

Loan # 10085a

ASSIGNMENT OF LEASES AND RENTS

This ASSIGNMENT OF LEASES AND RENTS ("Assignment"), dated as of June 23, 2004, is made by **THIRD CREEK, L.L.C.**, a Missouri limited liability company, **MATTHIAS D. RENNER FAMILY, L.L.C.**, a Missouri limited liability company, and **KENNETH J. WEBER FAMILY, L.L.C.**, a Missouri limited liability company (each, an "Assignor" and collectively, the "Assignors"), having a mailing address of 1830 Craig Park Court, Suite 101, St. Louis, Missouri 63146, for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association ("Assignee"), having a mailing address of 120 South Central Avenue, Clayton, Missouri 63105, Attention: Michael P. Lane and 2120 East Park Place, Suite 100, El Segundo, California 90245. The following recitals are made a material part of this Assignment.

A. Assignee has agreed to make a certain loan to Assignors, and Assignors' obligation to repay such loan (the "Indebtedness") is evidenced by that certain Loan Agreement dated as of the date hereof by and between Assignors and Assignee (as subsequently amended, modified, renewed and restated, the "Loan Agreement"; capitalized terms not otherwise defined herein shall have the meaning provided in the Loan Agreement) and that certain Promissory Note ("Note") in the amount of \$18,192,000.00 made payable by Assignors to the order of Assignee and dated as of the date of this Assignment. The Loan Agreement and the Note are secured by, among other Collateral, that certain Mortgage (the "Mortgage"), dated as of the date of this Assignment, covering certain property (the "Property") described on Exhibit A attached hereto and made a part hereof.

B. The Indebtedness and all other obligations of Assignors under this Assignment, the Loan Agreement, the Note, the Mortgage, the other Loan Documents and any other document or agreement evidencing, securing and/or guaranteeing repayment of the Indebtedness (collectively, the "Obligations") are to be secured by this Assignment.

NOW, THEREFORE, in consideration of the Loan agreed to be made by Assignee to Assignors and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignors do hereby assign, transfer and set over to the Assignee all of the right, title and interest of Assignors in, to and under any and all existing and future leases or occupancy agreements affecting all or any part of the Property, together with all extensions, renewals, modifications or replacements thereof, and any and all guaranties of the tenants' obligations under any provisions thereof (collectively, the "Leases"), and all right, title and interest of Assignors thereunder, including cash and securities deposited thereunder (as security deposits or otherwise), the right to receive and collect the rents, security deposits, income, proceeds, earnings, royalties, revenues, issues and profits payable

thereunder and the rights to enforce, at law or in equity, all provisions and options thereof (collectively, the "Rents"), and the right to apply the same to the payment and performance of the Obligations.

This Assignment is intended to be and is an absolute present assignment and not merely the passing of a security interest. This Assignment is made on the following terms, covenants, and conditions:

1. Until the occurrence of a Default, Assignors shall be entitled to collect and receive the Rents. Such rights of Assignors to collect and receive said Rents shall be automatically revoked upon the occurrence of a Default and thereafter Assignee shall have the right and authority to exercise any of the remedies granted to it hereunder. In addition, upon such a Default, Assignors shall promptly pay to Assignee all Rents and all security or other deposits paid to Assignors pursuant to any Lease assigned hereunder. Nothing contained in this Section shall be construed to bind Assignee to the performance of any of the covenants, conditions or provisions contained in any Lease or otherwise to impose any obligation on Assignee, except that Assignee shall be accountable for any money actually received pursuant to such assignment.

2. Assignors hereby further grant to Assignee the right to notify the tenant under any Lease of the assignment thereof and, after the occurrence of a Default (a) to demand that the tenant under any Lease pay all amounts due thereunder directly to Assignee, (b) to enter upon and take possession of any premises demised under any Lease for the purpose of collecting the Rents, (c) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof, (d) to let any such premises, or any part thereof, and (e) to apply the Rents, after payment of all necessary charges and expenses, on account of the Obligations. AFTER THE RECEIPT BY A TENANT UNDER ANY LEASE OF A DEMAND FROM THE ASSIGNEE AS DESCRIBED IN CLAUSE (a) OF THE PRECEDING SENTENCE, ASSIGNORS HEREBY AUTHORIZE AND DIRECT ANY AND ALL SUCH TENANTS TO TENDER THE PAYMENT OF RENT AND THE PERFORMANCE OF ITS OBLIGATIONS TO ASSIGNEE.

3. Assignors will, as and when requested from time to time by Assignee, execute, acknowledge and deliver to Assignee, in form approved by Assignee, one or more general or specific assignments of the landlord's interest under any Lease. Assignors will, on demand, reimburse Assignee for the payment of any costs or expenses incurred in connection with the preparation or recording of any such assignment.

4. If the tenant under any Lease (or any receiver, trustee, custodian or other party who succeeds to the rights of any tenant) defaults in the performance of its obligations thereunder or rejects or does not affirm such Lease pursuant to any bankruptcy law, Assignors hereby assign to Assignee the proceeds of any claims (including the right to retain or apply any security deposits) that Assignors may have against the tenant (or receiver, trustee, custodian or other party who succeeds to the rights of any tenant) under any one or more of the Leases and any guaranty thereof. Assignors, immediately upon obtaining knowledge of any such default by any such tenant, will notify Assignee thereof. Assignee shall have the right to proceed against such tenant as if it were the named lessor thereunder, in Assignors' name or in Assignee's name as agent for Assignors and Assignors agree to cooperate with Assignee in such action and shall execute any and all documents required in furtherance of such action.

5. Upon the occurrence of a Default, Assignee, without in any way waiving such default, may, at its option, without notice and without regard to the adequacy of the security for the Indebtedness secured hereby, either in person, by agent or by a receiver appointed by a court, take possession of the Property, including the premises described in the Leases, and have, hold, manage, lease, sell and operate the same on such terms and for such period of time as Assignee may deem proper and either with or

without taking possession of the Property in its own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee and to apply such Rents to the payment of: (a) all expenses of managing the Property including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Obligations together with all costs and Lender's Attorneys' Fees in such order of priority as Assignee, in its sole discretion, may determine, any statute, law, custom or use to the contrary notwithstanding. The exercise by Assignee of the option granted it in this paragraph and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any default by Assignors under the Note or Mortgage or under the Leases or this Assignment. Upon demand of Assignee following a Default, Assignors shall deliver to Assignee all security deposits it has collected from tenants, all of the Leases and all other books and records pertaining to the Property, all of which are assigned to Assignee pursuant to this Assignment as additional security for the Loan.

6. Assignee shall not be liable for any loss or damage suffered or incurred by Assignors resulting from Assignee's failure to let any leasable premises at the Property after default or from any other act or omission of Assignee in managing the Property after default unless such loss or damage is caused by the willful misconduct and bad faith of Assignee. Assignee shall not be obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this Assignment. Assignors hereby agree to indemnify, defend (by counsel acceptable to Assignee) and hold Assignee harmless from and against any and all liabilities, losses and damages which may or might be suffered or incurred by Assignee under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. If Assignee incurs any such liability, loss or damage under the Leases or under or by reason of this Assignment or in defense of any such claim or demand, the amount thereof, including reasonable costs, expenses and Lender's Attorneys' Fees, shall be deemed additional Indebtedness secured hereby and secured by the Mortgage and shall be immediately due and payable. This Assignment shall not operate to (i) place responsibility upon Assignee for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of the Leases; or (ii) make Assignee responsible or liable for any waste committed on the Property by the tenants or any other person or entity or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair, or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

7. Upon payment in full of the Obligations secured hereby and the full release of the Mortgage, this Assignment shall become and be void and of no effect. The affidavit, certificate, letter or statement of any officer, agent or attorney of Assignee showing any part of the Obligations to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon.

8. Assignee may take or release other security for the payment of the Obligations; may release any party primarily or secondarily liable therefor; and may apply any other security held by it to the satisfaction of the Obligations without prejudice to any of its rights under this Assignment.

9. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Agreement or any of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms

of the Loan Agreement and the other Loan Documents. The right of the Assignee to collect the Obligations and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

10. In case of any conflict between the terms of this Assignment and the Mortgage relative to the assignment of the Leases and Rents, the terms of this Assignment shall govern; otherwise, the terms of the Mortgage shall prevail.

11. Notwithstanding any amendment or modification of the terms of the Loan Agreement or the other Loan Documents, including increase or decrease in the principal amount thereof or in the rate of interest payable thereunder or any extension of time for payment thereunder or any release of part or parts of the Property subject to the Mortgage, the Leases, Rents and other rights assigned hereby shall continue as additional security in accordance with the terms of this Assignment.

12. This Assignment shall be governed by and construed in accordance with the laws of the State of Alabama, without reference to its conflicts of law principles.

13. This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee, and its successors and assigns and any subsequent holder of the Note and Mortgage and shall be binding upon each Assignor, its successors and assigns and any subsequent owner of the Property.

14. TO INDUCE ASSIGNEE TO ACCEPT THE ASSIGNMENT, ASSIGNORS IRREVOCABLY AGREE THAT, SUBJECT TO ASSIGNEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE ASSIGNMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN SHELBY COUNTY, ALABAMA. ASSIGNORS HEREBY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN SHELBY COUNTY, ALABAMA, WAIVE PERSONAL SERVICE OF PROCESS AND AGREE THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO ASSIGNORS AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

15. ASSIGNORS AND ASSIGNEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. ASSIGNORS AGREE THAT IT WILL NOT ASSERT ANY CLAIM AGAINST ASSIGNEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

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SIGNATURE PAGE FOR ASSIGNMENT
OF LEASES AND RENTS

IN WITNESS WHEREOF, this Assignment has been fully executed by Assignors as of the day and year first above written.

“Assignors”

THIRD CREEK, L.L.C., a Missouri limited liability company

By: _____

Printed Name: Matthias D. Renner

Title: Manager

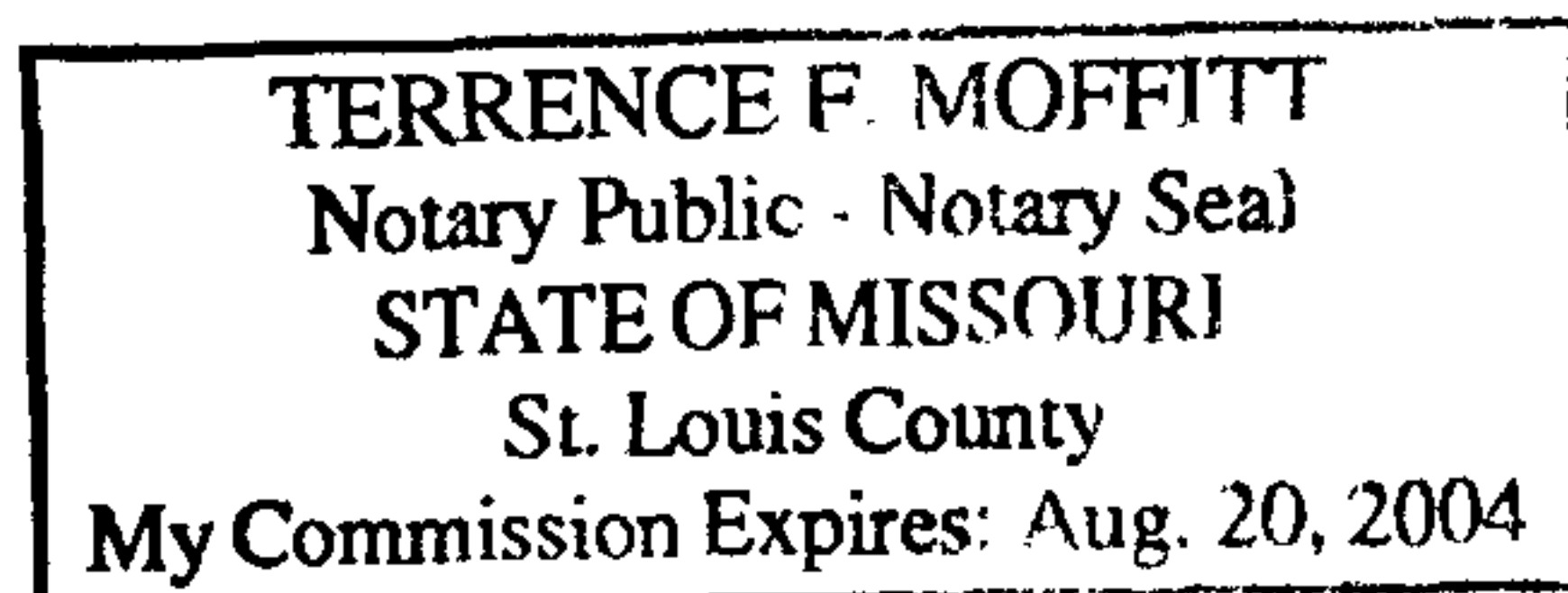
STATE OF MISSOURI)

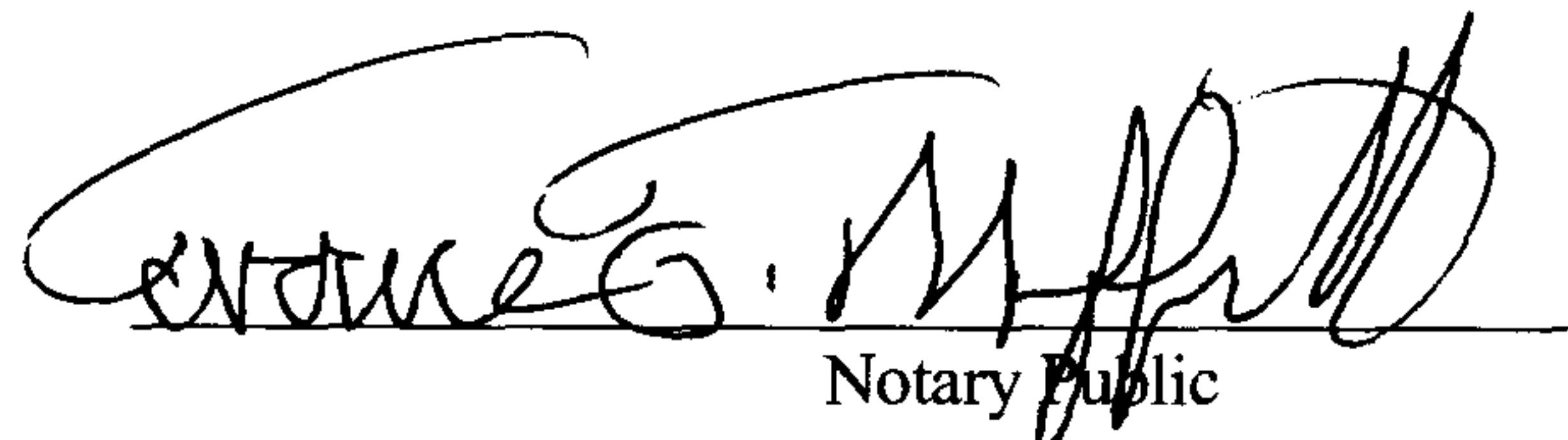
COUNTY OF ST. LOUIS)

I, the undersigned, a Notary Public, in and for said county in said state, hereby certify that MATTHIAS D. RENNER, whose name as Manager of THIRD CREEK, L.L.C., a Missouri limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said limited liability company.

Given under my hand and official seal this 21st day of June, 2004.

[NOTARIAL SEAL]




Notary Public

My Commission Expires: _____

SIGNATURES CONTINUED ON FOLLOWING PAGE

SIGNATURE PAGE FOR
ASSIGNMENT OF LEASES

MATTHIAS D. RENNER FAMILY, L.L.C., a Missouri limited liability company

By: _____

Printed Name: Matthias D. Renner

Title: Manager

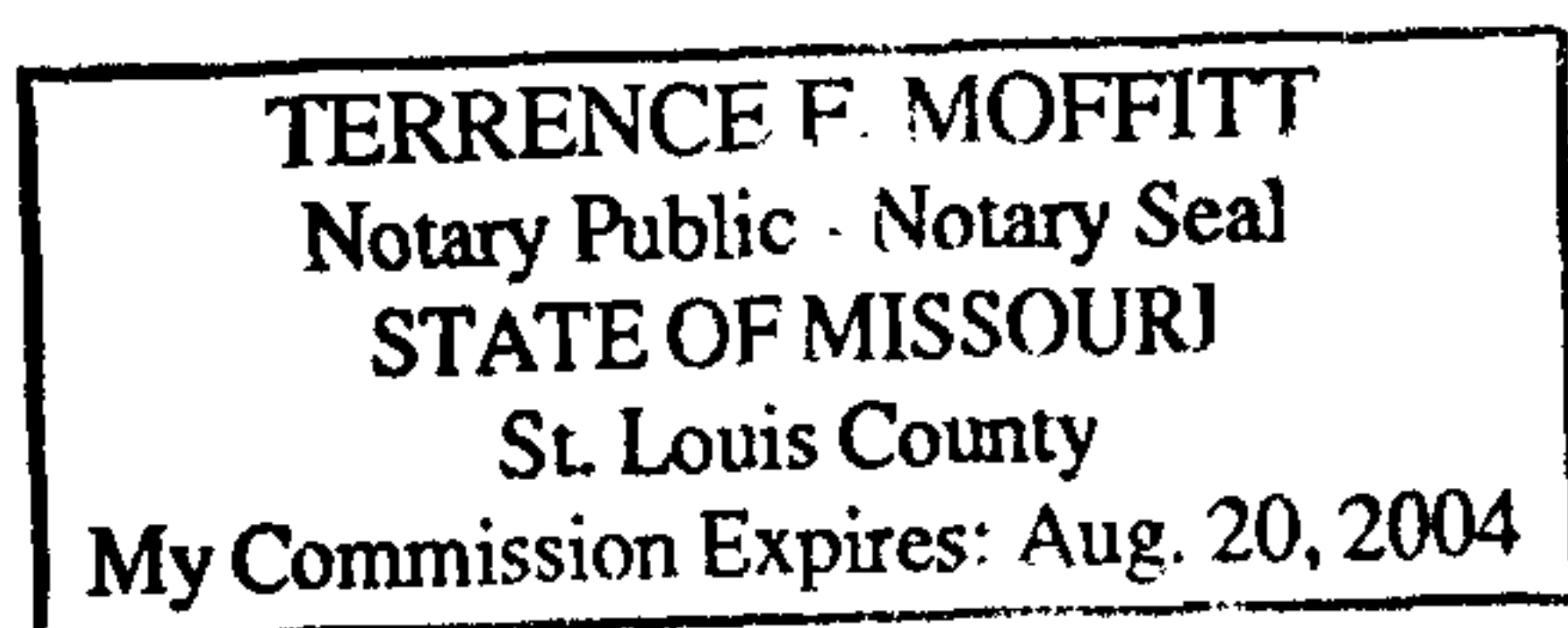
STATE OF MISSOURI)

COUNTY OF ST. LOUIS)

I, the undersigned, a Notary Public, in and for said county in said state, hereby certify that MATTHIAS D. RENNER, whose name as Manger of MATTHIAS D. RENNER FAMILY, L.L.C., a Missouri limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said limited liability company.

Given under my hand and official seal this 21st day of June, 2004.

[NOTARIAL SEAL]



Notary Public

My Commission Expires: _____

SIGNATURES CONTINUED ON FOLLOWING PAGE

SIGNATURE PAGE FOR
ASSIGNMENT OF LEASES

KENNETH J. WEBER FAMILY, L.L.C., a Missouri limited liability company

By: 

Printed Name: Matthias D. Renner

Title: Manager

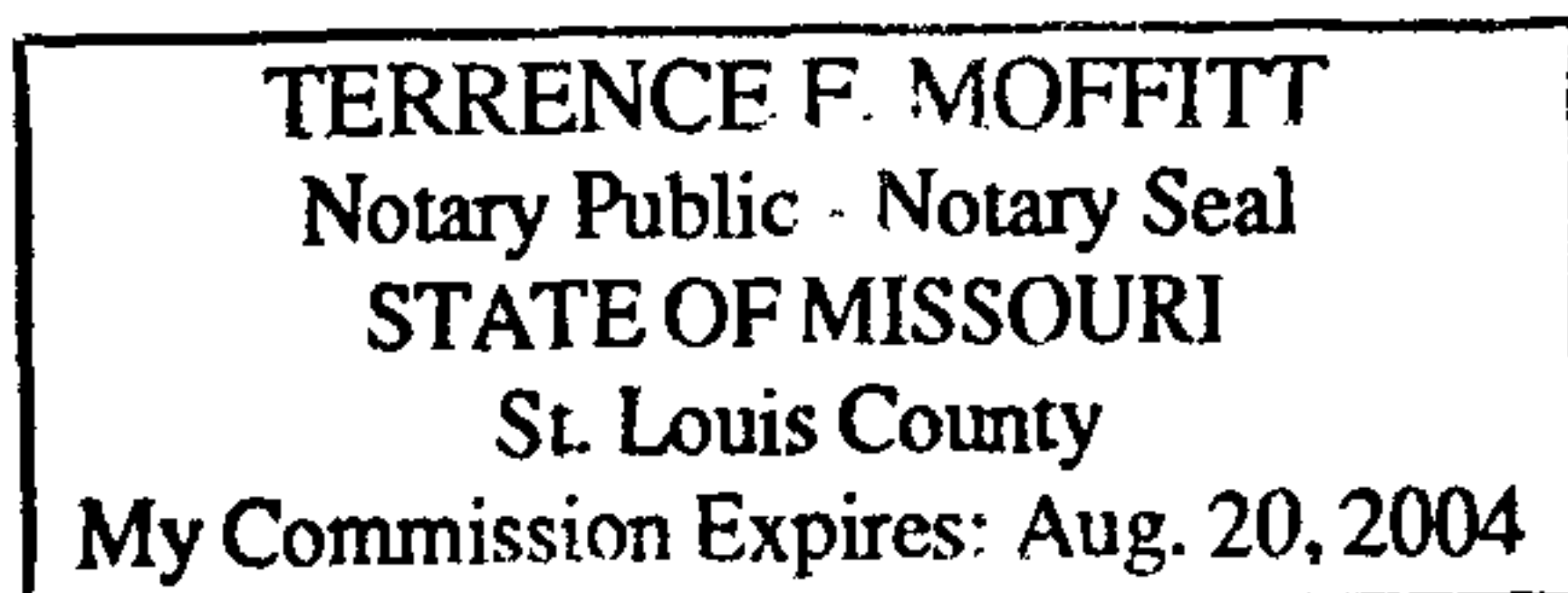
STATE OF MISSOURI)

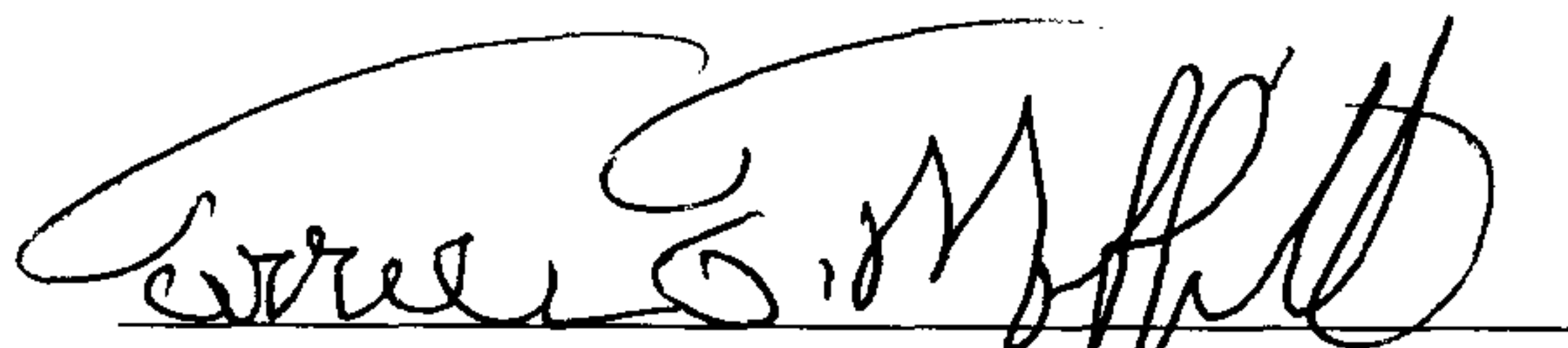
COUNTY OF ST. LOUIS)

I, the undersigned, a Notary Public, in and for said county in said state, hereby certify that MATTHIAS D. RENNER, whose name as Manager of KENNETH J. WEBER FAMILY, L.L.C., a Missouri limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said limited liability company.

Given under my hand and official seal this 21st day of June, 2004.

[NOTARIAL SEAL]




Notary Public

My Commission Expires: _____

THIS INSTRUMENT PREPARED BY:

Gayle Smith-Jones
Thompson Coburn LLP
One US Bank Plaza
Suite 3300
St. Louis, Missouri 63101

EXHIBIT A

Description of Property

All the certain real property located in the County of Shelby, State of Alabama, described as follows:

Lots 1, 2 and 3, according to the Survey of Cypress Equities Addition to Hoover, as recorded in Map Book 31 page 79, in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.