

Prepared By and Return To:
McGuireWoods LLP
(Kathy L. Pilkington)
201 North Tryon Street
Charlotte, North Carolina 28202



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Skagit County Auditor

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Document Title: First Modification to Second Amended and Restated Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing

Reference Number(s) of Documents Amended or Assigned: Instrument Number 201105110031, Instrument Number 201002040065 and Instrument Number 200301080089

Grantor(s): 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 8*

Assessor's Property Tax Parcel/Account Number(s): P120093 & P120731

FIRST MODIFICATION TO SECOND AMENDED AND RESTATED LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

THIS FIRST MODIFICATION TO SECOND AMENDED AND RESTATED LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Agreement"), made effective as of the 6th day of July, 2012, 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 (herein called "**Grantor**"), and **BANK OF AMERICA, N.A.**, a national banking association having an address of 101 S. Tryon Street, Mail Code NC1-002-15-36, Charlotte, North Carolina 28255, Attention: Agency Management (Erik Truette), 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, together with its successors, the "**Agent**") for the Secured Parties, as beneficiary. The "**Secured Parties**" as used herein means the Agent, the Lenders parties to the Loan Agreement from time to time, each Related Swap Counterparty party to a Related Swap Contract from time to time, and each Related Cash Management Bank party to a Related Cash Management Agreement from time to time. All capitalized terms used herein without definition are as defined in the Loan Agreement (as hereinafter defined).

WITNESSETH:

WHEREAS, by execution or joinder, Grantor (which term for purposes of this recital and the third recital below shall include Apple Northwest LLC, the predecessor in interest to Apple Washington LLC in the Property described below, and the original grantor of the Existing Deed of Trust described below) and certain affiliates of Grantor, as borrowers, Agent (as successor to Fleet Business Credit, LLC ("Fleet") in its capacity as Agent) and certain lenders were parties to that certain Loan and Security Agreement dated as of November 9, 2001 (said Loan and Security Agreement being the "**Initial Loan Agreement**"). Bank of America, N.A., acting in its capacity as Agent 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 of May 28, 2003;

WHEREAS, Grantor and certain other Borrowers identified therein, the Lenders identified therein and the Agent are parties to that certain First Amendment to Fourth Amended and Restated Loan and Security Agreement dated as of April 20, 2012 (the "**First Amendment**"), which amends that certain Fourth Amended and Restated Loan and Security Agreement dated as of May 9, 2011 (the "**Fourth Restated Agreement**") which is an amendment and restatement of that certain Third Amended and Restated Loan and Security Agreement dated as of January 29, 2010 (the "**Third Restated Agreement**"), which is an amendment and restatement of that certain Second Amended and Restated Loan and Security Agreement dated as of November 1, 2005, as amended (the "**Second Restated Agreement**"), which is an amendment and restatement of that certain Amended and Restated Loan and Security Agreement dated as of October 23, 2003, as amended (the "**First Restated Agreement**"), which is an amendment and restatement of the Initial Loan Agreement (said Initial Loan Agreement, as amended and restated or otherwise amended from time to time, including without limitation by the First Restated Agreement, the Second Restated Agreement, the Third Restated Agreement and the Fourth Restated Agreement, shall hereinafter be referred to as the "**Existing Loan Agreement**" and the Existing Loan Agreement as amended by the First Amendment, together with any and all further amendments, renewals, extensions for any period, modifications, supplements, increases or rearrangements thereof or further amendments and restatements, shall hereinafter be referred to as the "**Loan Agreement**"), pursuant to which, among other things, the Lenders have agreed, subject to the terms thereof, to make loans to the Borrowers up to an aggregate principal amount not to exceed \$395,000,000.00 (collectively, the "**Loans**"), which may be outstanding at any one time. The terms, conditions, covenants, representations and warranties of Grantor under the Loan Agreement are hereby incorporated herein by reference as if fully set forth herein;

WHEREAS, to secure the Borrowers' obligations under the Existing Loan Agreement, the Grantor executed and delivered to Chicago Title Insurance Company, as Trustee, for the benefit of the Agent (for the benefit of itself and the Secured Parties), that certain Second Amended and Restated Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of May 9, 2011, and recorded as Instrument Number 201105110031 in the Office of the Recorder of Skagit County, Washington, covering Grantor's interest in the Land described therein and on Exhibit A attached hereto (the "**2011 Deed of Trust**"), which amended and restated that certain Amended and Restated Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded as Instrument Number 201002040065 in the Office of the Recorder of Skagit County, Washington, which amended and restated that certain Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded as Instrument Number 200301080089 in the Office of the Recorder of Skagit County, Washington, as the same has from time to time



been amended, modified or amended and restated prior to the date hereof, including without limitation by the 2011 Deed of Trust;

WHEREAS, the Borrowers and the other Loan Parties have requested the Agent and the Lenders to amend the Existing Loan Agreement in order to, among other things, (i) increase the Aggregate Revolving Credit Commitments and (ii) increase the aggregate amount available for optional increases under Section 2.18 of the Existing Loan Agreement; and

WHEREAS, to accomplish such amendments, the Borrowers, the other Loan Parties, the Agent and the Lenders have entered into the First Amendment and as a condition to the effectiveness of the First Amendment, the Grantor and Agent have executed and delivered this Agreement to modify the 2011 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 2011 Deed of Trust shall be, and the same hereby is, modified and amended to provide as follows:

(a) The address of the Agent set forth in the first full paragraph of the 2011 Deed of Trust is hereby amended to read as follows:

“101 S. Tryon Street, Mail Code: NC1-002-15-36, Charlotte, North Carolina 28255, Attention: Agency Management (Erik Truette)”.

(b) The fourth Recital “D” of the 2011 Deed of Trust is hereby amended to delete the first sentence of such recital and to insert the following sentence in lieu thereof:

“Grantor and certain other Borrowers identified therein, the Lenders identified therein and the Agent have entered into that certain Fourth Amended and Restated Loan and Security Agreement dated as of May 9, 2011 (the “Fourth Restated Agreement”), as amended by that certain First Amendment to Fourth Amended and Restated Loan and Security Agreement dated as of April 20, 2012 (the “First Amendment”), (the Existing Loan Agreement as amended and restated by the Fourth Restated Agreement, as further amended by the First Amendment, 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”) pursuant to which, among other things, the Lenders have agreed subject to the terms thereof, to increase the aggregate amount of the loans to the Borrowers up to an aggregate principal amount not to exceed \$395,000,000.00 (collectively, the “Loans”) which may be outstanding at any one time.”



(c) The fifth Recital "E" of the 2011 Deed of Trust is hereby amended to delete the first sentence of such recital and to insert the following sentence in lieu thereof:

"Pursuant to the Fourth Restated Agreement, as amended by the First Amendment, Grantor and the other Borrowers have executed and delivered to the Lenders promissory notes in an aggregate amount not to exceed \$395,000,000.00 (the "Loan Notes"; the Loan Notes, together with any other notes now or hereafter issued in connection with the Loan Agreement, together with any and all amendments, renewals, extensions for any period, increases, rearrangements, restatements and replacements thereof, being collectively referred to as the "Notes"), 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."

(d) All references in the 2011 Deed of Trust to the "Loan Agreement", the "Loans" and the "Notes" shall hereafter be to such terms as redefined in Recitals D and E, as amended above. Furthermore, all references to the "Obligations" or "Secured Obligations" in the 2011 Deed of Trust shall incorporate such revised terms.

2. **Grant.** To confirm the liens of the Trustee and the Agent in the Property (as defined in the 2011 Deed of Trust, as amended by this Agreement) and to secure payment and performance of the Secured Obligations (as defined in the 2011 Deed of Trust, as amended by this Agreement) and in consideration of Ten Dollars (\$10.00) in hand paid, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby irrevocably GRANTS, TRANSFERS, BARGAINS, SELLS, CONVEYS, and ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, and with right of entry and possession as provided in the 2011 Deed of Trust, all of Grantor's right, title, interest, claim or demand whatsoever the Property, and does further grant a security interest to Agent, for the benefit of the Secured Parties (as defined in the 2011 Deed of Trust, as amended by this Agreement), in all Fixtures and Personal Property (as each such term is defined in the 2011 Deed of Trust, as amended by this Agreement), as well as all other Property in which a security interest may be created under the Code (as defined in the 2011 Deed of Trust, as amended by this Agreement).

TO HAVE AND TO HOLD the Property, properties, rights and privileges hereby conveyed or assigned, or intended so to be, unto Trustee, its beneficiaries, successors and assigns, for the benefit of Agent and the other Secured Parties, forever for the uses and purposes set forth in the 2011 Deed of Trust, as amended hereby.

3. **References to Deed of Trust.** All references to the "Deed of Trust" herein and in the 2011 Deed of Trust shall hereafter be to the 2011 Deed of Trust as modified by this Agreement and as further amended, modified, restated, supplemented, extended or renewed from time to time.



4. **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 amendments to the Existing Loan Agreement pursuant to the First Amendment do 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 Existing 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; and (iii) modifications to the 2011 Deed of Trust 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 2011 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 2011 Deed of Trust except as amended hereby, or affect or impair any rights, power or remedies under the Obligations, the 2011 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.

[Signature pages follow]



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

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

On June 27, 2012, before me, Marlene Gonzaga Adamson, personally appeared Lorin M. Cortina, Executive Vice President of APPLE WASHINGTON LLC, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Marlene Gonzaga Adamson (Seal)



(Signatures continued from previous page)

AGENT:

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

By: *Erik M. Truette*

Name: Erik M. Truette

Title: Assistant Vice President

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Erik M. Truette.

Date: July 2, 2012

Regina M. Lucas

Notary Public

Printed or Typed Name Regina M. Lucas

(Official Seal)

My commission expires: August 21, 2012

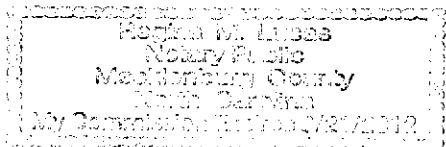


EXHIBIT A

Legal Description

Land

Leasehold estate in the following parcel(s) of real property:

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.



201207100036
Skagit County Auditor