


29.00

RETURN TO AFTER RECORDING:

LandAmerica National Commercial Services
450 S. Orange Avenue
Suite 170
Orlando, FL 32801
Attn: Keren Baki


20021122000585560 Pg 1/7 29.00
Shelby Cnty Judge of Probate, AL
11/22/2002 13:56:00 FILED/CERTIFIED

PREPARED BY:

Dale A. Burket, Esquire
Lowndes, Drosdick, Doster,
Kantor & Reed, P.A.
215 North Eola Drive
P. O. Box 2809
Orlando, Florida 32802

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE ("Assignment") is effective as of November 14, 2002, between **CNL FUNDING 2001-A, LP**, a Delaware limited partnership ("Assignor"), and **ALAN J. NAYER AND SOO-HI K. NAYER, TRUSTEES OF THE ALAN J. NAYER AND SOO-HI K. NAYER REVOCABLE TRUST DATED SEPTEMBER 27, 1994** ("Assignee"), under the following circumstances:

A. Assignor is the Landlord with respect to that certain Lease Agreement between Assignor and The Krystal Company, a Tennessee corporation, dated September 15, 2000 and terminating September 30, 2018 (the "Lease"), as evidenced by Memorandum of Lease dated September 15, 2000, filed of record September 27, 2000, as Instrument No. 2000-33978, whereby Assignor leased to The Krystal Company, a Tennessee corporation, that certain property known as Krystal, Site #BIR-13, 240 Cahaba Valley Road, Pelham, Shelby County, Alabama, more particularly described on the attached Exhibit "A"; and

B. Assignor desires to assign to Assignee all of Assignor's right, title and interest in, to and under the Lease, and Assignee desires to assume all of Assignor's obligations under the Lease arising after the date of this Assignment.

NOW, THEREFORE, for the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor assigns to Assignee all right, title and interest of the Landlord in, to and under the Lease, and Assignee assumes and agrees to perform all of the obligations of Assignor under the Lease first arising from and after the date of this Agreement.

2. Assignor represents and warrants that Assignor holds all such right, title and interest of Landlord under the Lease, has the right to convey it to Assignee, that such right, title and interest are unencumbered by Assignor, that the Lease is in full force and effect, and that, to Assignor's actual knowledge, neither the Landlord nor the Tenant is in material default of any of its obligations under the Lease, nor has any event occurred which, with notice, the passage of time, or both, could constitute a material default under the Lease.

3. Assignor hereby agrees to indemnify Assignee against, and hold Assignee harmless from, any and all cost, liability, loss, damage or expense, including, without limitation, reasonable attorneys' fees, first arising or accruing prior to the date hereof in connection with Assignor's performance or observance of, or the failure to perform or observe, any agreement or obligation of Assignor arising under the Lease. Assignee hereby agrees to indemnify Assignor against, and hold Assignor harmless from, any and all cost, liability, loss, damage or expense, including, without limitation, reasonable attorneys' fees, arising or accruing as of or subsequent to the date hereof in connection with Assignee's performance or observation of, or failure to perform or observe any agreement or obligation arising under the Lease hereby assumed by Assignee.

[Signatures on Next Page]

SIGNED as of the date first written above.

“ASSIGNOR”

Signed, Sealed and Delivered
in the presence of:

CNL FUNDING 2001-A, LP, a Delaware
limited partnership

By: **CNL FUNDING 2001-A, INC.**, a
Delaware corporation, as General Partner

Wilder Otero
Name: Wilder Otero


By: Steven D. Shackelford
Name: Steven D. Shackelford
Title: Chief Financial Officer

Peter J. Behr
Name: Peter J. Behr

STATE OF FLORIDA
COUNTY OF ORANGE

I, the undersigned, a notary public in and for said county in said state, hereby certify that **Steven D. Shackelford**, whose name as **Chief Financial Officer** of **CNL FUNDING 2001-A, INC.**, a Delaware corporation, as General Partner of **CNL FUNDING 2001-A, LP**, a Delaware limited partnership, 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 said instrument, he/she, as such CFO and with full authority, executed the same voluntarily for and as the act of said corporation on behalf of the limited partnership.

Given under my hand and official seal this 14th day of November 2002.

 Susan M Hightower
My Commission DD011809
Expires May 08, 2005

Susan M. Hightower
Notary Public, State of Florida

Printed Name: Susan M. Hightower
Notary Commission No. _____
My Commission Expires: _____

"ASSIGNEE"

Signed, Sealed and Delivered
In the presence of:

**THE ALAN J. NAYER AND SOO-HI K.
NAYER REVOCABLE TRUST DATED
SEPTEMBER 27, 1994**

Grace Blozier
Name: GRACE BLOZIER

By: Alan J. Nayer, Trustee
Name: **ALAN J. NAYER, TRUSTEE**

Gino Bartalotti Jr.
Name: GINO BARTALOTTI, JR.

By: Soohi K. Nayer, Trustee
Name: **SOO-HI K. NAYER, TRUSTEE**

STATE OF California
COUNTY OF MARIN

I, the undersigned, a notary public in and for said county in said state, hereby certify that **ALAN J. NAYER AND SOO-HI K. NAYER, TRUSTEES OF THE ALAN J. NAYER AND SOO-HI K. NAYER REVOCABLE TRUST DATED SEPTEMBER 27, 1994** are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such trustees and with full authority, executed the same voluntarily for and as the act of said trust.

Given under my hand and official seal this 7 day of November, 2002.

[Signature]
Notary Public

[NOTARIAL SEAL]

My Commission Expires: Feb 16, 2006

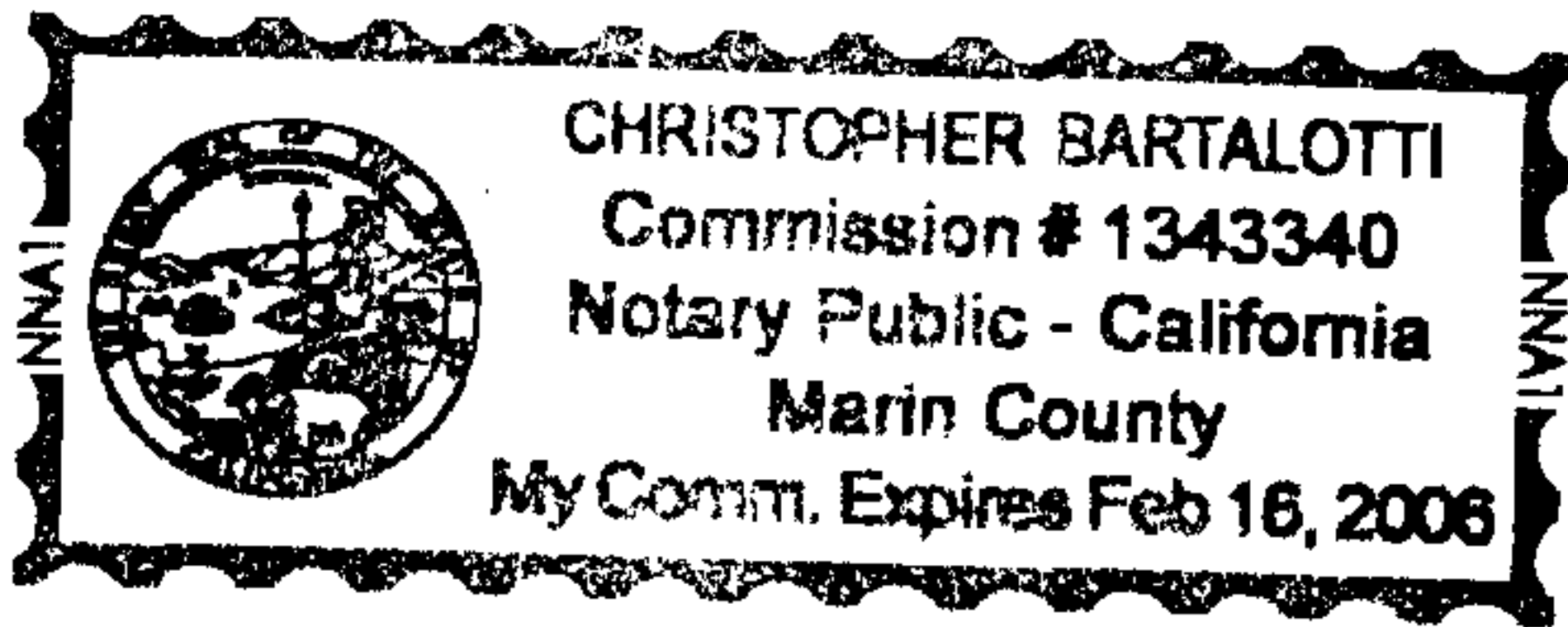


EXHIBIT "A"
Legal Description

A parcel of land located in the Southwest quarter of Section 31, Township 19 South, Range 2 West, City of Pelham, Shelby County, Alabama; being more particularly described as follows:

Commence at the Southeast corner of the Southwest quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama; thence run Northerly along the quarter line 506.79 feet; thence left 121 degrees, 25 minutes, 36 seconds Southwesterly 517.90 feet; thence right 106 degrees, 46 minutes, 08 seconds Northwesterly 188.10 feet; thence left 82 degrees, 42 minutes, 48 seconds Westerly 27.00 feet; thence left 90 degrees, 00 minutes, 00 seconds Southerly 79.46 feet to the Point of Beginning; thence right 86 degrees, 49 minutes, 01 seconds Westerly 129.18 feet; thence right 89 degrees, 48 minutes, 11 seconds Northerly 228.42 feet to the Southerly new right of way line of Alabama Highway No. 119, being seventy feet South of the roadway centerline; thence right 88 degrees, 35 minutes, 19 seconds Northeasterly to the chord of a curve concave Northerly with a radius of 1979.89 feet, a central angle of 3 degrees, 41 minutes, 43 seconds and a chord length of 127.68 feet; thence run Easterly, then Northeasterly along the arc of said curve 127.69 feet; thence turn an interior angle left 92 degrees, 27 minutes, 44 seconds from the chord of said curve Southerly 73.39 feet; thence left 90 degrees, 00 minutes, 00 seconds Easterly 2.98 feet; thence right 97 degrees, 15 minutes, 13 seconds Southerly 83.61 feet; thence left 90 degrees, 00 minutes, 00 seconds Easterly 3.00 feet; thence right 90 degrees, 00 minutes, 00 seconds Southerly 75.46 feet to the point of beginning.

Together with the following non-exclusive, perpetual easements which are intended to run with the land.

I) Easements for the benefit of the above described parcel for the purpose of vehicular and pedestrian ingress and egress as created that certain deed recorded under Instrument Number 2000-05681 over and across the following described parcel.

Commence at the Southeast corner of the Southwest quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama; thence run Northerly along the quarter line 506.79 feet; thence left 121 degrees, 25 minutes, 36 seconds Southwesterly 517.90 feet; thence right 106 degrees, 46 minutes, 08 seconds Northwesterly 188.10 feet to the Point of Beginning; thence left 82 degrees, 42 minutes, 48 seconds Westerly 27.00 feet; thence left 90 degrees, 00 minutes, 00 seconds Southerly 79.46 feet; thence left 93 degrees, 51 minutes, 31 seconds Easterly 25.56 feet; thence left 85 degrees, 02 minutes, 12 seconds Northerly 77.75 feet to the point of beginning.

Together with easements for the purpose of joint driveway use as created under Instrument Number 1994-17716 and under Instrument Number 1999-49463.

II) Together with those certain easement rights over and across the property described below as created by deed into Cahaba Valley Station, L.L.C. as recorded under Instrument Number 1999-07606.

A parcel of land situated in the Southwest one-quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the Southwest one-quarter of said Section 31; thence run in a Northerly direction along the East boundary of the said Southwest one-quarter for a distance of 506.79 feet; thence turn a deflection angle to the left 121 degrees, 25 minutes, 36 seconds and run in a

Southwesterly direction for a distance of 1325.96 feet; thence turn a deflection angle to the right 129 degrees, 40 minutes, 07 seconds and run in a Northeasterly direction for a distance of 683.30 feet to point on a curve to the left and the POINT OF BEGINNING, which is the centerline of the 28.00 foot easement herein described; thence turn an interior angle to the left 100 degrees, 50 minutes, 51 seconds to the chord of said curve, said curve having a radius of 1993.89 feet, a central angle of 05 degrees, 28 minutes, 31 seconds and a chord distance of 190.47 feet; thence turn in an Easterly direction parallel with the South right of way line of Alabama Highway No. 119 for a distance of 190.54 feet to the end of the easement herein described.

ALSO:

Commence at the Southeast corner of the Southwest one-quarter of said Section 31; thence run in a Northerly direction along the East boundary of said Southwest one-quarter for a distance of 506.79 feet; thence turn a deflection angle to the left 121 degrees, 25 minutes, 36 seconds and run in a Southwesterly direction for a distance of 1325.96 feet; thence turn a deflection angle to the right 129 degrees, 40 minutes, 07 seconds and run in a Northeasterly direction for a distance of 683.30 feet to a point on a curve to the left, thence turn an interior angle to the left of 100 degrees, 50 minutes, 51 seconds to the chord of said curve, said curve having a radius of 1993.89 feet, a central angle of 05 degrees, 28 minutes, 31 seconds and a chord distance of 190.47 feet; thence run in an Easterly direction parallel with the South right of way line of Alabama Highway No. 119 for a distance of 190.54 feet to a point on a curve to the left and the POINT OF BEGINNING, which is the centerline of the 28.00 foot easement herein described; thence turn an interior angle to the right 172 degrees, 37 minutes, 09 seconds from chord to chord of said curve, said curve having a radius of 1993.89 feet, a central angle of 09 degrees, 17 minutes, 10 seconds; a chord distance of 322.80 feet; thence run along the arc of said curve parallel to said right of way for a distance of 323.16 feet to the end of the easement herein described.

III) An easement for the benefit of the above described parcel for the purpose of storm water drainage as created by deed recorded under Instrument Number 2000-05681 over, beneath and across the following described parcel.

Commence at the Southeast corner of the Southwest quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama; thence run Northerly along the quarter line 506.79 feet; thence left 121 degrees, 25 minutes, 36 seconds Southwesterly 517.90 feet; thence right 106 degrees, 46 minutes, 08 seconds Northwesterly 188.10 feet; thence left 82 degrees, 42 minutes, 48 seconds Westerly 27.00 feet; thence left 90 degrees, 00 minutes, 00 seconds Southerly 79.46 feet; thence right 86 degrees, 49 minutes, 01 seconds Westerly 129.18 feet; thence right 89 degrees, 48 minutes, 11 seconds Northerly 5.00 feet to the point of beginning of the centerline of a ten foot wide storm sewer easement; thence left 90 degrees, 17 minutes, 51 seconds Westerly 92.53 feet; thence left 15 degrees, 39 minutes, 35 seconds Southwesterly 62.63 feet to the Point of Termination.

IV) Also, together with an exclusive easement for parking and curbing over the following described parcel as created by deed recorded under Instrument Number 2000-05681:

Commence at the Southeast corner of the Southwest quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama; thence run Northerly along the quarter line 506.79 feet; thence left 121 degrees, 25 minutes, 36 seconds Southwesterly 517.90 feet; thence right 106 degrees, 46 minutes, 08 seconds Northwesterly 188.10 feet; thence left 82 degrees, 42 minutes, 48 seconds Westerly 27.00 feet to the Point of Beginning; thence left 90 degrees, 00 minutes, 00 seconds Southerly 4.00 feet; thence right 90 degrees, 00 minutes, 00 seconds Westerly 3.00 feet; thence right 90 degrees, 00 minutes, 00 seconds Northerly 83.61 feet; thence left 97 degrees, 15 minutes, 13 seconds Southwesterly 2.98 feet;

thence right 90 degrees, 00 minutes, 00 seconds Northwesterly 48 feet; thence right 90 degrees, 00 minutes, 00 seconds Northeasterly 12.11 feet; thence right 97 degrees, 15 minutes, 13 seconds Southerly 128.39 feet to the Point of Beginning.

V) An easement for the benefit of the above described parcel for sanitary sewer as established pursuant to that certain dedication of perpetual easement for public sewer as recorded under Instrument Number 2000-05680, over and across the following described parcel.

Commence at the Southeast corner of the Southwest quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama; thence run Northerly along the quarter line 506.79 feet; thence left 121 degrees, 25 minutes, 36 seconds Southwesterly 517.90 feet; thence right 106 degrees, 46 minutes, 08 seconds Northwesterly 188.10 feet; thence left 82 degrees, 42 minutes, 48 seconds Westerly 27.00 feet; thence left 90 degrees, 00 minutes, 00 seconds Southerly 79.46 feet; thence right 86 degrees, 49 minutes, 01 seconds Westerly 119.18 feet to the Point of Beginning of the centerline of a twenty foot wide sanitary sewer easement; thence continue Westerly along the same course 10 feet to a Point "A"; thence left 00 degrees, 29 minutes, 40 seconds Westerly 154.35 feet to a Point "B"; thence right 85 degrees, 55 minutes, 12 seconds Northwesterly 205.00 feet; thence right 71 degrees, 00 minutes, 00 seconds Northeasterly 73 feet, more or less, to the Southerly right of way line of Alabama Highway No. 119 to the termination of said easement. Also commencing at Point "A" and proceeding to Point "B" as the Point of Beginning; thence left 94 degrees, 04 minutes, 54 seconds Southerly 65.01 feet to a Point "C" at the termination of said easement. It is the intention herein to extend such easement side line to adjoining easement or property lines to form contiguous and continuous easement rights.

Also commencing at Point "B" and proceeding to Point "C"; thence right 90 degrees, 00 minutes, 00 seconds Westerly ten feet to the Point of Beginning; thence continue Westerly along the same course 135.00 feet; thence right 90 degrees, 00 minutes, 00 seconds Northerly 35.00 feet; thence right 90 degrees, 00 minutes, 00 seconds Easterly 135.00 feet; thence right 90 degrees, 00 minutes, 00 seconds Southerly 35.00 feet to the Point of Beginning.