

STATE OF ALABAMA)
SHELBY COUNTY)

ASSIGNMENT AND ASSUMPTION OF EASEMENTS

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 Easement Agreement executed April 19, 1996, among James F. Donovan and Dorothy H. Donovan, as Grantor, and Eli's, Inc., as Grantee, recorded as instrument 1996-32293 in the Office of the Judge of Probate of Shelby County, Alabama and that certain Easement Agreement executed April 3, 1996, between Peak, Inc. d/b/a Oil Express, as Grantor, and Eli's, Inc., as Grantee, recorded as instrument 1996-32294 in the Office of the Judge of Probate of Shelby County, Alabama (collectively, the "Easements").

RECITALS:

A. Pursuant to instrument recorded at 1997-05012, Assignor assigned to Assignee all of its right, title and interest in and to 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, a Memorandum of which is recorded as instrument 1996-32295 in the Office of the Judge of Probate of Shelby County, Alabama (the "Lease").

B. The Easements are appurtenant to the premises leased under the Lease and Assignor and Assignee intend that all benefits and obligations run with title in and to the leasehold interest to Assignee by operation of law, and Assignor and Assignee desire to record this Assignment to evidence such intent.

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 EASEMENTS.** Assignor does hereby transfer, sell, convey and assign unto Assignee all of Assignor's right, title and interest in and to the Easements, including, without limitation, all benefits and obligations contained therein, and all other provisions thereof (the "Assignment").

3. **ACCEPTANCE, ASSUMPTION AND INDEMNIFICATION.** Assignee hereby accepts the Assignment and specifically assumes and promises to faithfully perform all covenants, stipulations, agreements and obligations under the Easements accruing on and after the Effective Date. Assignee shall indemnify and save Assignor harmless

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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 Easements or the premises described therein arising on or after the Effective Date.

4. **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.

5. **MISCELLANEOUS.**

(a) **Full Force and Effect.** All the terms and conditions of the Easements shall remain and continue in full force and effect.

(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) **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.

(e) **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 Pres.
Eli T. Stevens, President

ASSIGNEE:

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

By: Patricia Stevens
Patricia Stevens
Secretary/Treasurer

STATE OF ALABAMA)
SHELBY COUNTY)

the State of Alabama at large

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 2nd day of May, 1997.

Arnold Leggett
Notary Public
My Commission Expires: 11-19-99

STATE OF ALABAMA)
 COUNTY)

the State of Alabama at large

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 21st day of May, 1997.



Notary Public
My Commission Expires: 11-19-99

Inst # 1997-17768

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