, the April 2004 Modification and the October 2004 Modification being the "Original Deed of Trust");



WHEREAS, the Borrowers, the Lenders parties thereto and the Agent have entered into that certain Second Amended and Restated Loan and Security Agreement dated as of the date hereof, 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 \$181,620,000 (the Initial Loan Agreement as amended and restated by the Amended and Restated Loan and Security Agreement, as amended by Amendment No. 1, Amendment No. 2, Amendment No. 3 and Amendment No. 4, and as further amended and restated by the Second Amended and Restated Loan and Security Agreement and as it may hereafter be extended, amended, modified, supplemented or amended and restated from time to time being referred to as the "Loan Agreement");

WHEREAS, pursuant to the Second Amended and Restated Loan and Security Agreement, 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 and third sentences of such recital and to insert the following sentences 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 Second Amended and Restated Loan and Security Agreement dated as of November , 2005, which is an amendment and restatement of 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 "Initial Loan Agreement") dated as of November 9, 2001 (said Initial Loan Agreement, as amended and restated by the Amended and Restated Loan and Security Agreement dated as of October 23, 2003, as further amended by Amendment and Consent Agreement No. 1 dated as of March 9, 2004, by Amendment Agreement No. 2 dated as of March 31, 2004, by Amendment Agreement No. 3 dated as of October 1, 2004 and by Amendment Agreement No. 4 dated as of February 3, 2005 and as further amended and restated by said Second Amended and Restated Loan and Security Agreement, together with any and



all further amendments, renewals, extensions for any period, modifications, supplements, increases or rearrangements thereof or further amendments and restatements, being 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 \$181,620,000 (collectively, the "Loans"), which may be outstanding at any one time. Except as otherwise provided herein, all capitalized terms used but not defined herein shall have the respective meanings given them in the Loan Agreement.

(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 up to \$175,000,000, certain of which notes are executed and delivered in substitution for, and replacement of, those certain promissory notes issued in connection with the Initial Loan Agreement or the 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.

(f) The first paragraph of Section 34 of the Original Deed of Trust is hereby amended and restated to read as follows:

34. Related Swap Contracts. All Obligations of Grantor under or in respect of Related Swap Contracts (which are not prohibited under the terms of the Loan Agreement) to which any Related Swap Counterparty is a party, shall be deemed to be Obligations secured hereby, and each Related Swap



Counterparty party to any such Related Swap Contract shall be deemed to be a secured party hereunder with respect to such Obligations.

(g) All references in the Original Deed of Trust to the defined term "Obligations" shall be to such term as defined in the Loan Agreement.

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 Initial Loan Agreement and the Amended and Restated Loan and Security Agreement pursuant to the Second Amended and Restated Loan and Security Agreement does not constitute a novation of such loan agreements 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 Initial 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 the Second Amended and Restated Loan and Security Agreement 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.

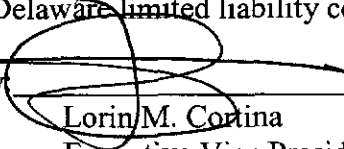


IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their names, in duplicate originals, this the day and year first above written.

GRANTOR:

APPLE WASHINGTON LLC,
a Delaware limited liability company


By: _____


Lorin M. Cortina
Executive Vice President

AGENT:

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

By: _____


Anne Zeschke
Assistant Vice President



ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA)
) ss.
COUNTY OF MECKLENBURG)

On this 27th day of October, 2005, before me, a Notary Public in and for the aforesaid State of North Carolina 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.

Terry L. Witcher
Signature of the Notary
Name: Terry L. Witcher

Notary Public for the State of North Carolina residing at Huntersville

My Appointment Expires: September 1, 2009

[Notary Seal]



ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this 23 day of October, 2005, before me, a Notary Public in and for the aforesaid State of Illinois personally appeared Anne Zeschke, 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 an Assistant 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 Pagao
Signature of the Notary
Print Name: _____

Notary Public for the State of Illinois residing at _____

My Appointment Expires: _____

[Notary Seal]



Burlington

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.

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