

STATE OF ALABAMA)

JEFFERSON COUNTY)

ASSIGNMENT OF RENTS AND LEASES

Know all men by these presents, that whereas, Ed Cates and Paul Ash, (hereinafter called the "Undersigned"), have executed a Mortgage and Security Agreement (hereinafter called the "Mortgage") of even date herewith to MATTHEW T. LEMAK, (hereinafter referred to as the "Mortgagee") conveying the real estate legally described in Exhibit "A" attached hereto and incorporated herein by reference and being hereinafter referred to as the "Premises", and given to secure, among other indebtedness (hereinafter referred to as the "Other Indebtedness"), a note or notes (hereinafter referred to as the "Note") of the undersigned in the principal sum of ONE MILLION THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,350,000.00) and MATTHEW T. LEMAK is the legal owner and holder of the Note and said Mortgage; and

WHEREAS, the Undersigned is desirous of further securing (i) the payment of principal, interest and all other sums now due or hereafter to become due under the Note, including any extensions or renewals thereof, and under the Mortgage, this Assignment and any other document evidencing, securing or relating to the Note or to Other Indebtedness (as defined in the Mortgage) of the Undersigned to the Mortgagee, and (ii) the performance of each and every obligation, covenant and agreement of the undersigned contained in this Assignment, the Note, the Mortgage and in any other document evidencing, securing or relating to the indebtedness evidenced by the Note or to Other Indebtedness of the Undersigned to Mortgagee.

NOW, THEREFORE, the Undersigned, for and in consideration of these premises and the mutual agreements herein contained and as further and additional security as aforesaid to the Mortgagee, and in consideration of the sum of ONE DOLLAR (\$1.00) to the Undersigned in hand paid, the receipt whereof is hereby acknowledged, does hereby sell, assign and transfer unto the Mortgagee all leases on the Premises and of all or any other part of the Premises, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises above described or any part hereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Mortgagee under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the such leases and agreements, and all the avails thereof, to the Mortgagee, and the Undersigned does hereby appoint irrevocably the Mortgagee, its true and lawful attorney, in its name and stead (with or without taking possession of the Premises as hereinafter provided), to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms, in its discretion as it may determine, and to

collect all of such avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Mortgagee would have upon taking possession of the Premises pursuant to the provisions hereinafter set forth.

1. Payment of Rent. The Undersigned represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the Premises has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Undersigned. Undersigned waives any right of setoff against any person in possession of any portion of the Premises. Undersigned agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Premises.

2. Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Mortgagee a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by the Mortgagee pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by the Undersigned.

3. Further Assurances. Although this instrument constitutes an assignment and transfer to Mortgagee of all existing and future leases covering all or parts of the Premises, nevertheless upon request of the Mortgagee to do so, the Undersigned further agrees to assign and transfer to the Mortgagee all future leases upon all or any part of the Premises and to execute and deliver, immediately upon the request of the Mortgagee, all such further assurances and assignment in the Premises as the Mortgagee shall from time to time require.

4. Conditional Assignment. Although it is the intention of the parties that this Assignment of Rents shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Mortgagee shall not exercise any of the rights and powers conferred upon it herein until and unless a default shall occur in the payment of interest or principal due under the Note or Other Indebtedness secured by the Mortgage, or in the performance or observance of any of the conditions or agreements of any instrument now or at any time securing or evidencing the Note or Other Indebtedness of the Undersigned to Mortgagee, which is not corrected within any applicable cure period, if any, and nothing herein contained shall be deemed to effect or impair any rights which the Mortgagee may

have under the Note and Mortgage or any other instrument evidencing, securing or relating to the indebtedness evidenced by the Note, or any Other Indebtedness of the Undersigned to Mortgagee.

5. Foreclosure. In any case in which under the provisions of the Mortgage, the Mortgagee has a right to institute foreclosure proceedings, whether before or after the entire principal sum secured thereby is declared to be immediately due, or whether before or after institution of legal proceedings or any other action to foreclose the lien thereof or before or after sale thereunder, forthwith, upon demand of the Mortgagee and if and to the extent permitted by law, the Undersigned agrees to surrender to the Mortgagee, and the Mortgagee shall be entitled to take actual possession of, the Premises or any part thereof personally, or by its agents or attorneys, and Mortgagee in its discretion may, if and to the extent permitted by law as aforesaid, enter upon and take and maintain possession of all or any part of the Premises, together with all the documents, books, records, papers and accounts of the Undersigned or then owner of the Premises relating thereto, and may exclude the Undersigned, its agents or servants, wholly therefrom and may as attorney in fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, of any, thereof either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of security of the avails, rents, issues, and profits of the Premises, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to the Undersigned, except as otherwise required by applicable law, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Undersigned to cancel the same, to elect, to disaffirm any lease or sublease made subsequent to the Mortgage or subordinated to the lien thereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises that may seem judicious in its discretion, to insure and reinsure the same for all risks incidental to Mortgagee's possession, operation and management thereof and to receive all such avails, rents, issues and profits.

6. Limitation of Liability. The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases or rental agreements relating to the Premises, and the Undersigned shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, loss or

damage which it may or might incur under any leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in such leases. Should the Mortgagee incur any such liability, loss or damage, under such leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Mortgagee in connection with any one or more of such leases, the Undersigned agrees to reimburse the Mortgagee for the amount thereof, including costs, expenses and a reasonable attorneys' fee immediately upon demand, and until the same are fully reimbursed by the Undersigned, all such costs, expenses and attorney's fee shall be secured by this Assignment.

7. Application of Rents, Etc. The Mortgagee in the exercise of the rights and powers conferred upon it by this Assignment shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as the Mortgagee may determine:

(a) To the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agent or agents, if management be delegated to an agent or agents, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) To the payment of taxes and special assessments now due or which may hereafter become due on the Premises;

(c) To the payment of all repairs, decorating, renewals, replacements, alterations, additions, or betterments, and improvements of the Premises, including the cost from time to time of installing, repairing and replacing heating and cooling equipment, and of placing the Premises in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and

(d) To the payment of any indebtedness evidenced or secured by the Note, the Mortgage or any other document evidencing, securing or related to the indebtedness evidenced by the Note, or any Other Indebtedness of the Undersigned to Mortgagee, or any deficiency which may result from any foreclosure sale of the Premises.

8. Collection of Rent. The Undersigned does further specifically authorize and instruct each and every present and

future lessee or tenant of the whole or any part of the Premises to pay all unpaid rental agreed upon in any lease or tenancy to the Mortgagee upon receipt of demand from the Mortgagee to pay the same.

9. **Remedies Cumulative.** It is understood and agreed that the provisions set forth in this Assignment shall be deemed as a special remedy given to the Mortgagee, and shall not be deemed exclusive of any of the remedies granted in the Mortgage, but shall be deemed an additional remedy and shall be cumulative with the remedies therein granted.

10. **Definitions.** Whenever the word "Undersigned" is mentioned herein, it is hereby understood that the same includes both the singular and plural in number and the masculine, feminine or neuter gender, as the context hereof shall require, and shall include and be binding upon heirs, representatives, successors and assigns (including successors by consolidation) of the Undersigned, and any party or parties holding title to the Premises by, through or under the Undersigned. All of the rights, powers, privileges and immunities herein granted and assigned to the Mortgagee shall also inure to its successors and assigns, including all holders, from time to time, of the Note.

11. **Continuation of This Assignment.** It is expressly understood that no judgment or decree which may be entered on any debt secured or intended to be secured by the Mortgage shall operate to abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment and discharge of any and all indebtedness secured by the Mortgage, in whatever form such indebtedness may be and until the indebtedness secured by the Mortgage shall have been paid in full and all bills incurred by virtue of the authority herein contained have been fully paid out of rents, issues and profits of the Premises, or by the Undersigned, or until such time as this instrument may be voluntarily released. This instrument shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after sale, until the issuance of a deed pursuant to such foreclosure, unless the indebtedness secured by the Mortgage is fully satisfied before the expiration of any period of redemption.

12. **Headings.** The headings of the sections, paragraphs and subdivisions of this Assignment are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

IN WITNESS WHEREOF, the Undersigned, has caused this instrument to be executed and delivered in Birmingham, Alabama, this 8th day of April, 2004.


Ed Cates


Paul Ash

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Ed Cates and Paul Ash, whose names 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 the instrument, they, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 8th day of April, 2004


NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires: 11-2-08

This instrument prepared by: Anthony D. Snable
Attorney at Law
1629 11th Avenue South
Birmingham, AL 35205
Telephone: (205) 939-0780

EXHIBIT "A"
LEGAL DESCRIPTION

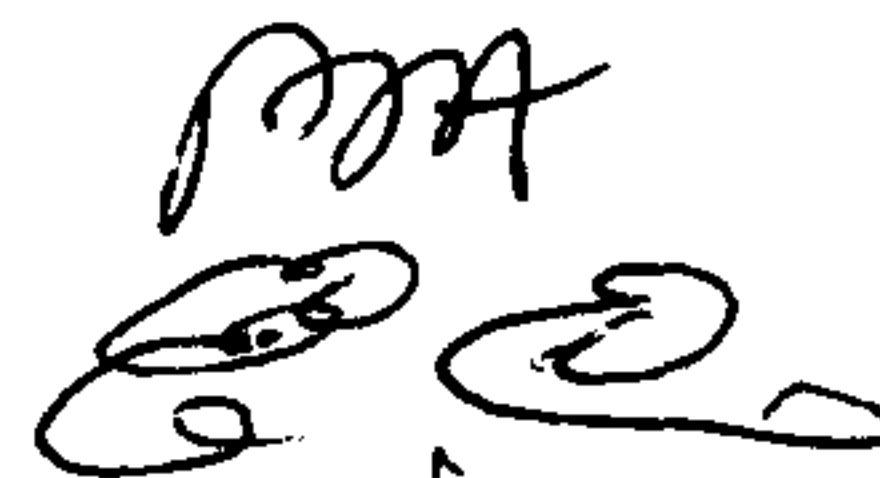
Parcel I

A parcel of land in the South $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 33, Township 21 South, Range 2 West, Shelby County, Alabama, described as follows: Commence at the SE corner of said Section 33; thence run North along the East section line 774.20 feet; thence turn left 90 deg. 50 min. and run West 1297.49 feet to the point of beginning; thence continue last course 337.24 feet; thence right 94 deg. 25 min. and run north 528.44 feet to a point on the South right of way of Alabama Highway No. 70 said point being on a clockwise curve having a delta angle of 13 deg. 47 min. 35 sec. and a radius of 1403.43 feet and a chord of 337.40 feet; thence turn right 85 deg. 41 min. 49 sec. to the chord and run East along the arc of said curve 337.85 feet; thence turn right 94 deg. 19 min. 31 min. from the chord of said curve and run South 527.90 feet to point of beginning; being situated in Shelby County, Alabama.

Parcel II

A part of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 33, Township 21 South, Range 2 West, Shelby County, Alabama, begin at the SE corner of Section 33, Township 21 South, Range 2 West; thence Northerly along the East boundary of said Section for 774.20 feet; thence left 90 deg. 50 min. in a Westerly direction 731.99 feet to the point of beginning, being the southwest corner of the land conveyed to Randy L. Trice in Real Book 49 page 249 in the Probate Office; thence continue Westerly along same course 565.50 feet, to the southeast corner of the land conveyed to William and Patricia Lloyd in Inst. # 2002-01727 in the Probate Office; thence northerly along the East line of said Parcel I for 527.90 feet, more or less, to a point on the South right of way boundary of Alabama Highway 70; thence Easterly and Southeasterly along said South boundary 570.00 feet, to the northwest corner of the land conveyed to said Randy L. Trice; thence Southerly along the West line of said Randy L. Trice Parcel 458.00 feet, more or less, to the point of beginning; being situated in Shelby County, Alabama.

Less and except that portion of caption lands sold to the State of Alabama by instrument recorded in Real Record 090 page 64 in Probate Office.

Handwritten signature and initials, likely of the judge or clerk, in black ink.