

8,280 / month

Return Recorded Documents To:

LandAmerica National Commercial Services CES
450 S. Orange Avenue, Suite 170
Orlando, FL 32801
Attention: Christi Pawlak 05-1590 90



20050819000428680 1/7 \$1524.00
Shelby Cnty Judge of Probate, AL
08/19/2005 03:15:40PM FILED/CERT

THIS INSTRUMENT WAS PREPARED BY:
DALE A. BURKET, ESQUIRE
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Drive
Orlando, Florida, 32801
(407) 843-4600

Shelby County, AL 08/19/2005
State of Alabama

Deed Tax: \$1495.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RETURN BY: MAIL (X) PICK UP ()

Captain D's/Calera, Shelby County, Alabama

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (the "Memorandum") is made and entered into as of the 15th day of August, 2005, by and between **CAPTAIN D'S, LLC**, a Delaware limited liability company (the "Tenant"), and **CNL NET LEASE FUNDING 2003, LLC**, a Delaware limited liability company (the "Landlord").

WITNESSETH:

WHEREAS, pursuant to the Lease Agreement, dated as of August 15th, 2005, (such Lease Agreement, as it may be hereafter amended, modified or supplemented, is herein referred to as the "Lease"), by and between Landlord and Tenant, Landlord has leased to Tenant, and Tenant has rented and leased from Landlord, the property described therein, including, without limitation, the following (the "Premises"): the real property or properties described more particularly in the legal description or descriptions attached hereto as **Exhibit A-1** and incorporated herein by this reference (the "Property"), together with (i) all rights, privileges, easements, servitudes, rights-of-way and appurtenances belonging or appurtenant to the Property [(including, without limitation, those easements, servitudes, rights-of-way and appurtenances more particularly described on **Exhibit A-2** attached hereto and incorporated by this reference)] (the "Appurtenant Interests"), and (ii) all buildings, fixtures and other improvements now or hereafter located on the Property and all right, title and interest of Landlord in and to any improvements used in connection with or necessary for the exercise of the Appurtenant Interests; and

WHEREAS, Landlord and Tenant wish to publish notice of the Lease with respect to the Premises;

NOW, THEREFORE, the parties hereto agree as follows:

1. In consideration of the rent and other sums to be paid by Tenant and of the other terms, covenants and conditions on Tenant's part to be kept and performed pursuant to the Lease, Landlord leases to Tenant, and Tenant takes and leases from Landlord, the Premises. The term of the Lease with respect to the Premises commenced on August 15th, 2005, and expires on August 31, 2025, unless extended or otherwise terminated as provided in the Lease.

2. The Lease grants Tenant four (4) additional options to extend the term of the Lease for consecutive periods of five (5) years each, each of which is deemed to be automatically exercised by Tenant unless Tenant provides written notice to Landlord not less than six (6) months prior to the then existing expiration date of the term of the Lease of Tenant's election not to extend the term of the Lease for the next succeeding five (5) year extension term.

3. Tenant has a right of first refusal to purchase the Premises on the terms and conditions set forth in the Lease.

4. The respective addresses of the parties hereto are:

Tenant: CAPTAIN D'S, LLC
1717 Elm Hill Pike, Suite A-1
Nashville, Tennessee 37210
Attn: Property Management

If to Landlord: CNL NET LEASE FUNDING 2003, LLC
450 South Orange Avenue
Orlando, FL 32801-3336
Attention: Property Management

5. The terms and provisions of the Lease and this Memorandum shall run with the land for as long as the Lease remains in effect and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

6. This Memorandum is intended for recording purposes only, and does not modify, supersede, diminish, add to or change any of the terms and conditions of the Lease in any respect. The terms and conditions of the Lease shall control notwithstanding that the terms and conditions of the Lease may be inconsistent or vary from those set forth in this Memorandum.

7. This Memorandum may be executed in multiple counterparts or copies, each of which shall be deemed an original hereof for all purposes. One or more counterparts or copies of this Memorandum may be executed by one of the parties hereto, and some different counterparts or copies executed by the other party hereto. Each counterpart or copy hereof executed by a party hereto shall be binding upon the party executing the same even though the other party may execute one or more different counterparts or copies and all counterparts or copies hereof so executed shall constitute but one and the same instrument. Each party hereto (a "Signing Party"), by execution of a counterpart or copy hereof, expressly authorizes and directs the other party hereto to detach the signature pages and/or acknowledgment, attestation, witness, jurat or similar pages thereto from the counterpart or copy hereof executed by such Signing Party and affix the same to another identical counterpart or copy hereof such that upon execution of

multiple counterparts or copies hereof by all parties hereto, there shall be one counterpart or copy hereof to which are attached signature pages containing signatures of all parties hereto, together with any such acknowledgment, attestation, witness, jurat or similar pages relating thereto.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed by their duly authorized representatives as of the day and date first above written.

"LANDLORD"

Signed and Delivered
in the presence of:

Joanne Ball
Name: Joanne Ball

PJ Okolowicz
Name: PJ Okolowicz

CNL NET LEASE FUNDING 2003, LLC, a
Delaware limited liability company

By: John L. Farren
Name: John L. Farren
Title: Manager

STATE OF FLORIDA
COUNTY OF ORANGE

I, the undersigned, a notary public in and for said County in said State, hereby certify that John L. Farren, whose name as Manager of **CNL NET LEASE FUNDING 2003, LLC**, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 10th day of August, 2005.

[NOTARIAL SEAL]

William T. Snow, II
Notary Public
Name: William T. Snow, II
Notary Public, State of Florida



William T. Snow, II
MY COMMISSION # DD111733 EXPIRES
April 25, 2006
BONDED THRU TROY FAIN INSURANCE, INC.

"TENANT"

Signed and Delivered
in the presence of:

CAPTAIN D'S, LLC, a Delaware limited
liability company

Nancy Abbott
Name: Nancy Abbott

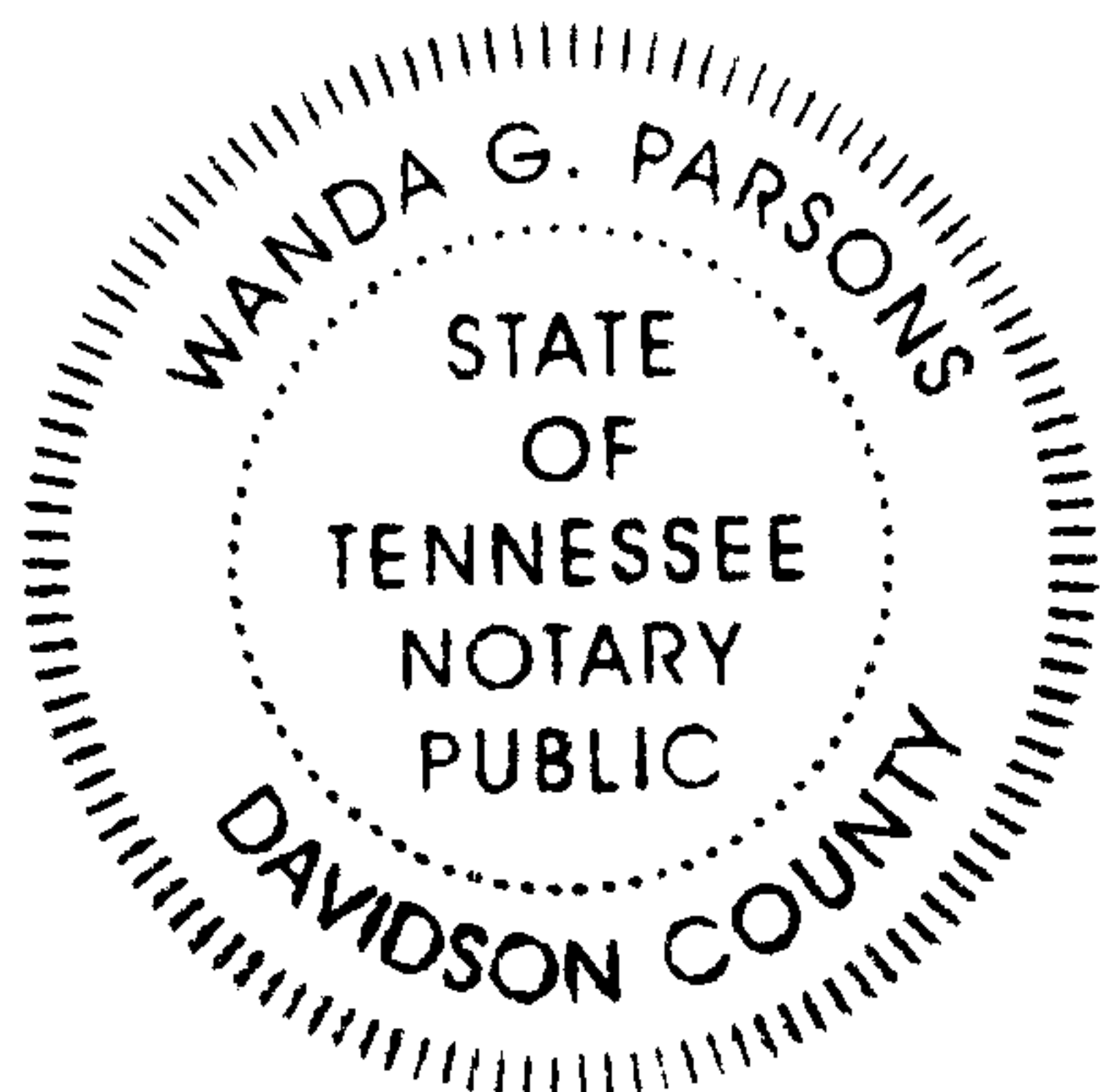
By: Michael T. Folks
Name: Michael T. Folks
As Its: Vice President

Sonya L. Ewing
Name: Sonya L. Ewing

STATE OF TENNESSEE
Davidson COUNTY

I, the undersigned, a notary public in and for said County in said State, hereby certify that Michael T. Folks, whose name as Vice President of **CAPTAIN D'S, LLC**, 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 the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 9th day of August, 2005.



[NOTARIAL SEAL]

Wanda G. Parsons
Notary Public

My Commission Expires: 5/23/09



20050819000428680 6/7 \$1524.00
Shelby Cnty Judge of Probate, AL
08/19/2005 03:15:40PM FILED/CERT

EXHIBIT "A-1"

(Legal Description)

101 Super Center Drive, Calera, Shelby County, Alabama 35040

Lot 4A, according to Baker Seafood, Inc. Resurvey being a resurvey of Lots 4 and 5, Wal-Mart Supercenter #3271 Subdivision, as recorded in Map Book 27, page 117) as recorded in Map Book 31, page 92, in the Office of the Judge of Probate of Shelby County, Alabama, also being situated in the Northwest quarter of the Southeast quarter of Section 4, Township 22 North, Range 2 West, St. Stephens Meridian, Shelby County, Alabama and being more particularly described as follows:

Commence at a point at the Southwest corner of the Southwest quarter of the Northeast quarter of Section 4, Township 22 North, Range 2 West, St. Stephens Meridian, Shelby County, Alabama; thence run North 02° 06' 24" West along the West line of said quarter, for a distance of 512.99 feet to a point; thence run South 89° 47' 07" East for a distance of 1036.65 feet to a point on the West right of way margin of Highway 31; thence run South 10° 16' 53" East along said right of way margin for a distance of 386.25 feet to an iron pin, said point being the True Point of Beginning; thence continue South 16° 16' 53" East along said right of way margin for a distance of 80.23 feet to an iron pin; thence run South 79° 34' 19" West along said right of way margin for a distance of 49.72 feet to an iron pin, said point being the point of a curve to the right having a radius of 854.81 feet and an arc distance of 83.80 feet; thence run along said curve to the right and along said right of way margin a chord bearing of South 07° 31' 03" East and a chord distance of 83.76 feet to an iron pin; thence run North 89° 39' 17" West for a distance of 188.73 feet to an iron pin; thence run North 00° 22' 34" East for a distance of 111.08 feet to an iron pin, said point being the point of a curve to the right having a radius of 43.50 feet and an arc distance of 60.24 feet; thence run along said curve to the right a chord bearing of North 40° 02' 50" East and a chord distance of 55.54 feet to an iron pin; thence run North 79° 43' 07" East for a distance of 120.73 feet to an iron pin; thence run South 10° 16' 53" East for a distance of 5.00 feet to an iron pin; thence run North 79° 43' 07" East for a distance of 40.25 feet to an iron pin; thence run South 65° 30' 48" East for a distance of 18.21 feet to a point and back to the True Point of Beginning.

20050819000428680 7/7 \$1524.00
Shelby Cnty Judge of Probate, AL
08/19/2005 03:15:40PM FILED/CERT

EXHIBIT "A-2"

[[Exhibit A-2 Not Included]]