

2 0 0 4 1 2 / 5 0 0 8



20040908000501440 Pg 1/15 53.00
Shelby Cnty Judge of Probate, AL
09/08/2004 15:50:00 FILED/CERTIFIED

BRE/ESA PROPERTIES L.L.C., as assignor
(Borrower)

and

BRE/ESA OPERATING LESSEE INC., as assignor
(Operating Lessee)

to

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as assignee
(Assignee)

ASSIGNMENT OF LEASES AND RENTS
(ALABAMA)

Dated: May 11, 2004

PREPARED BY AND UPON
RECORDATION RETURN TO:

Cadwalader, Wickersham & Taft LLP
100 Maiden Lane
New York, New York 10038
Attention: William P. McInerney, Esq.

MERS MIN 8000101-0000000107-2

Return Recorded Documents To:
LandAmerica National Commercial Services
450 S. Orange Avenue, Suite 170
Orlando, FL 32801
Attention: Christi Pawlak 04-407

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of the 11th day of May, 2004, by **BRE/ESA PROPERTIES L.L.C.**, a Delaware limited liability company, having its principal place of business at c/o Blackstone Real Estate Acquisitions IV L.L.C., 345 Park Avenue, New York, New York 10154, as assignor ("Borrower") and **BRE/ESA OPERATING LESSEE INC.**, a Delaware corporation, having its principal place of business at c/o Blackstone Real Estate Acquisitions IV L.L.C., 345 Park Avenue, New York, New York 10154, as assignor ("Operating Lessee") to **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, a Delaware corporation, having an address at 1595 Spring Hill Road, Vienna, Virginia 22182 ("Assignee"), as assignee and as nominee of Lender (as defined below).

WITNESSETH:

WHEREAS, this Assignment is given in connection with a loan in the principal sum of Two Billion Fifty Million Dollars (\$2,050,000,000) (the "Loan") given by **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 and **BANK OF AMERICA, N.A.**, a national banking association, having an address at Bank of America Corporate Center, 100 North Tryon Street, Charlotte, North Carolina 28255 (each, a "Co-Lender" and, collectively with their respective successors and assigns, "Lender") to Borrower and **BRE/ESA FL PROPERTIES L.L.C.**, a Delaware limited liability company, **BRE/ESA MD BORROWER L.L.C.**, a Delaware limited liability company, **BRE/ESA MN PROPERTIES L.L.C.**, a Delaware limited liability company, **BRE/ESA PA PROPERTIES L.L.C.**, a Delaware limited liability company, and **BRE/ESA TX PROPERTIES L.P.**, a Delaware limited partnership (collectively, "Other Borrowers") pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by that certain Promissory Note, dated the date hereof, given by Borrower and Other Borrowers to Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Note");

WHEREAS, pursuant to that certain lease agreement dated the date hereof, between Borrower and Operating Lessee (the "Operating Lease"), Operating Lessee has agreed to lease and operate the Property and the improvements contained thereon;

WHEREAS, Borrower desires to secure the payment of the Debt and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents;

WHEREAS, this Assignment is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents is secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Assignment; and

WHEREAS, Operating Lessee will directly benefit from Lender's making the Loan to Borrower.

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Assignment:

ARTICLE 1 - ASSIGNMENT

Section 1.1 Property Assigned. Borrower and Operating Lessee hereby absolutely and unconditionally assign and grant to Assignee the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower and/or Operating Lessee:

(a) **Leases**. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements made a part thereof (whether written or oral and whether now or hereafter in effect), pursuant to which any Person is granted a possessory interest in, or a right to use or occupy, all or any portion of any space in that certain lot or piece of land, more particularly described in Exhibit A annexed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "Property") and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, and the right, title and interest of Borrower, Operating Lessee, and their respective successors and assigns, therein and thereunder.

(b) **Other Leases and Agreements**. All other leases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, whether made before or after the filing by or against Borrower or Operating Lessee of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") together with any extension, renewal or replacement of the same. This Assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment. The "leases" described in Subsection 1.1(a) and the leases and other agreements described in this Subsection 1.1(b) are collectively referred to as the "Leases".

(c) **Rents**. All rents, rent equivalents, income, receivables, revenues, receipts, insurance proceeds, deposits and profits arising from the Leases and renewals thereof together with all rents, rent equivalents, income, fees, receivables, accounts, profits (including, but not limited to, all oil and gas or other mineral royalties and bonuses), charges for services rendered and any and all payment and consideration of whatever form or nature received by Borrower, Operating Lessee or their respective agents or employees from any and all sources relating to the use, enjoyment and occupancy of the Property including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering

of services by Assignor or any operator or manager of the hotel or the commercial space located in the Property or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance, whether paid or accrued before or after the filing by or against Borrower or Operating Lessee of any petition for relief under the Bankruptcy Code (collectively, the “Rents”).

(d) Bankruptcy Claims. All of Borrower’s and Operating Lessee’s claims and rights (the “Bankruptcy Claims”) to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code.

(e) Proceeds. All proceeds from the sale or other disposition of the Leases, the Rents, the guaranties of the Leases and the Bankruptcy Claims.

(f) Other. All rights, powers, privileges, options and other benefits of Borrower and Operating Lessee as lessor under the Leases and beneficiary under any and all guaranties of the Leases, including without limitation the immediate and continuing right to make claim for, receive and collect all Rents payable or receivable under the Leases and all sums payable under any and all guaranties of the Leases or pursuant thereto (and to apply the same to the payment of the Debt or the Other Obligations), and to do all other things which Borrower, Operating Lessee or any lessor is or may become entitled to do under the Leases or any and all guaranties of the Leases.

(g) Entry. The right, at Lender’s option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents.

(h) Power of Attorney. Borrower’s and Operating Lessee’s irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Section 3.1 of this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property and authorized by the terms of this Assignment.

(i) Other Rights and Agreements. Any and all other rights of Borrower and Operating Lessee in and to the items set forth in subsections (a) through (h) above, and all amendments, modifications, replacements, renewals and substitutions thereof.

Section 1.2 Grants to Assignee. This Assignment and the grants, assignments and transfers made to Assignee in this Article 1 shall inure to Assignee solely in its capacity as Lender’s nominee.

ARTICLE 2 - TERMS OF ASSIGNMENT

Section 2.1 Present Assignment And License Back. It is intended by Borrower and Operating Lessee that this Assignment constitute a present, absolute assignment of the Leases, Rents, the guaranties of the Leases and Bankruptcy Claims, and not an assignment

for additional security only. Nevertheless, subject to the terms of this Section 2.1 and the Cash Management Agreement and the other Loan Documents, Lender grants to Borrower and Operating Lessee a revocable license to (a) collect, receive, use and enjoy the Rents and Borrower and Operating Lessee, as applicable, shall hold such Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Lender for use in the payment of such sums in accordance with the terms of the Loan Documents and (b) otherwise deal with and enjoy the rights of lessor under the Leases.

Section 2.2 Notice To Lessees. Borrower and Operating Lessee hereby authorize and direct the lessees named in the Leases or any other future lessees or occupants of the Property to pay over to Lender or to such other party as Lender directs all Rents upon receipt from Lender of written notice to the effect that Lender is then the holder of this Assignment and that an Event of Default exists, and to continue so to do until otherwise notified by Lender.

Section 2.3 Incorporation By Reference. All representations, warranties, covenants, conditions and agreements contained in the Loan Agreement and the other Loan Documents as same may be modified, renewed, substituted or extended are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

ARTICLE 3 - REMEDIES

Section 3.1 Remedies of Lender. Upon or at any time after the occurrence of an Event of Default, the license granted to Borrower and Operating Lessee in Section 2.1 of this Assignment shall automatically be revoked, and Lender, or Assignee acting on behalf of and at the sole discretion of Lender in its capacity as Lender's nominee, shall immediately be entitled to possession of all Rents, whether or not Lender enters upon or takes control of the Property. In addition, Lender may, at its option, without waiving such Event of Default, without regard to the adequacy of the security for the Debt, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Borrower and Operating Lessee and their respective agents and servants from the Property, without liability for trespass, damages or otherwise and exclude Borrower and Operating Lessee and their respective agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents and sums due under all guaranties of the Leases, 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 Lender may deem proper and may apply the Rents and sums received pursuant to any guaranties of the Leases to the payment of the following in such order and proportion as Lender in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Lender 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 Debt, together with all costs and reasonable attorneys' fees. In addition, upon the occurrence of an Event of Default, Lender, at its option, may (1) complete any construction on the Property in such manner and form as Lender deems advisable, (2) exercise all rights and powers of Borrower and Operating Lessee, including, without limitation, the right to negotiate, execute, cancel, enforce or modify any Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any guaranties of the Leases, (3) require Borrower and Operating Lessee to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Borrower and Operating Lessee or (4) require Borrower and Operating Lessee to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower and Operating Lessee may be evicted by summary proceedings or otherwise.

Section 3.2 Other Remedies. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Agreement, the Note, or the other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Debt and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower and Operating Lessee hereby absolutely, unconditionally and irrevocably waive any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Borrower and Operating Lessee under this Assignment, the Loan Agreement, the Note, the other Loan Documents or otherwise with respect to the Loan in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Loan Agreement, the Note, or any of the other Loan Documents (provided, however, that the foregoing shall not be deemed a waiver of Borrower's or Operating Lessee's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Borrower's or Operating Lessee's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

Section 3.3 Other Security. Lender may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

Section 3.4 Non-Waiver. The exercise by Lender of the option granted it in Section 3.1 of this Assignment and the collection of the Rents and sums due under the guaranties of the Leases and the application thereof as herein provided shall not be considered a waiver of any default by Borrower and Operating Lessee under the Note, the Loan Agreement, the Operating Lease, the Leases, this Assignment or the other Loan Documents. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower and Operating Lessee shall not be relieved of Borrower's and Operating Lessee's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower, Operating Lessee or any other party to take any action

to enforce any of the provisions hereof or of the Loan Agreement, the Note or the other Loan Documents, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Loan Agreement, the Note, or the other Loan Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

Section 3.5 Bankruptcy. (a) Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower or Operating Lessee in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower and Operating Lessee, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower or Operating Lessee a petition under the Bankruptcy Code, and Borrower or Operating Lessee, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower or Operating Lessee, as applicable shall give Lender not less than ten (10) days' prior notice of the date on which Borrower or Operating Lessee shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower or Operating Lessee, as applicable, within such ten-day period a notice stating that (i) Lender demands that Borrower and/or Operating Lessee assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower or Operating Lessee the notice described in the preceding sentence, Borrower or Operating Lessee, as applicable shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE 4 - NO LIABILITY, FURTHER ASSURANCES

Section 4.1 No Liability of Lender. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or any guaranty of any Lease or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower or Operating Lessee resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default unless such loss is caused by the willful misconduct and bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any guaranties of the Leases or under or by reason of this Assignment and Borrower and Operating Lessee shall, and hereby

agree to, indemnify Lender for, and to hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Leases, any guaranties of the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any guaranties of the Leases. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment, the Mortgage and the other Loan Documents and Borrower and Operating Lessee shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower or Operating Lessee so to do Lender may, at its option, declare all sums secured by this Assignment, the Mortgage and the other Loan Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any guaranties of the Leases; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property including, without limitation, the presence of any Hazardous Substances (as defined in the Environmental Indemnity Agreement), 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.

Section 4.2 No Mortgagee in Possession. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower and Operating Lessee.

Section 4.3 Further Assurances. Borrower and Operating Lessee will, at the cost of Borrower and Operating Lessee, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower and Operating Lessee may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower and Operating Lessee to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Leases.

ARTICLE 5 - MISCELLANEOUS PROVISIONS

Section 5.1 Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

Section 5.2 No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Borrower, Operating Lessee, Assignee or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 5.3 General Definitions. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein", the word "Lender" shall mean "Lender and any subsequent holder of the Note", the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Loan Agreement", the word "Property" shall include any portion of the Property and any interest therein, the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorney's, paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 5.4 Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

Section 5.5 Governing Law. This Assignment shall be governed in accordance with the terms and provisions of Section 10.3 of the Loan Agreement.

Section 5.6 Termination of Assignment. Upon payment in full of the Debt, this Assignment shall become and be void and of no effect.

Section 5.7 Notices. All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

Section 5.8 WAIVER OF TRIAL BY JURY. BORROWER AND OPERATING LESSEE HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS ASSIGNMENT, THE NOTE, OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Section 5.9 Exculpation. The provisions of Section 9.4 of the Loan Agreement are hereby incorporated by reference into this Assignment to the same extent and with the same force as if fully set forth herein.

Section 5.10 Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Borrower, Operating Lessee and Lender and their respective successors and assigns forever.

Section 5.11 Headings, Etc. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 5.12 References to Lender. Notwithstanding anything to the contrary contained herein or in any other Loan Document, all references herein and in any other Loan Document to "Lender" shall be deemed to collectively or individually (as the context requires) refer to Lender or to Assignee, acting on behalf of and at the sole direction of Lender in its capacity as Lender's nominee, as each of their interests may appear; provided, that, unless Lender, in its sole discretion, shall determine otherwise, only Lender (and not Assignee) shall be deemed to be "Lender" with respect to (a) any consent or similar approval right granted to Lender hereunder or under any of the other Loan Documents (including, without limitation, any consent or similar approval right that is deemed granted if not approved or denied within a specified time period), (b) any items, documents or other information required to be delivered to Lender hereunder or under any of the other Loan Documents (other than notices expressly required to be sent to Assignee) or (c) any future funding or other obligations of Lender to Borrower or any affiliate of Borrower hereunder or under any of the other Loan Documents, if any.

ARTICLE 6 - STATE-SPECIFIC PROVISIONS

Section 6.1 In the event of any inconsistencies between the other terms and conditions of this Assignment and this Article 6, the terms and conditions of Article 6 shall control and be binding.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower and Operating Lessee have executed this Assignment under seal the day and year first above written.

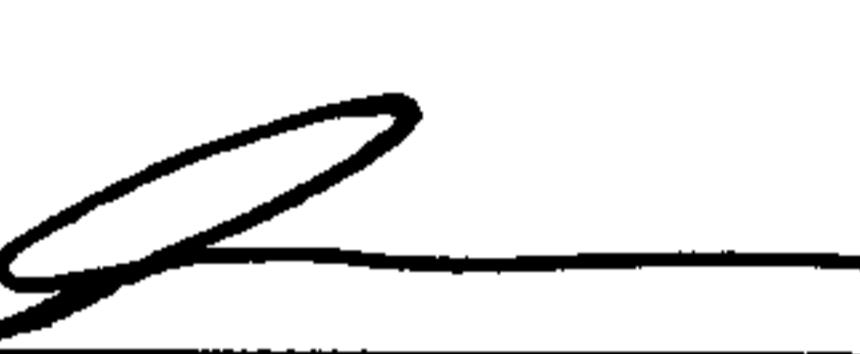
BORROWER:

BRE/ESA PROPERTIES L.L.C., a Delaware limited liability company

By: 
Name: Alan Miyasaki
Title: Assistant Secretary

OPERATING LESSEE:

BRE/ESA OPERATING LESSEE INC., a Delaware corporation

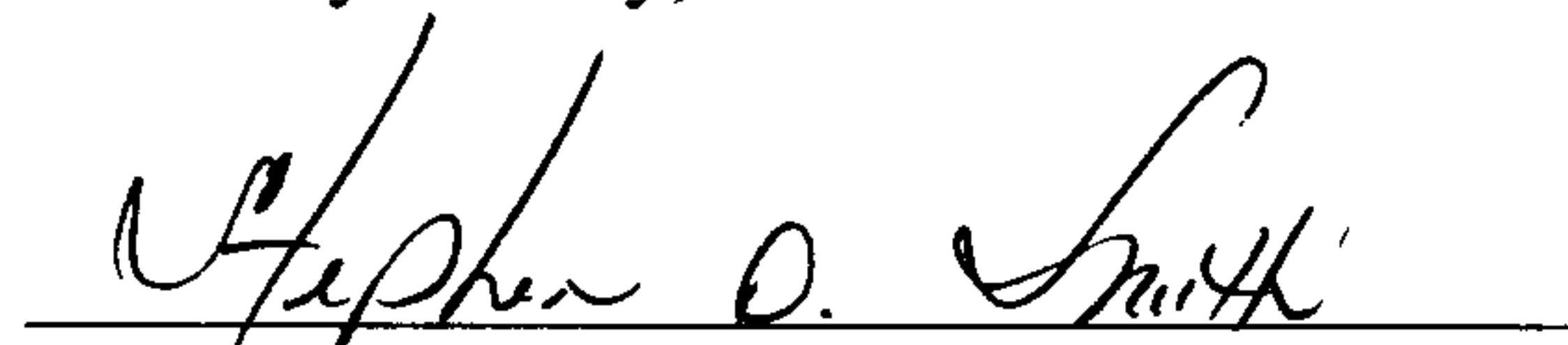
By: 
Name: Alan Miyasaki
Title: Assistant Secretary

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Alan Miyasaki, whose name as Assistant Secretary of BRE/ESA Properties L.L.C., a Delaware 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 said instrument, he, as such Assistant Secretary and with full authority, he executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 7th day of May, 2004.



Notary Public

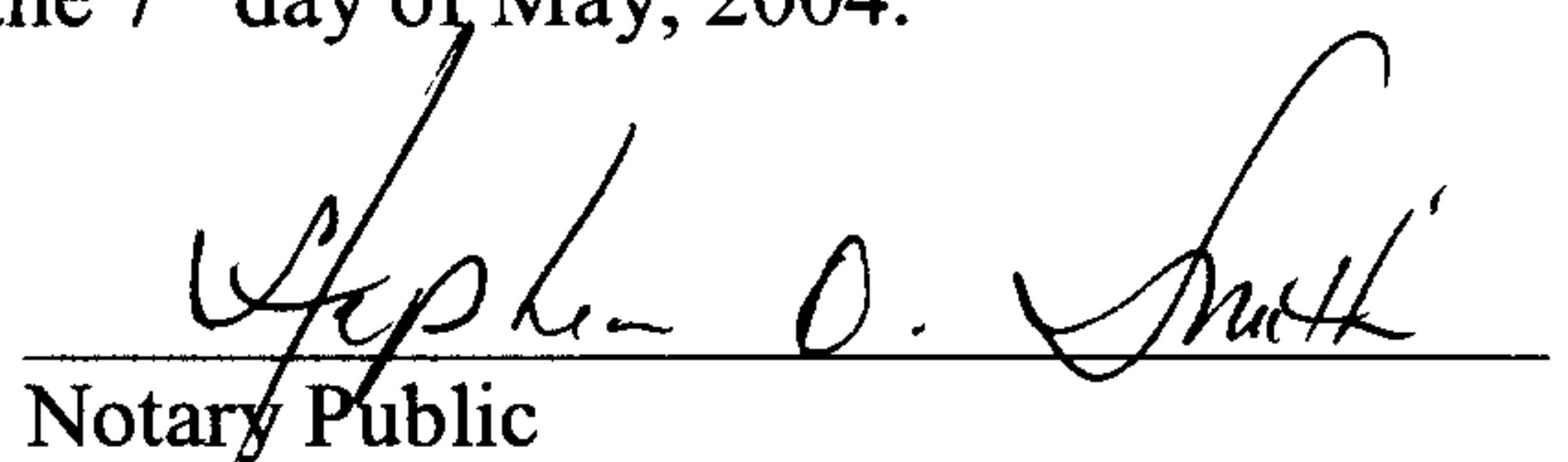
STEPHEN O. SMITH
Notary Public, State of New York
No. 01SM6041047
Qualified in King County
Commission Expires 3/1/06

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Alan Miyasaki, whose name as Assistant Secretary of BRE/ESA Operating Lessee Inc., a Delaware 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 said instrument, he, as such Assistant Secretary and with full authority, he executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 7th day of May, 2004.



Notary Public

My Commission Expires:

STEPHEN O. SMITH
Notary Public, State of New York
No. 01SM6041047
Qualified in Kings County
Commission Expires 3/1/04

EXHIBIT A

TA ESA
Site # Site # Site Address

6 408	27	40 State Farm Pkwy. Birmingham, AL County: Jefferson
----------	----	--

Lot 1, according to the Survey of Studio Plus Addition to Wildwood Centre, as recorded in Map Book 182, Page 76, in the Probate Office of Jefferson County, Alabama.

EXHIBIT A

TA	ESA	
Site #	Site #	Site Address

20040908000501440 Pg 15/15 53.00
Shelby Cnty Judge of Probate, AL
09/08/2004 15:50:00 FILED/CERTIFIED

5	25	101 Cahaba Park Cir. Birmingham, AL County: Mobile
407		

Lot 10E, according to Studio Plus Resurvey, as recorded in Map Book 20, page 80, in the Probate Office of Shelby County, Alabama, and in Map book 183, page 18, in the Probate Office of Jefferson County, Alabama.

State of Alabama - Jefferson County