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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

48898610 6600
Dinamore & Shohl, P.L.L.
1900 Chemed Center
255 E. 5th St.
Cincinnati, Ohio 45202-4797

46 DEC 23 AM 10:28

Please cross reference to **96084199**

Leasehold and Security Agreement dated November 1, 1996 recorded at File No. 96074740, Lake County, Indiana records

Uniform Commercial Code Financing Statement (Form 1) filed with Clerk of Kenton County, KY at File No. 96003903

Assignment of Lessor's Interest in Lease dated November 1, 1996 recorded at File No. 96074741, Lake County, Indiana records

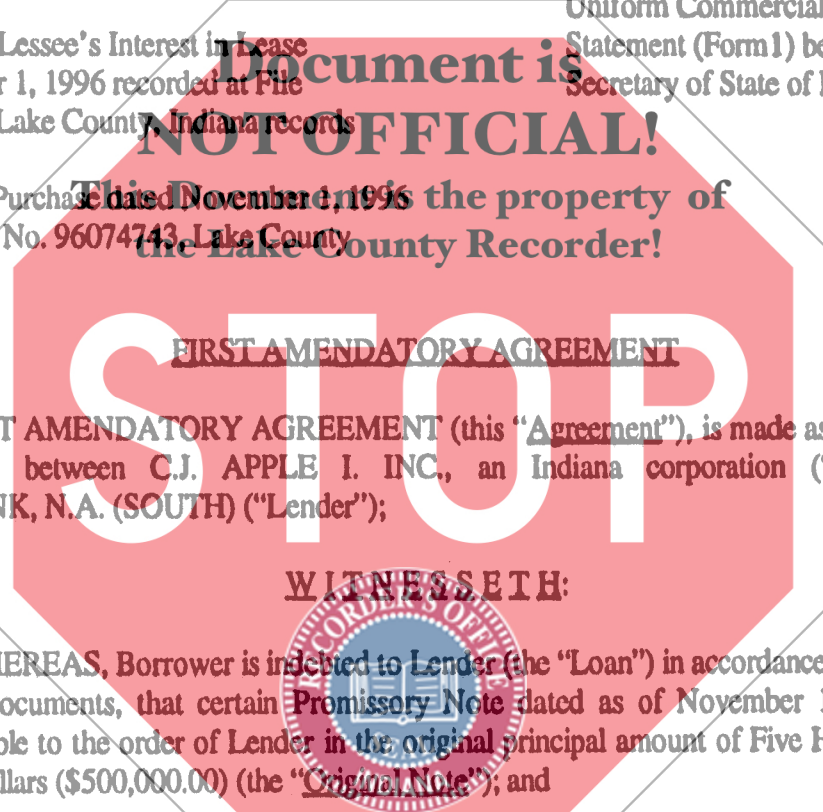
Uniform Commercial Code Financing Statement (Form 1) being filed with Clerk of Lake County

Assignment of Lessee's Interest in Lease dated November 1, 1996 recorded at File No. 96074742, Lake County, Indiana records

Uniform Commercial Code Financing Statement (Form 1) being filed with Secretary of State of Indiana

Assignment of Purchase dated November 1, 1996 recorded at File No. 96074743, Lake County, Indiana records

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FIRST AMENDATORY AGREEMENT

THIS FIRST AMENDATORY AGREEMENT (this "Agreement"), is made as of December 19, 1996, by and between C.J. APPLE I. INC., an Indiana corporation ("Borrower") and NATIONSBANK, N.A. (SOUTH) ("Lender");

WITNESSETH:

WHEREAS, Borrower is indebted to Lender (the "Loan") in accordance with the terms of, among other documents, that certain Promissory Note dated as of November 1, 1996, made by Borrower payable to the order of Lender in the original principal amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "Original Note"); and

WHEREAS, the Original Note is: (a) secured, in part, by (i) that certain Leasehold Mortgage and Security Agreement dated as of November 1, 1996, given by Borrower in favor of Lender and recorded at File No. 96074740, Lake County, Indiana Records (the "Mortgage"), encumbering certain real property situated in Merrillville, Lake County, Indiana, (ii) that certain Assignment of Lessor's Interest in Lease dated as of November 1, 1996, given by Borrower in favor of Lender and recorded at File No. 96074741, Lake County, Indiana Records (the "Lessor's Assignment"), and (iii) that certain Assignment of Lessee's Interest in Lease dated as of November 1, 1996, given by Borrower in favor of Lender and recorded at File No. 96074742, Lake County, Indiana Records (the "Lessee's Assignment");; and (b) governed, in part, by that certain Loan Agreement dated as of September 15, 1993 by and between Borrower and Lender, as the same has been amended from time to time (as amended, the "Loan Agreement") (the Original Note, the Supplemental

Chicago Title Insurance Company

34.00 KS Cf

Promissory Note (as such term is hereinafter defined), the Mortgage, the Lessor's Assignment, the Lessee's Assignment, together with any and all other documents, instruments and agreements now or hereafter evidencing and/or securing the Loan, as amended hereby, are hereinafter collectively called the "Loan Documents"; and

WHEREAS, Borrower has requested, and Lender has agreed, to increase the outstanding principal balance of the Loan by \$200,000.00 which amount shall be evidenced by a Supplemental Promissory Note to be made by Borrower payable to the order of Lender and dated of even dated herewith in the principal amount of \$200,000.00 and having the same maturity date as the Original Note (the "Supplemental Promissory Note"), and Borrower and Lender desire to execute and deliver all documents necessary to effectuate the Loan modification, including, without limitation, the Supplemental Promissory Note, this Agreement, the Eighteenth Addendum to Loan Agreement, and an Acknowledgment and Consent of Guarantors;

NOW THEREFORE, for and in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00), in hand paid by Lender to Borrower and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

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the Lake County Recorder!**

1. Definitions. Capitalized terms used herein shall have the meanings ascribed to them in the Supplemental Promissory Note, unless otherwise defined herein.

2. The Supplemental Promissory Note. Contemporaneously with the execution hereof, Borrower shall execute and deliver to Lender the Supplemental Promissory Note with final payment being due on May 1, 2007. The Supplemental Promissory Note shall be secured by, among other Loan Documents, the Mortgage, the Lessor's Assignment and the Lessee's Assignment.

3. Amendments to Mortgage. Effective as of December 19, 1996, the Mortgage has been and is hereby amended as follows:

3.1. By deleting any and all references (either in words or numbers) in the Mortgage to the number "\$500,000.00" and replacing such references with "\$700,000.00".

3.2. By redefining the terms "Note" or "Notes" wherever they appear in the Mortgage so that henceforth such terms shall mean and refer to the Original Note and the Supplemental Promissory Note as defined herein.

3.3. By redefining the terms "Mortgage", "Mortgage and Security Agreement" and "Indenture" wherever they appear in the Mortgage so that henceforth such terms shall mean and refer to the Mortgage, as amended by this Agreement.

3.4. By redefining the terms "Assignment" and "Rent Assignment" wherever they appear in the Mortgage so that henceforth such terms shall mean and refer to the Lessor's Assignment or the Lessee's Assignment, as the case may be, as amended by this Agreement.

3.5 By amending the definition of "Indebtedness" wherever it appears by adding to, and including in, such definition the indebtedness evidenced by the Supplemental Promissory Note.

4. Amendments to Lessor's Assignment. Effective as of December 19, 1996, the Lessor's Assignment has been and is hereby amended as follows:

4.1. By deleting any and all references (either in words or numbers) in the Lessor's Assignment to the number "\$500,000.00" and replacing such references with "\$700,000.00".

4.2. By redefining the terms "Note" or "Notes" wherever they appear in the Lessor's Assignment so that henceforth such terms shall mean and refer to the Original Note and the Supplemental Promissory Note as defined herein.

4.3. By redefining the terms "Mortgage" and "Mortgage and Security Agreement" wherever they appear in the Lessor's Assignment so that henceforth such terms shall mean and refer to the Mortgage, as amended by this Agreement.

4.4. By redefining the terms "Assignment" and "Assignment of Lessor's Interest In Lease" wherever they appear in the Lessor's Assignment so that henceforth such terms shall mean and refer to the Lessor's Assignment, as amended by this Agreement.

4.5. By redefining the term "Security Conveyance" wherever it appears in the Lessor's Assignment so that henceforth such term shall mean and refer to the Security Conveyance, as amended by this Agreement.

5. Amendments to Lessee's Assignment. Effective as of December 19, 1996, the Lessee's Assignment has been and is hereby amended as follows:

5.1. By deleting any and all references (either in words or numbers) in the Lessee's Assignment to the number "\$500,000.00" and replacing such references with "\$700,000.00".

5.2. By redefining the terms "Note" or "Notes" wherever they appear in the Lessee's Assignment so that henceforth such terms shall mean and refer to the Original Note and the Supplemental Promissory Note as defined herein.

5.3. By redefining the terms "Mortgage" and "Mortgage and Security Agreement" wherever they appear in the Lessee's Assignment so that henceforth such terms shall mean and refer to the Mortgage, as amended by this Agreement.

5.4. By redefining the terms "Assignment" and "Assignment of Lessor's Interest In Lease" wherever they appear in the Lessee's Assignment so that henceforth such terms shall mean and refer to the Lessee's Assignment, as amended by this Agreement.

5.5 By redefining the term "Security Conveyance" wherever it appears in the Lessee's Assignment so that henceforth such term shall mean and refer to the Security Conveyance, as amended by this Agreement.

6. Amendments to Other Loan Documents. Effective as of December 19, 1996, the Loan Documents, not otherwise expressly amended hereby (the "Other Loan Documents"), have been and are hereby amended as follows:

6.1. By deleting any and all references (either in words or numbers) in the Other Loan Documents to the number "\$500,000.00" and replacing such references with "\$700,000.00".

6.2. By redefining the terms "Note" or "Notes" wherever they appear in the Other Loan Documents so that henceforth such terms shall mean and refer to the Original Note and the Supplemental Promissory Note as defined herein.

6.3. By redefining the terms "Mortgage" and "Mortgage and Security Agreement" wherever they appear in the Other Loan Documents so that henceforth such terms shall mean and refer to the Mortgage, as amended by this Agreement.

6.4. By redefining the terms "Assignment" and "Assignment of Lessor's Interest In Lease" wherever they appear in the Other Loan Documents so that henceforth such terms shall mean and refer to the Lessor's Assignment, as amended by this Agreement.

6.5. By redefining the terms "Assignment" and "Assignment of Lessee's Interest In Lease" wherever they appear in the Other Loan Documents so that henceforth such terms shall mean and refer to the Lessee's Assignment, as amended by this Agreement.

7. Acknowledgment and Consent of Guarantors. Contemporaneously with the execution and delivery of this Agreement, the Guarantors (as such term is hereinafter defined) have executed and delivered that certain Acknowledgment and Consent of Guarantors attached hereto as Exhibit "A", and by this reference incorporated herein and made a part hereof (the Acknowledgment"), pursuant to which the Guarantors acknowledged and consented to the granting and advancing by Lender to Borrower of the Loan modification and increase with respect to the Merrillville, Lake County, Indiana Rio Bravo Restaurant. "Guarantors" shall have the meaning ascribed to it in the Acknowledgment.

8. Borrower's Estoppel. As a material inducement to Lender to enter into this Agreement, Borrower hereby warrants, represents and certifies to Lender as follows:

8.1 As of the date hereof, Borrower has no defenses, offsets or counterclaims as against the Indebtedness (as such term is defined in the Mortgage).

8.2 To the best knowledge and belief of Borrower, the Original Note, the Supplemental Promissory Note, the Mortgage, the Lessor's Assignment, the Lessee's Assignment, the Loan Agreement, and the Other Loan Documents, as amended hereby are in all respects the legal, valid

and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms and free from all infirmities, defenses or counterclaims of any nature whatsoever. To the best knowledge and belief of Borrower Lender is not in default or breach of any of its obligations to Borrower under the Original Note, the Supplemental Promissory Note, the Mortgage, the Lessor's Assignment, the Lessee's Assignment, the Loan Agreement, or any Other Loan Documents, as amended hereby.

8.3 To the best knowledge and belief of Borrower, after giving effect to this loan modification, no Event of Default has occurred and continues to exist nor has any event, state of facts or other condition occurred, which with notice or the passage of time or both, would constitute an Event of Default under the Loan Documents.

9. No Other Change. Except as herein expressly amended, each and every term, condition, warranty and provision of the Loan Documents shall remain in full force and effect, and such are hereby ratified, confirmed and approved by the parties hereto. Nothing herein shall be construed to alter or affect the priority of the lien or title created by the Loan Documents, it being the expressly declared intention of the parties hereto that no novation of the Loan Documents be created hereby.

10. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, successors, legal representatives and assigns.

11. Counterpart Execution. This Agreement may be executed in one or more counterparts and the signature of any party to any counterpart may be appended to any other counterpart, all of which counterparts when taken together shall equal one Agreement.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name under seal as of the day and year first above written.

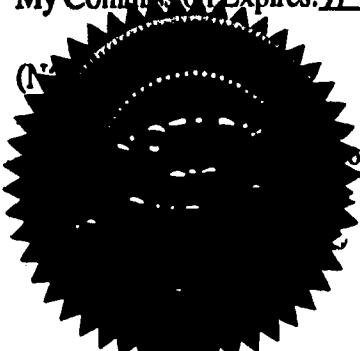


Signed, sealed and delivered in the presence of:

Candy Randall
Unofficial Witness Printed Name: Candy Randall
Jessie Simmons
Notary Public

By: W. Curtis Smith
W. Curtis Smith, President

My Commission Expires: 11-12-2000



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Signed, sealed and delivered
in the presence of:

By: James P. Borke
James P. Borke, Secretary

Landy Randall
Unofficial Witness Printed Name: LANDY RANDALL

[CORPORATE SEAL]

Teresa Simmons
Notary Public

My Commission Expires: 11-12-2000

(NOTARIAL SEAL)

Signed, sealed and delivered
in the presence of:

Marie Sims
Unofficial Witness PRINTED NAME: MARIE SIMS

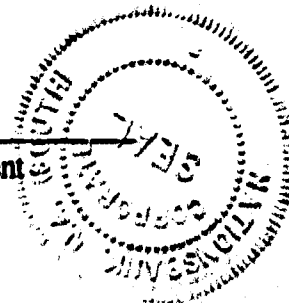
Catherine Powell
Notary Public

My Commission Expires:
(NOTARIAL SEAL)

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LENDER:
This Document is the property of
the Lake County National Bank, N.A. (South), a national
banking association

By: Mark A. Phillips
Mark A. Phillips, Senior Vice President

[BANK SEAL]



[NOTARY ACKNOWLEDGMENT ON FOLLOWING PAGE]

STATE OF KENTUCKY
COUNTY OF KENTON

Before me, a Notary Public in and for said County and State, personally appeared W. Curtis Smith, president of C. J. Apple I, Inc., an Indiana corporation, who acknowledged execution of the foregoing instrument as such officer acting for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 19th day of December, 1996.

Teresa J. Simmons
Notary Public

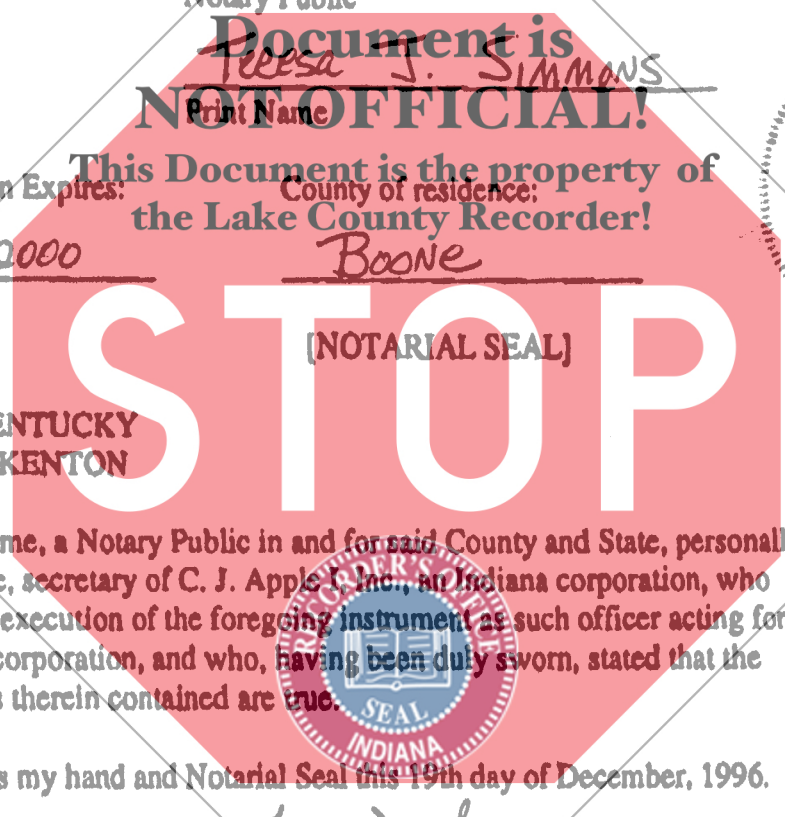
Document is NOT OFFICIAL!
Teresa J. SIMMONS
Print Name

My Commission Expires:

11-12-2000

This Document is the property of the Lake County Recorder!
County of residence:

Boone



STATE OF KENTUCKY
COUNTY OF KENTON

Before me, a Notary Public in and for said County and State, personally appeared James P. Borke, secretary of C. J. Apple I, Inc., an Indiana corporation, who acknowledged execution of the foregoing instrument as such officer acting for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 19th day of December, 1996.

Teresa J. Simmons
Notary Public

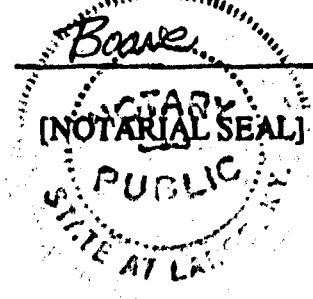
Teresa J. SIMMONS
Print Name

My Commission Expires:

11-12-2000

County of residence:

Boone



STATE OF GEORGIA
COUNTY OF FULTON

Before me, a Notary Public in and for said County and State, personally appeared Mark A. Phillips, an officer of NationsBank, N.A. (South), a national banking organization, who acknowledged execution of the foregoing instrument as such officer acting for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 19th day of December, 1996.

Catharine Powell

Notary Public

Document is

Print Name

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My Commission Expires:

April 3, 2000

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County of residence:

DeKalb

STOP



EXHIBIT "A"

ACKNOWLEDGMENT AND CONSENT OF GUARANTORS

THIS ACKNOWLEDGMENT AND CONSENT OF GUARANTORS (this "Consent") is made as of the 19th day of December, 1996, by W. CURTIS SMITH, JAMES P. BORKE, C.J. APPLE I, INC., C.J. APPLE II, INC., C.J. APPLE III, INC., CURTIS JAMES INVESTMENTS, and APPLE SAUCE, INC. (collectively, "Guarantors") in favor of NATIONSBANK, N.A. (SOUTH) ("Lender"), and any subsequent holder, and CURTIS JAMES INVESTMENTS, C.J. APPLE I, INC., C.J. APPLE II, INC., and C.J. APPLE III, INC. (collectively, "Borrowers");

~~WITNESSETH: That~~
~~Document is~~

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~~the Lake County Recorder!~~
WHEREAS, Borrowers are indebted to Lender (collectively, the "Loans") in accordance with the terms and conditions set forth in that certain Loan Agreement dated as of September 15, 1993, as amended from time to time (the "Agreement" and the "Loan Documents" (as such term is defined) in the Agreement; and

WHEREAS, Guarantors have executed from time to time those certain Continuing and Unconditional Guarantees as a condition to Lender making, and as security for, the Loans, including, without limitation, those certain Continuing and Unconditional Guarantees dated May 1, 1995 (all of such guarantees are hereinafter collectively referred to as the "Guarantees"); and

WHEREAS, Guarantors, Borrowers and Lender have and do hereby acknowledge and agree that the obligations and liabilities of the Guarantors under the Guarantees is continuing and unconditional and therefore it is unnecessary for Guarantors to execute and deliver new guarantees at the closing of additional loans made by Lender to Borrowers; and

WHEREAS, notwithstanding the continued and unconditional enforceability of the Guarantees, Lender has requested and Guarantors have agreed, that as a condition to making that certain modification and increase to the "Merrillville Loan" (as such term is defined in the Agreement), Guarantors shall execute and deliver this Consent for the purposes of ratifying each of the Guarantors acknowledgment and consent to (i) the making by Lender to C.J. Apple I, Inc. of the modification/increase to the Merrillville Loan and (ii) the continued and unconditional enforceability of the Guarantees with respect to any and all Loans, including, without limitation, the Merrillville Loan, notwithstanding that the liabilities and obligations secured by the Guarantees has been increased and modified, but except as expressly provided below;

NOW, THEREFORE, as a material inducement to Lender to make the Merrillville Loan as requested by Curtis James Investments and C.J. Apple I, Inc., and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantors hereby agree as follows:

1. Acknowledgment, Consent and Ratification of Guarantors. Guarantors hereby (i) acknowledge and consent to and give their express written consent to the making by Lender to C.J. Apple I, Inc. of the modification/increase to the Merrillville Loan, and (ii) ratify the continued and unconditional enforceability of the Guarantees with respect to any and all Loans, including, without limitation, the Merrillville Loan, as modified and increased, notwithstanding that the liabilities and obligations secured by the Guarantees has been increased and modified.

2. Estoppel. Guarantors represent, warrant and agree that as of the date hereof, their respective obligations under the Guarantees are not subject to any counterclaims, offsets or defenses against Lender of any kind.

3. No Other Modification. Except as otherwise expressly provided herein, the execution and delivery of this Consent by Guarantors to Lender and Borrowers in no way modifies or amends any of the Guarantees or any of Guarantors' obligations and duties under the Guarantees. Said Guarantees are and shall remain in full force and effect and are continuing obligations of Guarantors according to their respective terms.

4. Warranties and Representations. The warranties and representations made by Guarantors in the Guarantees are true and correct as of the date hereof.

5. Binding Nature. This Consent shall inure to the benefit of Lender, Borrowers and their respective successors and assigns, and legal representatives, and shall bind Guarantors, their respective heirs and assigns.

6. Governing Law. This Consent has been given, and shall be construed under, the laws of the State of Georgia.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Consent under seal as of the day and year first above written.

"GUARANTORS"

W. Curtis Smith (SEAL)
W. Curtis Smith

James P. Borke (SEAL)
James P. Borke

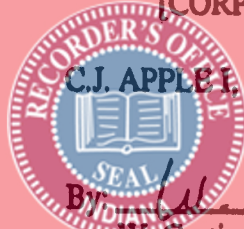
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APPLE SAUCE, INC., a Kentucky corporation

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W. Curtis Smith
W. Curtis Smith
President

By: James P. Borke
James P. Borke
Secretary

[CORPORATE SEAL]



C.J. APPLE E. INC., an Indiana corporation
By: W. Curtis Smith
W. Curtis Smith
President

By: James P. Borke
James P. Borke
Secretary

[CORPORATE SEAL]

C. J. APPLE II, INC., a Florida corporation

By: W. Curtis Smith
W. Curtis Smith
President

By: James P. Borke
James P. Borke
Secretary



By: W. Curtis Smith
W. Curtis Smith
President

By: James P. Borke
James P. Borke
Secretary



CURTIS JAMES INVESTMENTS, an Ohio general partnership

By: W. Curtis Smith (SEAL)
W. Curtis Smith, Partner

By: James P. Borke (SEAL)
James P. Borke, Partner