

6/02/10 9:53:43
DK T BK 3, 173 PG 180
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

6/02/10 9:54:19
DK P BK 137 PG 686
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

Recording Requested by
and when recorded return to:

WELLS FARGO BANK,
NATIONAL ASSOCIATION
1808 Aston Avenue, Suite 250
Carlsbad, California 92008
Telephone: (760) 918-2700
Attention: Loan Admin.
Loan No.: 93-0909742
Unit No.: 52077

Name, address and phone number for grantor and beneficiary:

<u>BORROWER:</u>	<u>ADMINISTRATIVE AGENT:</u>
DBAPPLEF LLC	WELLS FARGO BANK, NATIONAL ASSOCIATION
1345 Avenue of the Americas, 46th Floor	1808 Aston Avenue, Suite 250
New York, New York 10105	Carlsbad, California 92008
Telephone: (212) 798-6100	Telephone: (760) 918-2700

Indexing instruction:

To the Chancery Clerk of DeSoto County, Mississippi:

The real property described herein is situated at Lot 4, Resubdivision of Lots 3, 4 and 5 of DeSoto Crossing Subdivision, Phase 1, as shown on plat recorded in Plat Book 46 at Page 39

MODIFICATION TO DEED OF TRUST AND ASSIGNMENT OF LEASES AND RENTS

THIS MODIFICATION TO DEED OF TRUST AND ASSIGNMENT OF LEASES AND RENTS (this "Modification"), dated as of May 27, 2010, to be effective as of May 27, 2010, is executed by and between DBAPPLEF LLC, a Delaware limited liability company

Modification to Deed of Trust and Assignment of Leases and Rents (Mississippi)
Wells Fargo/DBAPPLEF - Applebee's
Loan No.: 93-0909742/ Unit No.: 52077

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("Borrower"), with an office at 1345 Avenue of the Americas, 46th Floor, New York, New York 10105, c/o Drawbridge Special Opportunities Fund LP, Attn: Constantine M. Dakolias, and WELLS FARGO BANK, NATIONAL ASSOCIATION, as administrative agent ("Administrative Agent") for the benefit of the lenders from time to time under the Loan Agreement (defined below) (collectively, "Lender"), with a mailing address of 1808 Aston Avenue, Suite 250, Carlsbad, California 92008, Attn: Loan Administration.

RECITALS:

- A. Pursuant to that certain Loan Agreement dated June 13, 2008 (the "Original Loan Agreement"), by and among Borrower, Administrative Agent and Lender, Lender extended to Borrower a loan (the "Original Loan") in the aggregate original principal amount of \$230,500,000.00, as evidenced by the Note (as defined in the Original Loan Agreement; hereinafter referred to as the "Original Note"), executed by Borrower and made payable to the order of Administrative Agent, for the benefit of Lender, which Original Note is secured by, *among other things*, (i) that certain Deed of Trust and Absolute Assignment of Rents and Leases and Security Agreement (and Fixture Filing) of even date with the Original Loan Agreement (the "Deed of Trust"), executed by Borrower for the benefit of Administrative Agent, for the benefit of Lender, filed for record on June 23, 2008 under Book 2915, Page 461 with the Chancery Clerk of DeSoto County, State of Mississippi (the "Records"), and (ii) that certain Assignment of Leases and Rents of even date with the Original Loan Agreement (the "ALR"), executed by Borrower for the benefit of Administrative Agent, for the benefit of Lender, filed for record on June 23, 2008 under Book 126, Page 762 of the Records (the Deed of Trust and the ALR are, each, a "Recordable Document" and, collectively, the "Recordable Documents"), each of the Recordable Documents covering that certain property described on Exhibit A attached hereto and incorporated herein for all purposes (the "Property").
- B. The parties have agreed to amend and restate the Original Loan, the Original Loan Agreement and the Original Note pursuant to the terms and conditions of that certain Amended and Restated Loan Agreement of even date herewith (the "Loan Agreement"), by and among Borrower, Lender and Administrative Agent.
- C. Pursuant to the Loan Agreement, Borrower has executed and delivered to Administrative Agent, for the benefit of Lender, that certain Amended and Restated Secured Promissory Note of even date herewith (the "Note"), in the Loan Amount (as defined below), and the other Loan Documents (as defined in the Loan Agreement).

- D. In connection with the execution and delivery of the Loan Agreement, the parties desire to modify certain terms of the Recordable Documents pursuant to the execution and recordation of this Modification.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree to modify the Recordable Documents as follows:

ARTICLE 1 MODIFICATION TO DEED OF TRUST

1.1. **Defined Terms.** The following defined terms are hereby inserted into the Deed of Trust or, if applicable, deleted and replaced with the following definitions:

(i) "**Administrative Agent**" means Wells Fargo Bank, National Association, as administrative agent for Lender pursuant to the Loan Agreement and the other Loan Documents.

(ii) "**Lender**" means, collectively, Wells Fargo Bank, National Association, and such other financial institutions as from time to time may be party to the Loan Agreement as a lender.

(iii) "**Loan**" means that certain amended and restated loan in the Loan Amount, made by Lender to Borrower pursuant to the Loan Agreement and which is evidenced by the Note.

(iv) "**Loan Amount**" means the total principal amount of \$68,600,000.00.

(v) "**Loan Agreement**" means that certain Amended and Restated Loan Agreement of even date with this Modification, by and among Lender, Administrative Agent and Borrower.

(vi) "**Note**" means that certain Amended and Restated Secured Promissory Note of even date with this Modification, in the Loan Amount executed by Borrower to Administrative Agent, for the benefit of Lender.

(vii) "**Loan Documents**" has the meaning ascribed to such term in the Loan Agreement.

(viii) "**Maturity Date**" means June 1, 2012, subject to extension in accordance with the Extension Term (as defined and set forth in the Loan Agreement) to June 1, 2013.

(ix) "**Master Lease**" has the meaning set forth in the Loan Agreement.

(x) "**Tenant**" has the meaning set forth in the Loan Agreement.

(xi) "**Disclosure Agreement**" has the meaning set forth in the Loan Agreement.

1.2. **Address for Administrative Agent.** The address for Administrative Agent set forth in **Section 8.21** of the Deed of Trust is hereby deleted in its entirety and replaced with the following:

WELLS FARGO BANK,
NATIONAL ASSOCIATION
1808 Aston Avenue, Suite 250
Carlsbad, California 92008
Attn: Loan Administration
Telephone: (760) 918-2700
Facsimile: (760) 918-2727

ARTICLE 2 MODIFICATION TO ALR

2.1. **Definitions.** The following defined terms are hereby inserted into the ALR or, if applicable, deleted in their entirety and replaced with the following definitions:

(i) "**Administrative Agent**" means Wells Fargo Bank, National Association, as administrative agent for Lender pursuant to the Loan Agreement and the other Loan Documents.

(ii) "**Lender**" means, collectively, Wells Fargo Bank, National Association, and such other financial institutions as from time to time may be party to the Loan Agreement as a lender.

(iii) "**Loan**" means that certain amended and restated loan in the Loan Amount, made by Lender to Borrower pursuant to the Loan Agreement and which is evidenced by the Note.

(iv) "**Loan Amount**" means the total principal amount of \$68,600,000.00.

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- (v) "**Loan Agreement**" means that certain Amended and Restated Loan Agreement of even date with this Modification, by and among Lender, Administrative Agent and Borrower.
- (vi) "**Note**" means that certain Amended and Restated Secured Promissory Note of even date with this Modification, in the Loan Amount executed by Borrower to Administrative Agent, for the benefit of Lender.
- (vii) "**Loan Documents**" has the meaning ascribed to such term in the Loan Agreement.
- (viii) "**Master Lease**" has the meaning ascribed to such in the Loan Agreement.
- (ix) "**Master Tenant**" means "Tenant," as defined in the Loan Agreement.
- (x) "**Mortgage**" means, collectively, the "Mortgages," as defined in the Loan Agreement.

ARTICLE 3 **MISCELLANEOUS.**

3.1. **Recitals.** The recitals set forth herein are true and correct in all respects and are hereby incorporated herein as specific agreements by this reference for all purposes.

3.2. **Certain Terms.** All references in this Modification to (i) "Administrative Agent" shall mean "Lender," as defined in the Deed of Trust, and "Assignee," as defined in the ALR, and (ii) "Borrower" shall mean "Grantor," as defined in Deed of Trust, and "Assignor," as defined in the ALR.

3.3. **Reaffirmation of Indebtedness; Security Interests.** In conjunction with the amendment and restatement of the Original Loan pursuant to the Loan Agreement, Borrower hereby reaffirms the indebtedness and obligations evidenced by the Original Note (as amended, restated and superseded pursuant to the Note) and the Recordable Documents (as amended and modified by this Modification) and the liens and security interests created and granted therein until the indebtedness secured thereby has been fully paid, and agrees that the modification and amendment pursuant to this Modification and the Loan Documents shall in no manner affect or impair the liens and security interests created and granted pursuant to the Recordable Documents, and that said liens and security interests shall not in any manner be waived, one of the purposes of this Modification being to carry forward all liens and security interests securing the Loan, which liens and security interests are acknowledged by Borrower to be valid and subsisting as modified and amended by this Modification and the documents executed pursuant

hereto. Borrower hereby ratifies, affirms, reaffirms, acknowledges, confirms and agrees that the Note and the other Loan Documents to which it is a party represent the valid, binding and enforceable obligations of Borrower. Administrative Agent, on behalf of Lender, and Borrower hereby agree that this Modification in no way acts as a diminishment, impairment, release or relinquishment of the liens, power, title, security interest, assignments and rights securing payment of the Loan.

3.4. **Full Force; No Default; No Offsets.** All terms, conditions and provisions of the Recordable Documents shall be and remain in full force and effect as therein written, as expressly herein provided or modified in conjunction with this Modification, and the validity and priority of the liens, security interests and assignments provided for by the Recordable Documents shall not be extinguished, impaired, reduced, released, or adversely affected by the terms of this Modification or the other Loan Documents. Borrower represents and warrants that the representations and warranties set forth in the Recordable Documents are as true and correct on the date hereof as when initially made. Borrower acknowledges and agrees that there are no offsets or defenses to the obligations set forth in the Recordable Documents, as hereby amended, and represents that there are no Defaults (as defined in the Recordable Documents) existing on the date hereof, nor are there any facts or consequences which will or could lead to a Default under the Recordable Documents, as hereby amended.

3.5. **No Waiver.** Borrower acknowledges that nothing contained in this Modification or other acts undertaken or omissions shall constitute a waiver by Administrative Agent, on behalf of Lender, of any existing or future default or Default under the Loan, whether known or unknown by Administrative Agent, or a waiver of any rights, remedies, recourses, benefits or powers available to Administrative Agent, on behalf of Lender, nor be an election of remedies resulting from any existing default or Default, with respect to any of the Loan Documents. Additionally, Borrower acknowledges that Administrative Agent, on behalf of Lender, expressly reserves the right to, and may, at its option, pursue any and all rights, remedies, powers, benefits and/or recourses available to it and no failure to exercise and no delay in exercising any rights, remedies, benefits, recourses and powers under any of the Loan Documents or otherwise available at law or in equity shall operate as a waiver of any such rights, remedies, benefits, recourses or powers. Finally, Administrative Agent, on behalf of Lender, expressly reserves the right to, and may, at its option, pursue any and all rights, remedies and/or recourses available to it in connection with any existing, whether known or unknown by Administrative Agent, or future Default.

3.6. **Governing Law.** The parties agree that the state of New York has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Modification and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of New York applicable to contracts made

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and performed in such state and any applicable law of the United States of America, except that at all times the provisions for enforcement of all remedies granted hereunder and the creation, perfection and enforcement of the liens and security interests created pursuant hereto and to the other Loan Documents in any Collateral (as defined in the Deed of Trust) which is located in the state where the Land (as defined in the Deed of Trust) is located shall be governed by and construed, according to the law of the state where the Land is located except to the extent that under the UCC perfection may be governed by the laws of a different jurisdiction. Except as provided in the immediately preceding sentence, Borrower hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than New York governs this Modification and other Loan Documents.

3.7. **Amendment/Modification.** This Modification and each of the other Loan Documents, and the terms of each of them, may not be changed, waived, modified, canceled, discharged or terminated orally, but only by an instrument or instruments in writing signed by both parties.

3.8. **Counterparts.** This Modification may be executed in any number of counterparts, each of which shall constitute an original but all of which together will constitute one instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Borrower and Administrative Agent, on behalf of Lender, have executed this Modification May 25, 2010, to be effective as of May 22, 2010.

BORROWER:

DBAPPLEF LLC,
a Delaware limited liability company

By: 
Name: Joshua A. Pack
Title: Vice President

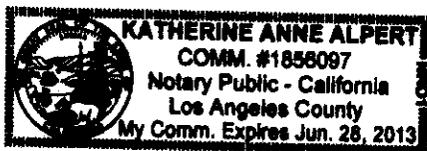
STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

Personally appeared before me, the undersigned authority in and for the said county and state, on this 25th day of May, 2010, within my jurisdiction, the within named Joshua A. Pack, who acknowledged to me that he executed the foregoing Modification to Deed of Trust and Assignment of Leases and Rents on behalf of DPAPPLEF LLC, a Delaware limited liability company, and as its act and deed in his authorized capacity.

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 



FOR NOTARY STAMP

Modification to Deed of Trust and Assignment of Leases and Rents (Mississippi)
Wells Fargo/DBAPPLEF - Applebee's
Loan No.: 93-0909742/ Unit No.: 52077

ADMINISTRATIVE AGENT:

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**

By: *John R. Mellott*
Name: John R. Mellott
Title: Director

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

Personally appeared before me, the undersigned authority in and for the said county and state, on this 25 day of May, 2010, within my jurisdiction, the within named John R. Mellott, who acknowledged to me that he executed the foregoing Modification to Deed of Trust and Assignment of Leases and Rents on behalf of Wells Fargo Bank, National Association, and as its act and deed in his authorized capacity.

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 *Debra Connell*



FOR NOTARY STAMP

Modification to Deed of Trust and Assignment of Leases and Rents (Mississippi)
Wells Fargo/DBAPPLEF - Applebee's
Loan No.: 93-0909742/ Unit No.: 52077

EXHIBIT ALEGAL DESCRIPTION

Unit No.: 52077

Property Address: 710 DeSoto Cove, Horn Lake, MS

Real property situated in the State of Mississippi, DeSoto County and described as follows:

LOT 4, AS SHOWN ON SUBDIVISION PLAT ENTITLED "PART OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 8 WEST, FINAL PLAT A RESUBDIVISION OF LOTS 3, 4 & 5 OF DESOTO CROSSING SUBDIVISION, PHASE 1", LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 8 WEST, DESOTO COUNTY, MISSISSIPPI, AND RECORDED IN PLAT BOOK 46, PAGE 39, IN THE OFFICE OF THE CHANCERY CLERK OF DESOTO COUNTY, MISSISSIPPI, TO WHICH PLAT REFERENCE IS HEREBY MADE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT AN IRON STAKE (SET) AT THE NORTHEAST CORNER OF LOT NO. 3 IN THE SOUTHERLY LINE OF DESOTO COVE, SAID STAKE BEING 135.00 FEET EASTWARDLY FROM THE TANGENT INTERSECTION OF THE SOUTHERLY LINE OF DESOTO COVE AND THE EASTERLY LINE OF INTERSTATE BOULEVARD; THENCE NORTH 89° 21' 40" EAST 180.14 FEET WITH THE SOUTHERLY LINE OF SAID COVE TO AN IRON STAKE (SET) AT THE NORTHWEST CORNER OF LOT NO. 5A; THENCE SOUTH 00° 38' 20" EAST 328.08 FEET ALONG THE WESTERLY LINE OF LOT NO. 5A TO AN IRON STAKE (SET) IN THE PRESENT NORTHERLY LINE OF GOODMAN ROAD, SAID STAKE BEING NORTH 86° 45' 16" WEST 334.35 FEET FROM A "CONCRETE" RIGHT OF WAY MONUMENT (FOUND) IN A SOUTHERLY LINE OF LOT NO. 5A AT THE PRESENT INTERSECTION OF A NORTHERLY LINE OF GOODMAN ROAD AND A NORTHERLY LINE OF THE INTERSTATE 55 RIGHT OF WAY; THENCE NORTH 88° 12' 25" WEST 180.30 FEET WITH THE NORTHERLY LINE OF SAID ROAD TO AN IRON STAKE (SET), SAID STAKE BEING SOUTH 88° 12' 25" EAST 99.69 FEET FROM AN IRON STAKE (SET) AT A SOUTHWEST CORNER OF LOT NO. 3; THENCE NORTH 00° 38' 20" WEST 320.43 FEET ALONG THE EASTERLY LINE OF LOT NO. 3 TO THE POINT OF BEGINNING.

TOGETHER WITH EASEMENTS GRANTED IN DECLARATION OF PROTECTIVE COVENANTS AND RECIPROCAL EASEMENTS RECORDED IN BOOK 272, PAGE 116.