

INDEXING INFORMATION

Please index this affidavit in the mortgage records showing ELI'S HAMBURGER HEAVEN, INC. as Mortgagor and ALIANT BANK as Mortgagee

State of Alabama
County of Shelby

**AFFIDAVIT CORRECTING SATISFACTION AND REPUBLISHING
MORTGAGE AS TO THE PROPERTY DESCRIBED ON EXHIBIT "B"**

Before me the undersigned a Notary Public in and for said county and said state personally appeared ELI'S HAMBURGER HEAVEN, INC. and Phillip (Pete) T. Flach who having been duly sworn deposes under oath and states as follows:

1. I am Phillip (Pete) T. Flach, the President of ELI'S HAMBURGER HEAVEN, INC. ("Mortgagor")
2. On August 15, 2007, Mortgagor executed and delivered to Aliant Bank a Mortgage, Assignment of Rents and Leases, and Security Agreement (hereinafter "Mortgage") on the property described on Exhibit "A" and Exhibit "B" attached hereto.
3. The Mortgage was recorded on August 20, 2007 as Instrument 20070820000390640 in the office of the Judge of Probate of Shelby County, Alabama. In connection with the Mortgage two Subordination, Non-Disturbance and Attornment Agreement were also recorded as Instrument 20070820000390650 and 20070820000390660.
4. The Mortgage specifically secured the following promissory notes executed in connection with the Mortgage:
 - i) a Promissory Note in the amount of \$438,000.00 (the "\$438,000 Note) executed by Mortgagor and delivered to Aliant Bank, and
 - ii) a Promissory Note in the amount of \$100,000.00 (the \$100,000 Note") executed by Phillip (Pete) T. Flach and delivered to Aliant Bank.
5. Prior to June 17th 2008 the \$438,000 Note secured by the Mortgage was paid in full, but a balance remained and still remains owing on the \$100,000 Note
6. On June 24, 2008 a Satisfaction of Mortgage (the "Satisfaction") pertaining to the \$438,000 Note was recorded as Instrument 20080624000256910 in the Office of the Judge of Probate of Shelby County, Alabama.
7. This Satisfaction was not intended nor designed to satisfy the Mortgage as to the \$100,000 Note.
8. The agreements of the parties to the Mortgage, was that the payment of the \$438,000 Note would cause Aliant Bank to solely release the property described on Exhibit "A" of the

P.T.

Mortgage, and the Mortgage as to the property described on Exhibit "B" thereto would remain as security for the \$100,000 Note.

9. In connection herewith, Aliant Bank has prepared and is recording herewith a Corrected Satisfaction of Mortgage to correct the Satisfaction and state the intentions of the parties.

10. As to property described on Exhibit "B", the Mortgage is hereby republished and is and should be in full force and effect, just as if the Satisfaction was never prepared or filed.

ELI'S HAMBURGER HEAVEN, INC.

BY: _____

Phillip (Pete) T. Flach (Its President)

Phillip (Pete) T. Flach

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Phillip (Pete) T. Flach, whose name as President of ELI'S HAMBURGER HEAVEN, INC., a 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 19th day of November, 2009.

Claudia Bryant
NOTARY PUBLIC

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
My Commission Expires: July 30, 2011

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Phillip (Pete) T. Flach, whose name 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 this instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 19th day of November, 2009.

Claudia Bryant
NOTARY PUBLIC

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
My Commission Expires: July 30, 2011

**THIS INSTRUMENT PREPARED BY AND AFTER
RECORDATION SHOULD BE RETURNED TO:**

William B. Hairston III
ENGEL HAIRSTON & JOHANSON, P.C.
4th Floor, 109 North 20th Street
Birmingham, Alabama 35203
(205) 328-4600



20091201000440610 2/4 \$20.00
Shelby Cnty Judge of Probate, AL
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EXHIBIT "A"

[The following property is leased by James F. Donovan and Dorothy H. Donovan to ELI's INC. on May 10, 1996 as evidenced by Memorandum of Lease recorded on October 1, 1996 as Instrument 1996-32295 in the Office of the Judge of Probate of Shelby County, Alabama, and assigned on October 1, 1996 by Eli's Inc to Eli's Hamburger Heaven, Inc. in accordance with the terms of an Assignment and Assumption of Ground Lease recorded on February 17, 1997 as Instrument 1997-05012 in said probate office]

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 degrees 18 minutes 08 seconds to the left and run a distance of 533.53 feet to the point of beginning; thence continue in the same direction a distance of 265.53 feet; thence turn an angle of 90 degrees 00 minutes to the left and run a distance of 271.52 feet to the North right of way line of U.S. Highway 280; thence turn an angle of 96 degrees 52 minutes to the left and run along said Highway right of way a distance of 267.45 feet; thence turn an angle of 83 degrees 08 minutes to the left and run a distance of 239.54 feet to the point of beginning. Situated in the NE ¼ of the SE ¼ of Section 31, Township 18 South, Range 1 West, Huntsville Meridian, Shelby County, Alabama; being situated in Shelby County, Alabama.

LESS AND EXCEPT that portion of the property leased to Peak, Inc. d/b/a Express Oil more particularly 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 left 90 degrees 18 minutes 08 seconds and run West 533.53 feet; thence turn left 90 degrees 00 minutes 00 seconds and run South 239.54 feet; thence turn 83 degrees 08 minutes 00 seconds right and run Westerly along the North Right of Way line of U.S. Highway 280 24.75 feet to the Point of Beginning; thence continue Westerly 120.00 feet; thence turn 96 degrees 52 minutes 00 seconds right and run North 256.70 feet; thence turn 90 degrees 00 minutes 00 seconds right and run Easterly 119.14 feet; thence turn 90 degrees 00 minutes 00 seconds right and run South 242.35 feet to the Point of Beginning.

SUBJECT TO: i) taxes and assessments for the year 2009, a lien but not yet payable; ii) terms and conditions of that certain Lease Agreement dated 5/10/1996 by and between James F. Donovan and Dorothy H. Donovan and Eli's Inc., filed for record 10/01/1996, recorded in Instrument 1996-32295, assignment and assumption recorded in Instrument 1997-05012; 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.



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Shelby Cnty Judge of Probate, AL
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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 2009, 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.



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