

**THIRD MODIFICATION TO  
MORTGAGES AND SECURITY AGREEMENTS AND  
DEED OF TRUST AND SECURITY AGREEMENT**

This THIRD MODIFICATION TO MORTGAGES AND SECURITY AGREEMENTS AND DEED OF TRUST AND SECURITY AGREEMENT (this "Modification") executed this \_\_\_\_\_ day of September, 2004 and effective the \_\_\_\_\_ day of September, 2004, by and among **AJS ASSOCIATES** (the "Grantor" or "Borrower") and **BANK OF AMERICA, N.A.** (formerly known as NationsBank, N.A., NationsBank of Georgia, N.A. and The Citizens and Southern National Bank) (the "Beneficiary" or "Lender").

**RECITALS**

WHEREAS, Borrower has previously executed and delivered the Mortgages and Deed of Trusts (collectively, the "Mortgages") described on the cover page of this Modification relating to the Restaurants located at the street addresses set forth on Exhibit "A" attached hereto and made a part hereof;

WHEREAS, of even date herewith, Borrower purchased the property located at 322 W. Main Street, Hendersonville, TN (Sumner County)(the "Hendersonville Property"), in which Borrower had previously pledged its leasehold interest to Lender;

WHEREAS, Borrower and Lender now desire to amend the Mortgages to reflect Borrower now pledges its fee simple interest in the Hendersonville Property as security for the Note instead of the leasehold interest previously pledged.

NOW THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** Borrower and Lender hereby approve the foregoing recitations and agree that said recitations are true and correct in all respects.

2. **Definitions.** As defined in and used throughout the Mortgages,

A. "Premises" is amended to mean with respect to the Hendersonville Property:

The fee simple interest in that certain Land located in the State of Tennessee, as more particularly described in Exhibit A attached hereto which is by this reference incorporated herein.

TOGETHER with all buildings, structures and improvements of every kind whatsoever now or hereafter situated on the said Premises, and all fixtures, machinery and equipment of every nature whatsoever now or hereafter owned by the Grantor and located in, on and used or intended to be used in connection with or with the operation of said property, buildings, structures, or other improvements including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Grantor, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all the estate, rights, title, interest, property, possession, claim and demand whatsoever at

law, as well as in equity of the Grantor of, in and to the same, including but not limited to:

(a) All rents, profits, issues and revenues of the Premises from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving as a license to Grantor; however, so long as Grantor is not in default hereunder, the right to receive and retain the rents, profits, issues and revenues thereof; and

(b) All judgments, awards or damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Trustee, with the consent of Beneficiary, is hereby authorized on behalf and in the name of Grantor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Beneficiary may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's fees, to the Secured Indebtedness in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

By execution of this Amendment, Borrower covenants that Borrower is now lawfully seized of the Premises, has a good right to convey same, and that the same are unencumbered, except as specifically set forth on Exhibit B attached hereto. Borrower further covenants and binds itself, its successors, heirs and representatives, to warrant and defend the title to the Premises to the Trustee forever against the lawful claims of all persons.

B. "Leasehold Deed of Trust" as used in that certain Leasehold Deed of Trust by AJS Associates to NationsBank, N.A. dated May 24, 1999 and recorded May 28, 1999 at Deed Book 979, page 247, Register of Deeds for Sumner County, TN is amended to read: "Deed of Trust", as same shall hereafter be deemed to be a Deed of Trust against the fee simple interest of Borrower. Paragraph 24 of said Leasehold Deed of Trust is hereby deleted and all references to Lease, are amended to reflect that the leasehold estate has merged into the fee simple estate of even date herewith.

3. **General.** Except as specifically modified herein, all other terms and conditions of the Mortgages shall remain unchanged and in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Borrower has caused this Modification to be signed in its name by its duly authorized individuals and its seal to be hereunto affixed, the day and year first above written.

BORROWER:

AJS Associates, a Kentucky general partnership,  
by its two (2) general partners

BY: OBERST CORPORATION,  
a Kentucky corporation, its General Partner

By:   
Norma V. Oberst, President

(Corporate Seal)

BY: ALICE J. SCHLEICHER HUNTSVILLE,  
INC., an Indiana corporation, its General Partner

By: \_\_\_\_\_  
Alice J. Schleicher, President

(Corporate Seal)


COMMONWEALTH OF KENTUCKY  
COUNTY OF JEFFERSON

This day personally appeared before me, the undersigned authority in and for the State and County aforesaid, Norma V. Oberst, whose name as President of Oberst Corporation, a Kentucky corporation, as General Partner in AJS Associates, a Kentucky general partnership, is signed to the foregoing Modification and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such officer and with full authority, executed same voluntarily for and as the act of said corporation, acting in its capacity as General Partner as aforesaid.

Given under my hand and official seal this the 3 day of September, 2004.

My Commission expires:

1-21-2008

  
Notary Public

[AFFIX NOTARY SEAL]

(Notary continued on the next page.)

IN WITNESS WHEREOF, the Borrower has caused this Modification to be signed in its name by its duly authorized individuals and its seal to be hereunto affixed, the day and year first above written.

BORROWER:


AJS Associates, a Kentucky general partnership,  
by its two (2) general partners

BY: OBERST CORPORATION,  
a Kentucky corporation, its General Partner

By: \_\_\_\_\_  
Norma V. Oberst, President

(Corporate Seal)

BY: ALICE J. SCHLEICHER HUNTSVILLE,  
INC., an Indiana corporation, its General Partner

By:   
Alice J. Schleicher, President

(Corporate Seal)

COMMONWEALTH OF KENTUCKY  
COUNTY OF JEFFERSON

This day personally appeared before me, the undersigned authority in and for the State and County aforesaid, Norma V. Oberst, whose name as President of Oberst Corporation, a Kentucky corporation, as General Partner in AJS Associates, a Kentucky general partnership, is signed to the foregoing Modification and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such officer and with full authority, executed same voluntarily for and as the act of said corporation, acting in its capacity as General Partner as aforesaid.

Given under my hand and official seal this the \_\_\_\_ day of September, 2004.

My Commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

[AFFIX NOTARY SEAL]

(Notary continued on the next page.)

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

This day personally appeared before me, the undersigned authority in and for the State and County aforesaid, Alice J. Schleicher, whose name as President of Alice J. Schleicher Huntsville, Inc., an Indiana corporation, as General Partner in AJS Associates, a Kentucky general partnership, is signed to the foregoing Modification and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such officer and with full authority, executed same voluntarily for and as the act of said corporation, acting in its capacity as General Partner as aforesaid.

Given under my hand and official seal this the 7 day of September, 2004.

My Commission expires:

NOTARY  
PUBLIC  
AT  
LARGE

Notary Public

[AFFIX NOTARY SEAL]

SIGNATURES CONTINUED ON NEXT PAGE

My Commission Expires MAR. 26, 2007

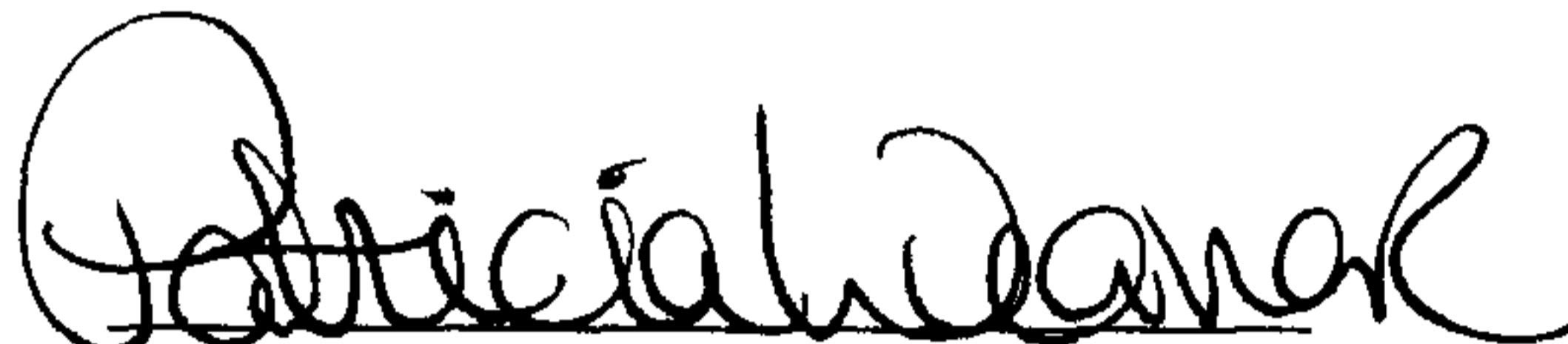
LENDER:

BANK OF AMERICA, N.A.

By:   
Jay Goldstein, Vice President

STATE OF GEORGIA  
COUNTY OF FULTON

~~20~~ PERSONALLY appeared before me the undersigned authority in and for said County and State, on this 20 day of September, 2004 within my jurisdiction, the within named Jay Goldstein, who acknowledged that he is a Vice President of Bank of America, N.A., and that for and on behalf of said national banking association and that in said capacity, he executed the above and foregoing instrument, after first having been duly authorized so to do.

  
Notary Public

My Commission Expires:  
My Commission Expires  
7-1-06

[AFFIX NOTARY SEAL]

# EXHIBIT A

## PROPERTY DESCRIPTION

Property lying in Sumner County, Tennessee, more particularly described according to a survey prepared by Phillip E. Holmes, Jr., RLS No. 1728, Volunteer Surveying, dated March 31, 2004, File No. 99064-2, as follows:

BEGINNING AT AN IRON PIN AT THE INTERSECTION OF THE NORTHERLY MARGIN OF W. MAIN STREET (GALLATIN PIKE) AND THE WESTERLY MARGIN OF MAPLE STREET;

(1) THENCE, WITH THE NORTHERLY MARGIN OF GALLATIN PIKE, SOUTH 81°47'50" WEST, 118.47 FEET TO AN IRON PIN, BEING THE SOUTHEAST CORNER OF THE PROPERTY CONVEYED TO OSCAR E. AND JANE B. POTTS OF RECORD IN BOOK 63, PAGE 698, REGISTER'S OFFICE FOR SUMNER COUNTY, TENNESSEE;

(2) THENCE, LEAVING SAID MARGIN, AND WITH THE EASTERLY BOUNDARY OF THE SAID POTTS, NORTH 06°40'44" WEST, 176.11 FEET TO AN IRON PIN, BEING THE SOUTHWEST CORNER OF THE PROPERTY CONVEYED TO BETTY L. SHAW OF RECORD IN BOOK 222, PAGE 616, SAID REGISTER'S OFFICE;

(3) THENCE, WITH THE SOUTHERLY BOUNDARY OF THE SAID SHAW, NORTH 84°34'10" EAST, 117.50 FEET TO AN IRON PIN ON THE WESTERLY MARGIN OF MAPLE STREET;

(4) THENCE, WITH THE WESTERLY MARGIN OF MAPLE STREET, SOUTH 07°00'03" EAST, 170.40 FEET TO THE POINT OF BEGINNING, CONTAINING 20,435.430 SQUARE FEET OR 0.469 ACRES.

Being part of the property conveyed to Charles Roney by deeds from Lizzie Talley Carr et al. recorded in Book 127, page 96, Register's Office for Sumner County, Tennessee and from W. A. Shivel of record in Book 128, page 49, said Register's Office; the said Charles Roney having since died intestate, his interest in the property passed to Harold B. Roney, his son and only heir-at-law; and the said Harold B. Roney having since died, his interest in the property was devised to Charles E. Roney, successor Trustee of the Trust u/w/o Harold B. Roney, of record in Book 501, page 439, said Register's Office;

And being part of the property conveyed to H. B. Roney by deeds from S. W. McCormack and wife Virgie McCormack and Emily Frances McCormack Hudson of record in Book 153, page 295, said Register's Office and from Elsie N. Roney of record in Book 154, page 72, said Register's Office; the said H. B. Roney having since died, his interest in the property was devised to Charles E. Roney, successor Trustee of the Trusts u/w/o Harold B. Roney, of record in Book 501, page 439, said Register's Office;

And being part of the same property conveyed to Lizzie Roney by deed from H. B. Roney and wife, Elsie N. Roney of record in Book 153, page 496, said Register's Office; the said Lizzie Roney having since died, her interest in the property was devised to Harold B. Roney by Will of record in Book 2081, page 424-426, said Register's Office; and the said Harold B. Roney having since died, his interest in the property was devised to Charles E. Roney, successor Trustee of the Trust u/w/o Harold B. Roney, of record in Book 501, page 439, said Register's Office.

This property is improved and is located at 322 West Main Street, Hendersonville, Sumner County, Tennessee 37075.

The document is 1 of 8 counterparts to be recorded  
in the following counties:

Jackson County, AL  
Jefferson County, AL  
Madison County, AL  
Shelby County, AL  
Davidson County, TN  
Sumner County, TN  
Robertson County, TN  
Lincoln County, TN

Prepared by and return to:

Sherry D. Olson, P.C.  
2515 Kings Way  
Cumming, Georgia 30040  
Phone: 770-205-8858 ext 102

**THIRD MODIFICATION TO  
MORTGAGES AND SECURITY AGREEMENTS AND  
DEED OF TRUST AND SECURITY AGREEMENT**

from  
**AJS ASSOCIATES** (the "Grantor" or "Borrower")  
for the benefit of  
**BANK OF AMERICA, N.A.**  
(formerly known as NationsBank, N.A., NationsBank of Georgia, N.A. and The Citizens and Southern  
National Bank) (the "Beneficiary" or "Lender")

**Cross-Reference to Original Deed of Trust or Mortgages:**

County	State	Prior Recorded Documents
Jackson	AL	First Modification to Mortgages and Security Agreements executed by and between AJS Associates and NationsBank, N.A., dated September 19, 1997 and recorded October 16, 1997 at 11:14 a.m. in Book 97, page 15581 in the Probate Office of Jackson County, Alabama.
Jackson	AL	Modification of Mortgage filed in Book 98, page 21966, in the Probate Office of Jackson County, Alabama.
Jackson	AL	Mortgage and Security Agreement, dated May 10, 1993, by AJS Associates to NationsBank of Georgia, N.A., recorded at INSTRUMENT NO. 93-6408, Jackson County.
Jackson	AL	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 4, 2003 at Deed Book 2003, Page 27737, Register of Deeds of Jackson County, AL.
Jefferson	AL	Amendment to Purchase Money Mortgage and Security Agreement, dated January 12, 1989, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3536, PAGE 259.
Jefferson	AL	First Amendment to Purchase Money Mortgage and Security Agreement, dated March 29, 1988, recorded in BESSEMER REAL VOLUME 694, Page 404, and recorded in REAL VOLUME 3357, PAGE 098.
Jefferson	AL	First Amendment to Purchase Money Mortgage and Security Agreement, dated February 1, 1991, recorded in REAL VOLUME 3970, PAGE 630.
Jefferson	AL	First Modification to Mortgages and Security Agreements executed by and between AJS Associates and NationsBank, N.A., dated September 19, 1997 and recorded October 10, 1997 at 15:37 p.m. in Instrument No. 9711-991 in the Probate Office of Jefferson County, Alabama.
Jefferson	AL	Leasehold Mortgage and Security Agreement executed by AJS Associates to Bank of America, N.A. dated November 26, 2001, filed for record December 11, 2001, at 10:34 am, record in Instrument Number 200115/5328, in the Office of the Judge of Probate of Jefferson County, AL.

Jefferson	AL	Leasehold Mortgage and Security Agreement, dated July 15, 1988, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3425, PAGE 468, Probate Office.
Jefferson	AL	Modification of Mortgage filed in Instrument 9816/1253, in the Probate Office of Jefferson County, Alabama.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated April 7, 1995, by AJS Associates to NationsBank of Georgia, N.A., recorded REAL VOLUME 1080, PAGE 451, Probate Office.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated December 17, 1993, by AJS Associates to NationsBank of Georgia, N.A., recorded in BESSEMER REAL VOLUME 995, PAGE 247, Probate Office.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated December 30, 1986, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3061, PAGE 093, Office of the Judge of Probate, re-filed in BESSEMER REAL VOLUME 634, PAGE 33.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated December 30, 1986, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3061, PAGE 093, Office of the Judge of Probate, re-filed in BESSEMER REAL VOLUME 634, PAGE 33.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated December 9, 1994, by AJS Associates to NationsBank of Georgia, N.A., recorded in INSTRUMENT NO. 9414-1898, Probate Office.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated June 16, 1988, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 703, PAGE 856, Probate Office, Bessemer Division.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated June 21, 1991, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 4050, PAGE 43, Probate Office.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated March 14, 1988, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3350, PAGE 944, Office of the Judge of Probate.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated March 29, 1988, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3357, PAGE 61, Office of the Judge of Probate
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated March 29, 1993, by AJS Associates to NationsBank of Georgia, N.A., recorded in REAL VOLUME 4509, PAGE 831, Probate Office.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated March 31, 1989, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3581, PAGE 372, Probate Office.
Jefferson	AL	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 3, 2003 at Deed Book 200313, Page 6169, Register of Deeds of Jefferson County, AL.
Jefferson	AL	Second Mortgage and Security Agreement, dated June 13, 1989, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3623, PAGE 620, Probate Office of the Judge of Probate.
Madison	AL	First Modification to Mortgages and Security Agreements executed by and between AJS Associates and NationsBank, N.A., dated September 19, 1997 and recorded October 17, 1997 at 1:33 p.m. in Book 2328, page 532 in the Probate Office of Madison County, Alabama.
Madison	AL	Future Advance Mortgage, dated May 10, 1993, by AJS Associates to NationsBank of Georgia, N.A., recorded in MORTGAGE BOOK 1909, PAGE 667, Judge of Probate, Madison County; and recorded at INSTRUMENT NO. 93-6408, Jackson County.

Madison	AL	Leasehold/Fee Mortgage and Security Agreement from AJS Associates to Bank of America, N.A. dated 1-17-01, filed for record 2-9-01 at 11:27 a.m., recorded in Mortgage Book 2751, Page 1084, in the Probate Office of Madison County, AL.
Madison	AL	Mortgage from AJS Associates to Bank of America, N.A., dated May 30, 2002 and recorded May 31, 2002 at 12:15 p.m. in Mortgage Book 3049, page 1112, in the office of the Judge of Probate for Madison County, AL, as amended by that certain Amendatory Agreement dated July 30, 2002 and recorded August 1, 2002 in Mortgage Book 3088, page 612.
Madison	AL	Second Modification to Mortgages and Security Agreement from AJS Associates to NationsBank, N.A. dated October 9, 1998, at 3:33 p.m., in Mortgage Book 2484, page 821, in the Office of the Probate Judge of Madison County, AL.
Madison	AL	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 8, 2003 at Deed Book 3488, Page 385, Register of Deeds of Madison County, AL.
Shelby	AL	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 4, 2003 at Document # 20030904000588090, Register of Deeds of Shelby County, AL.
Davidson	TN	Deed of Trust dated January 20, 2000, executed by AJS Associates in favor of Bank of America, N.A. filed for record January 21, 2000 at 4:03 PM as Instrument No. 200001210007428, in the Register of Deeds for Davidson County, TN
Davidson	TN	Deed of Trust executed by AJS Associates to Stuart Jones, Trustee in favor of NationsBank, N.A. dated 5/25/99 and recorded 05/27/99 at 2:03 P.M. in Book 11497, Page 327, Register of Deeds for Davidson County, TN.
Davidson	TN	Leasehold Deed of Trust by AJS Associates to NationsBank, N.A. dated May 24, 1999 and recorded May 27, 1999 at Deed Book 11497, page 407, Register of Deeds for Davidson County, TN.
Davidson	TN	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 4, 2003 at Deed Book 20030904, Page 0128543, Register of Deeds of Davidson County, TN.
Lincoln	TN	Deed of Trust and Security Agreement, dated May 10, 1993, by AJS Associates to NationsBank of Georgia, N.A., recorded in TRUST DEED BOOK 319, PAGE 446, Register of Deeds, Lincoln County, TN.
Lincoln	TN	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 5, 2003 at Document #03028634, Register of Deeds of Lincoln County, TN.
Robertson	TN	Deed of Trust, executed by AJS Associates to Larry D. Craig, Trustee for Bank of America, N.A., dated August 8, 2000 and recorded August 19, 2000 at 10:30 a.m. in Book 628, Page 530, Register of Deeds for Robertson County, TN.
Robertson	TN	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 5, 2003 at Deed Book 886, Page 629, Register of Deeds of Robertson County, TN.
Sumner	TN	Leasehold Deed of Trust by AJS Associates to NationsBank, N.A. dated May 24, 1999 and recorded May 28, 1999 at Deed Book 979, page 247, Register of Deeds for Sumner County, TN.
Sumner	TN	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 5, 2003 at Deed Book 1839, Page 779, Register of Deeds of Sumner County, TN.