

STATE OF ALABAMA)

SHELBY COUNTY)

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

THIS AGREEMENT is dated as of October 1, 1996 and entered into by and between **ELI'S, INC.**, an Alabama corporation ("Assignor"), and **ELI'S HAMBURGER HEAVEN, INC.**, an Alabama corporation ("Assignee"), for the purpose of assigning from Assignor to Assignee that certain Ground Lease dated as of January 1, 1996, between James F. Donovan and Dorothy H. Donovan, as Landlord, and Eli's, Inc., as Tenant, (the "Lease"), a Memorandum of the Lease being recorded as instrument 1996-32293 in the Office of the Judge of Probate of Shelby County, Alabama.

Inst # 1997-05012

RECITALS:

- A. Under the Lease, Assignor, as Tenant, leased from James F. Donovan and Dorothy H. Donovan, as Landlord, the leased premises described in **Exhibit A** attached hereto (the "Leased Premises") and was granted a right of first refusal to purchase the Leased Premises.
- B. Assignor desires to assign unto Assignee all its right, title and interest in and to the Lease, including, without limitation, the leasehold estate and the right of first refusal granted thereunder, and Assignee desires to accept such assignment and to assume all obligations under the Lease from and after the effective date of the assignment.
- C. Section 10.1 of the Lease provides that the Tenant may, without the consent of the Landlord, sublease, assign or encumber the Lease and Tenant's rights thereunder, but in such event, Tenant shall remain liable for the payment of rent and the performance of all terms and conditions thereunder.

NOW, THEREFORE, in consideration of the premises, mutual covenants and agreements hereinafter undertaken, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **EFFECTIVE DATE.** This assignment shall be effective as of October 1, 1996 (hereinafter the "Effective Date").
2. **ASSIGNMENT OF LEASE.** Assignor does hereby transfer, sell, convey and assign unto Assignee all of Assignor's right, title and interest in and to the Lease,

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including, without limitation, the leasehold estate and the right of first refusal granted thereunder, and all other provisions thereof (the "Assignment").

3. **ACCEPTANCE, ASSUMPTION AND INDEMNIFICATION.** Assignee hereby accepts the Assignment and specifically assumes and promises to pay all rent and to faithfully perform all other covenants, stipulations, agreements and obligations under the Lease accruing on and after the Effective Date. Assignee shall indemnify and save Assignor harmless from any and all claims, demands, actions, causes of actions, suits, proceedings, damages, liabilities and costs and expenses of every nature whatsoever which relate to the Lease or the premises demised thereunder arising on or after the Effective Date.

4. **NO MODIFICATION OF LEASE.** Assignee shall not change, modify or amend the Lease in any way, including, without limitation, the rental to be paid thereunder, without the express prior written consent of Assignor.

5. **NO FURTHER ASSIGNMENT.** Assignee shall not assign any portion of its rights, duties, obligations or liabilities hereunder or under the Lease without the express prior written consent of Assignor.

6. **REPRESENTATIONS OF ASSIGNOR.** Assignor hereby represents and warrants unto Assignee that:

- (a) the Lease is in full force and effect;
- (b) Assignor is the Tenant under the Lease and has full authority to enter into this Agreement; and
- (c) Assignor shall observe all covenants and shall perform all obligations to be observed and performed on the part of the Tenant under the Lease arising prior to the Effective Date of this Agreement.

7. **ACKNOWLEDGEMENT BY ASSIGNEE.** Assignee hereby acknowledges that it has examined the Leased Premises and that Assignor has made no warranties, covenants or representations with respect to the condition of the Leased Premises.

8. **ASSIGNEE'S EXPENSES.** All taxes and other governmental charges and fees, including, without limitation, any and all transfer taxes, stamp taxes, sales taxes and recording fees, relating to the transaction evidenced by this Agreement shall be paid by Assignee.

9. **SURRENDER OF PREMISES.** Assignee acknowledges that Assignor has surrendered the Leased Premises to Assignee as of the Effective Date.

10. MISCELLANEOUS.

(a) Full Force and Effect. All the terms and conditions of the Lease shall remain and continue in full force and effect. In case of any inconsistency between the Lease and this Agreement, this Agreement shall govern and control.

(b) Binding Effect. This agreement shall be binding upon the successors and assigns of the parties. The parties shall execute and deliver such further and additional instruments, agreements and other documents as may be necessary to evidence or carry out the provisions of this Agreement.

(c) Entire Agreement. This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

(d) Notices. All notices or other documents under this Agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

(e) Non-Waiver. No delay or failure by either party to exercise any right under this Agreement, and not partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

(f) Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

(g) Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first written above.

ASSIGNOR:

ELI'S, INC.,
an Alabama corporation

By: Eli T. Stevens
Eli T. Stevens, President

ASSIGNEE:

ELI'S HAMBURGER HEAVEN, INC.,
an Alabama corporation

By: Patricia Stevens
Patricia Stevens
Secretary/Treasurer

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STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Eli T. Stevens, whose name as President of **ELI'S, INC.**, an Alabama corporation, 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 the foregoing instrument, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the 11th day of February, 1997.

Amel Leppert
Notary Public
My Commission Expires: 11-19-99

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Patricia Stevens, whose name as Secretary/Treasurer of **ELI'S HAMBURGER HEAVEN, INC.**, an Alabama corporation, 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 the foregoing instrument, he, in his capacity as such Officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the 08 day of February, 1997.

Rebecca C. Spickard
Notary Public
My Commission Expires: 8/19/99

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