

RECORDER'S MEMORANDUM
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Shelby Cnty Judge of Probate, AL
08/20/2007 11:07:26AM FILED/CERT

SUBORDINATION NON-DISTURBANCE AND ATTORNMENT AGREEMENT

On this 8th day of August, 2007, ELI'S, INC., whose address is 3161 Guilford Road, Birmingham, Alabama 35223 ("Lessor"), the lessor under that certain Lease (the "Lease") dated September 1, 2006 with ELI'S HAMBURGER HEAVEN, INC. (as assignee of ELI'S, INC.), whose address is 5309 Highway 280 S, Birmingham, AL, 35242 ("Lessee"), certifies, covenants and agrees with and to ALIANT BANK ("Lender") as follows:

1. Lessor is the fee simple owner of the property described on Exhibit "B" attached hereto and incorporated herein by reference (the "Leased Property"), and Lessor is the lessor of the Leased Property under the Lease.
2. To Lessor's knowledge, the Lessee is the current lessee under the Lease.
3. The Lease (a true and correct copy of which is attached hereto) has not been canceled, modified, assigned, extended or amended.
4. As of this date, the Lease is in full force and effect; there are no uncured defaults under the Lease; Lessor has no claims against the Lessee under the Lease except as set forth in the Lease; to Lessor's knowledge, Lessee has no offsets against the rent or other charges payable by Lessee under the Lease; and as of the date hereof, Lessee has either satisfied all of its obligations to the Lessor under the Lease or the same have been waived by Lessor.
5. Lessor has received no actual notice of any sale, transfer or assignment, hypothecation or pledge of Lessee's right, title or interest in, to or under the Lease, except to Lender.
6. Lessor has not sold, transferred, assigned, hypothecated or pledged the leased premises or its right, title or interest in, to or under the Lease.
7. Lessor acknowledges that Lessor has been notified that Lessee intends to mortgage its right, title and interest in, to and under the Lease to Lender as collateral for a loan (the "Loan"). Lessor hereby agrees that the making of the Loan and the encumbering of Lessee's interest in the Lease do not constitute a default under the Lease.
8. Lessor agrees that it will deliver to Lender, at the address set forth below, a duplicate copy of any and all written notices which Lessor may, from time to time, give or serve upon Lessee under the terms of the Lease, as and when Lessor gives or serves such notices upon Lessee:

ALIANT BANK
P.O. Box 383067
Birmingham AL 35238-3067

Failure to deliver a copy of such notice to Lender shall in no way affect the validity of the notice as it respects Lessee, but shall make the same invalid as it respects the interest of the Lender.

9. Lessor further agrees that Lender shall have (a) thirty (30) days following receipt of written notice from Lessor as to the non-payment of any monetary sum due under the Lease within which to cure such monetary default, and (b) the same period of time as Lessee after Lender has received written notice from Lessor of any non-monetary default by Lessee within which to cure such non-monetary default, or if such default(s) cannot be cured within such time, then such additional time, not to exceed ninety (90) days, as may be reasonably necessary to cure such default(s) (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure). Upon Lender curing such default in accordance with the foregoing, any notice of Lessor advising of any such event of default or any action of Lessor to terminate this Lease or to interfere with the occupancy, use or enjoyment of the Leased Property by reason thereof shall be deemed rescinded and this Lease shall be reinstated and shall continue in full force and effect.
10. Notwithstanding anything to the contrary contained in the Lease or in this agreement, in addition and not in limitation of the foregoing, (a) Lessor and Lessee each agree not to (i) amend or modify the Lease in any respect without the prior written consent of Lender and/or (ii) terminate the Lease without Lender's prior written consent, and (b) Lessor and Lessee acknowledge and agree that the Lease shall not be amended, modified and/or terminated if either Lessor or Lessee attempts to amend, modify and/or terminate the Lease without first obtaining Lender's prior written consent.
11. Lessor agrees to accept performance of Lessee's obligations under the Lease by Lender as if it were performance by Lessee. Notwithstanding the foregoing, Lessor acknowledges that while Lender shall have the right to tender performance of Lessee's obligations under the Lease, Lender shall not have the obligation to do so.
12. If Lender or its successors or assigns succeeds to Lessee's interest in the Lease, the Lease shall not be terminated by such action and Lessor agrees to accept performance of Lessee's obligations under the Lease by Lender or its successors or assigns, and the Lease shall continue in full force and effect as a lease between Lessor and Lender or its successors or assigns. Lender shall not be responsible for obligations under the Lease unless and until Lender succeeds to Lessee's interest in the Lease. Lender shall remain responsible for Lessee's obligations under the Lease only so long as Lender is the owner, and Lender will not be liable under the Lease following the sublease or assignment to a third party or its other disposition of Lessee's leasehold estate upon reasonable approval by Lessor of such third party's financial capacity, which approval shall not be unreasonably withheld or delayed.
13. Without the prior consent of Lender, i) the Lease shall not be surrendered or canceled (other than as a result of a default of Lessee after notice to and opportunity to cure of Lessee and Lender, respectively) prior to the expiration of the term of the Lease, ii) Lessee shall not have the right to exercise any option to terminate the Lease, and iii) any agreement purporting to surrender, cancel, terminate, modify or amend the Lease or any attempted exercise of such option, without the consent of the Lender, shall be ineffective, null and void.
14. If the Lease terminates before its term expires, including the rejection of the Lease in a bankruptcy proceeding involving Lessee, except by eminent domain, Lessor shall serve upon

Lender written notice of that fact, together with a statement of all sums which would at that time be due under the Lease but for the termination, and of all other defaults under the Lease then actually known to Lessor. The Lender may then obtain a new lease and a bill of sale for all personal property and fixtures in the building previously owned by Lessee and then owned by Lessor arising out of such termination, all in accordance with and upon the following terms and conditions. Upon the written request of Lender within thirty (30) days after service of notice that the Lease has been terminated, Lessor shall enter into a new lease of the Leased Property with Lender, or its designee (which designee does require the approval of Lessor, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, said designee does not require the approval of Lessor if the designee has the same or better financial condition as Lessee did at the date of the Lease), which new lease shall: (i) be entered into at the reasonable cost of the new tenant, (ii) be effective as of the date of termination of the Lease, (iii) be for the remainder of the term of the Lease, and (iv) be at the same rent and upon all the agreements, terms, covenants, and conditions of the Lease (including reversion of all personalty upon expiration of earlier termination of the new lease to Lessor); and (v) be executed within fourteen (14) business days after the same has been tendered by Lessor to Lender. The new lease shall require the tenant to perform all of Lessee's unfulfilled obligations under the Lease that are reasonably susceptible of being performed by the Lessee. Upon execution of the new lease, the new tenant shall pay all sums that would then be due under the Lease but for the termination. Subject to the preceding sentence, upon execution of the new lease, Lessor shall allow to the new tenant, and the new tenant shall be entitled to, an adjustment equal to the net income derived by Lessor from the Leased Property during the period from the date of termination of the Lease to the date of execution of the new lease. Lessor acknowledges that Lender is unwilling to make the Loan to Lessee without this paragraph, and without this paragraph, there is an inadequate remedy at law for Lender, therefore, if Lessor fails to enter into a new lease with Lender upon the terms and conditions set forth above within ten (10) days of the termination of the Lease, Lender may seek specific performance of Lessor's obligation to enter into a new lease upon the terms and conditions set forth above in addition to any other rights or remedies of Lender.

15. Effective upon the commencement of the term of any new lease executed under the above section, all subleases shall be assigned and transferred without recourse by Lessor to the tenant under the new lease. All moneys on deposit with Lessor which Lessee would have been entitled to use but for the termination or expiration of the Lease may be used by the tenant under the new lease for purposes of and in accordance with its provisions. The new tenant shall thereafter indemnify and hold Lessor, its agents and employees harmless from and against any claims of such subtenants with regard to any deposits actually received by the new tenant.
16. The provisions of this agreement notwithstanding, nothing contained herein shall grant Lender any rights greater than those granted to Lessee under the Lease or expand any rights granted to Lessee under the Lease.
17. Lessor has full power and authority to enter into and perform its agreements under this agreement, and the person executing and delivering this agreement on behalf of Lessor is fully and properly authorized to do so, and neither the execution, delivery or performance of its obligations under this agreement is or could result in a violation of any applicable law, rule,

regulation, statute, court order or other governmental pronouncement, or a default under any agreement or organizational document, to which Lessor is a signatory or by which its properties may be bound.

18. This agreement may be executed in one or more counterparts, or by the parties executing separate counterpart signature pages, including facsimiles transmitted by telecopier, all of which shall be deemed the original counterpart of this agreement.
19. Upon payment in full of all obligations due Lender secured by the mortgage given by Lessee to Lender on Lessee's interest in the Leased Property and Lease, and the satisfaction and termination of such mortgage, then this agreement shall terminate.

LESSOR:

ELI'S, INC.

BY Eli T. Stevens
Eli T. Stevens (Its President)

LESSEE:

ELI'S HAMBURGER HEAVEN, INC.

By: Phillip (Pete) T. Flach
Phillip (Pete) T. Flach (Its President)

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, 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 said instrument, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the 15 day of August, 2007.

[Signature]
NOTARY PUBLIC

My Commission Expires: 6/7/11

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Phillip (Pete) Flach whose name as President 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 said instrument, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the 15 day of August, 2007.

[Signature]
NOTARY PUBLIC

My Commission Expires: 6/7/11



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EXHIBIT "B"

[The following property is leased by ELI'S, INC. to ELI'S HAMBURGER HEAVEN, INC. in accordance with the terms of a Lease Agreement dated September 1, 2006]

15 foot strip of property lying East of property conveyed from Eli's Inc. to Wal-Mart Real Estate Business Trust, a Delaware Business Trust by Exchanged Statutory Warranty Deed recorded 2001-14727 in the Probate Office of Shelby County, Alabama being more particularly described as follows:

A parcel of land located in the Northeast Quarter of the Southeast Quarter of Section 31, Township 18 South, Range 1 West in Shelby County, Alabama and being more particularly described as follows:

As a starting point, start at the Northeast corner of the Northeast Quarter of the Southeast Quarter of said Section 31; thence run in a Westerly direction and along the North boundary of said Northeast Quarter of the Southeast Quarter for a distance of 803.22 feet to the POINT OF BEGINNING of the property herein described; thence with a deflection angle of 90° 23' 39" to the left run in a Southerly direction for a distance of 970.15 to the Northwest corner of James F. Donovan property, as recorded in Deed Book 1996, Page 21512; thence with an interior angle of 90° 01' 41" run in a Westerly direction for a distance of 21.31 feet to a point; thence with an interior angle of 269° 14' 24" run in a Southerly direction for a distance of 274.52 feet to a point on the North boundary of U. S. Highway No. 280; thence with an interior angle of 97° 35' 55" run in a Westerly direction and along the North boundary of U.S. Highway No. 280 for a distance of 76.76 feet to a point; thence with an interior angle of 83° 10' 53" run in a Northerly direction for a distance of 373.60 feet to a point; thence with an interior angle of 239° 29' 20" run in a North Westerly direction for a distance of 178.70 feet to a point; thence with an interior angle of 210° 05' 46" run in a Westerly direction for a distance of 11.43 feet to a point; thence with an interior angle of 90° 04' 36" run in a Northerly direction for a distance of 512.55 feet to a point, said point also being the Southeast corner of Jimmie K. and Samuel J. Turner property as recorded in Deed Book 210, Page 176; thence with an interior angle of 180° 20' 29" continue in a Northerly direction and along the East boundary of said Jimmie K. and Samuel J. Turner property for a distance of 278.84 feet to a point on the North boundary of the Northeast corner of the Southeast Quarter of Section 31; thence with an interior angle of 89° 33' 17" run in an Easterly direction and along the North boundary of said Northeast Quarter of the Southeast Quarter for a distance of 264.47 feet to the POINT OF BEGINNING.

Said 15 foot strip being a portion of property conveyed from Eli T. Stevens and wife, Patricia M. Stevens to Eli's Inc. recorded SR344-434 in the Probate Office of Shelby County, Alabama being more particularly described as follows:

A tract of land located in Section 31, Township 18 South, Range 1 West described as follows:

Commence at the Southeast corner of Section 31, Township 18 South, Range 1 West, thence run North along the East line of said Section a distance of 1663.70 feet; thence turn an angle of 90° 18' 08" to the left and run a distance of 799.06 feet to the point of beginning; thence turn an angle of 90° 00' to the left and run a distance of 271.52 feet to the North right of way of U.S. Highway No. 280; thence turn an angle of 83° 08' to the right and run along said right of way a distance of 267.18 feet; thence turn an angle of 96° 47' to the right and run a distance of 1274.60 feet; thence turn an angle of 90° 42' to the right and run a distance of 266.00 feet; thence turn an angle of 89° 16' 31" to the right and run a distance of 968.27 feet to the point of beginning. Situated in the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West, Huntsville Meridian, Shelby County, Alabama.

SUBJECT TO: i) taxes and assessments for the year 2007, a lien but not yet payable; ii) terms and conditions of that certain Lease Agreement dated September 1, 2006 from ELI'S, INC. to ELI'S HAMBURGER HEAVEN, INC.; iii) easement recorded in Instrument 1996-32293 assigned and assumed in Instrument 1997-17768; iv) right of way granted to Alabama Power Company by instrument recorded in Volume 112, page 131, Volume 129, page 151 and Volume 220, page 349; v) easement with restrictions recorded in Volume 2001, page 26718 and Volume 2001, page 14728; vi) easement recorded in Instrument 1996-32294, assigned and assumed in Instrument 1997-17768; vii) easement recorded in Instrument 1999-46825; viii) less and except any portion of subject property lying within a road right of way; ix) right of way granted to Alabama Power Company by instrument recorded in Deed Book 314, page 929; ix) right of way to State of Alabama recorded in Deed Book 251, page 447, Deed Book 251, page 686, Deed Book 251, page 746 and Deed Book 251, page 449; and x) coal, oil, gas and mineral and mining rights which are not owned by Mortgagor.