

ASSIGNMENT OF RENTS AND LEASES

BORROWER:
DIVE ALABAMA LLC

100 INDUSTRIAL PARK DRIVE
PELHAM, AL 35124

LESSOR:



20110203000037810 1/4 \$21.00
Shelby Cnty Judge of Probate, AL
02/03/2011 10:17:14 AM FILED/CERT

Note Amount: \$ 365,600.00

Funding Date: February 01, 2011

Maturity Date: February 01, 2031

1. ASSIGNMENT. In consideration of the loan evidenced by the promissory note or credit agreement described above (the "Note"), which is secured by a mortgage or deed of trust (the "Security Instrument"), Lessor, identified above, absolutely assigns to Central State Bank ("Lender")

all Lessor's estate, right, title, interest, claim and demand now owned or hereafter acquired in all existing and future leases of the real property described in Schedule A (the "Premises") (including extensions, renewals and subleases), all agreements for use and occupancy of the Premises (all such leases and agreements whether written or oral, are hereafter referred to as (the "Leases")), and all guaranties of lessees' performance under the Leases, together with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now or hereafter due (including any income of any nature coming due during any redemption period) under the Leases or from or arising out of the Premises including minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents, liquidated damages following default in any Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises, all proceeds payable as a result of a lessee's exercise of an option to purchase the Premises, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding and all proceeds from any rights and claims of any kind which Lessor may have against any lessee under the Leases or any occupants of the Premises (all of the above are hereafter collectively referred to as the "Rents"). This Assignment is subject to the right, power and authority given to the Lender to collect and apply the Rents. The foregoing Assignment is intended to be specific, perfected, and choate upon the recording of the Security Instrument as provided by applicable state law.

2. COVENANTS OF LESSOR. Lessor covenants and agrees that Lessor will: (a) observe and perform all the obligations imposed upon the landlord under the Leases; (b) refrain from discounting any future Rents or executing any future assignment of the Leases or collect any Rents in advance without the written consent of Lender; (c) perform all necessary steps to maintain the security of the Leases for the benefit of Lender including, if requested, the periodic submission to Lender of reports and accounting information relating to the receipt of Rent payments; (d) refrain from modifying or terminating any of the Leases without the written consent of Lender; (e) execute and deliver, at the request of Lender, any assurances and assignments with respect to the Leases as Lender may periodically require; and (f) comply with all applicable federal, state and local laws and regulations concerning the Premises, including but not limited to all environmental laws, the Americans with Disabilities Act, and all zoning and building laws.

3. REPRESENTATIONS OF LESSOR. Lessor represents and warrants to Lender that: (a) the tenants under the Leases are current in all Rent payments and are not in default under the terms of any of the Leases; (b) each of the Leases are valid and enforceable according to its terms, and there are no claims or defenses presently existing which could be asserted by any tenant under the Leases against Lessor or any assignee of Lessor; (c) no Rents or security deposits under any of the Leases have previously been assigned by Lessor to any party other than Lender; (d) Lessor has not accepted, and will not accept, Rent in excess of one month in advance under any of the Leases; (e) Lessor has the power and authority to execute this Assignment; (f) Lessor has not performed any act or executed any instrument which might prevent Lender from collecting Rents and taking any other action under this Assignment; (g) Lessor's chief executive office is located in the state of Alabama; (h) Lessor's state of organization is the state of Alabama; and (i) Lessor's exact legal name is set forth on the first page of this agreement.

4. LESSOR MAY RECEIVE RENTS. As long as there is no default under the Note described above, the Security Instrument securing the Note, this Assignment or any other present or future obligation of Borrower or Lessor to Lender (whether incurred for the same or different purposes) ("Obligations"), Lender grants Lessor a revocable license to collect all Rents from the Leases when due and to use such proceeds in Lessor's business operations. However, Lender may at any time require Lessor to deposit all Rents into an account maintained by Lessor or Lender at Lender's institution.

5. DEFAULT AND REMEDIES. Upon default in the payment of, or in the performance of, any of the Obligations, Lender may at its option take possession of the Premises and have, hold, manage, lease and operate the Premises on terms and for a period of time that Lender deems proper. Lender may proceed to collect and receive all Rents, and Lender shall have full power periodically to make alterations, renovations, repairs or replacements to the Premises as Lender may deem proper. Lender may apply all Rents, in Lender's sole discretion, to payment of the obligation or to the payment of the cost of such alterations, renovations, repairs and replacements and any expenses incident to taking and retaining possession of the Premises and the management and operation of the Premises. Lender may keep the Premises properly insured and may discharge any taxes, charges, claims, assessments and other liens which may accrue. The expense and cost of these actions may be paid from the Rents received and any unpaid amounts shall be added to the principal of the Note. These amounts, together with other costs, shall become part of the indebtedness secured by the Security Instrument and for which this Assignment is given. Lender's remedies described herein are cumulative, non-exclusive and in addition to any other remedies under the Security Instrument and applicable law.

6. APPOINTMENT OF RECEIVER. In the event of a default, Lender shall be entitled, without notice, without bond, and without regard to the adequacy of the collateral securing the Obligations to the appointment of a receiver for the Premises. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by a receiver, all the rights and powers granted to Lender under the Security Instrument and this Assignment.

7. POWER OF ATTORNEY. Lessor irrevocably authorizes Lender as Lessor's attorney-in-fact coupled with an interest, at Lender's option, upon taking possession of the Premises to lease or re-lease the Premises or any part thereof, to cancel and modify Leases, evict tenants, bring or defend any suits in connection with the possession of the Premises in the name of either party, make repairs as Lender deems appropriate and perform such other acts in connection with the management and operation of the Premises as Lender may deem proper. Lender may endorse Lessor's name on rent checks or other instruments to accomplish the purposes of this assignment. The receipt by Lender of any Rents under this Assignment after institution of foreclosure proceeding under the Security Instrument shall not cure any default or affect such proceeding or sale which may be held as a result of such proceedings.

8. BENEFICIAL INTEREST. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases by reason of this Assignment. Lessor hereby agrees to indemnify Lender and to hold Lender harmless from any and all liability, loss or damage which Lender may incur under the Leases by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part to perform or discharge any of the terms or agreements contained in the Leases. Should Lender incur any liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount of such loss, including any costs and expenses to the extent permitted by applicable law, shall be secured by the Security Instrument and this Assignment. Lessor agrees to reimburse Lender immediately upon demand for any such costs, and upon failure of Lessor to do so, Lender may accelerate and declare due all sums owed to Lender under any of the Obligations.

9. NOTICE TO TENANTS. A written demand by Lender to the tenants under the Leases for the payment of Rents or written notice of any default claimed by Lender under the Leases shall be sufficient notice to the tenants to make future payments of Rents directly to Lender and to cure any default under the Leases without the necessity of further consent by Lessor. Lessor hereby releases the tenants from any liability for any Rents paid to Lender or any action taken by the tenants at the direction of Lender after such written notice has been given.

10. INDEPENDENT RIGHTS. This Assignment and the powers and rights granted are separate and independent from any obligation contained in the Security Instrument and may be enforced without regard to whether Lender institutes foreclosure proceedings under the Security Instrument. This Assignment is in addition to the Security Instrument and shall not affect, diminish or impair the Security Instrument. However, the rights and authority granted in this Assignment may be exercised in conjunction with the Security Instrument.

11. MODIFICATION AND WAIVER. The modification or waiver of any of Lessor's obligations or Lender's rights under this Assignment must be contained in a writing signed by Lender. Lender may perform any of Lessor's obligations or delay or fail to exercise any of its rights without causing a waiver of those obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. Lessor's obligations under this Assignment shall not be affected if Lender amends, compromises, exchanges, fails to exercise, impairs or releases any of the obligations belonging to any Lessor or third party or any of its rights against any Lessor, third party or collateral.

12. **NOTICES.** Except as otherwise required by law, any notice or other communication to be provided under this Assignment shall be in writing and sent to the parties at the addresses indicated in this Assignment or such other address as the parties may designate in writing from time to time.

13. **SEVERABILITY.** Whenever possible, each provision of this assignment shall be interpreted so as to be valid and effective under applicable state law. If any provision of this Assignment violates the law or is unenforceable, the rest of the Assignment shall remain valid.

14. **COLLECTION COSTS.** To the extent permitted by law, Lessor agrees to pay Lender's reasonable fees and costs, including, but not limited to, fees and costs of attorneys and other agents (including without limitation paralegals, clerks and consultants) whether or not any attorney is an employee of Lender, which are incurred by Lender in collecting any amount due or enforcing any right or remedy under this Assignment, all whether or not suit is brought and including, but not limited to, fees and costs incurred on appeal, in bankruptcy, and for post-judgment collection actions. These collection costs are secured by this Assignment and the Security Instrument.

15. **MISCELLANEOUS.** (a) A default by Lessor under the terms of any of the Leases which would entitle the tenant thereunder to cancel or terminate such Lease shall be deemed a default under this Assignment and under the Note and Security Instrument so long as, in Lender's option, such default results in the impairment of Lender's security. (b) A violation by Lessor of any of the covenants, representations or provisions contained in this Assignment shall be deemed a default under the terms of the Note and Security Instrument. (c) This Assignment shall be binding upon and inure to the benefit of Lessor and Lender and their respective successors, assigns, trustees, receivers, administrators, personal representatives, legatees, and devisees. (d) This Assignment shall be governed by the laws of the state indicated in the address of the Premises. Unless applicable law provides otherwise, Lessor consents to the jurisdiction of any court selected by Lender in its sole discretion located in the state indicated in Lender's address in the event of any legal proceeding under this Assignment. (e) All references to Lessor in this Assignment shall include all persons signing below. If there is more than one Lessor, their obligations shall be joint and several. This Assignment represents the complete and integrated understanding between Lessor and Lender pertaining to the terms hereof.

16. **JURY TRIAL WAIVER.** LESSOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION ARISING OUT OF, OR BASED UPON, THIS ASSIGNMENT.

17. **ADDITIONAL TERMS.**

18. **INDEXING INSTRUCTIONS.**

LESSOR ACKNOWLEDGES THAT LESSOR HAS READ, UNDERSTANDS, AND AGREES TO THE TERMS AND CONDITIONS OF THIS ASSIGNMENT.

Dated: February 01, 2011

DIVE ALABAMA, LLC
BY: *[Signature]*

1 Feb 11

RICHARD BRYANT LAPOINT, MEMBER

Date

BY: *[Signature]* by *[Signature]*
MICHELLE LAPOINT, MEMBER *her attorney in fact*
BY: RICHARD BRYANT LAPOINT, HER ATTORNEY-IN-FACT

1 Feb 11

Date

Date


Date

Date

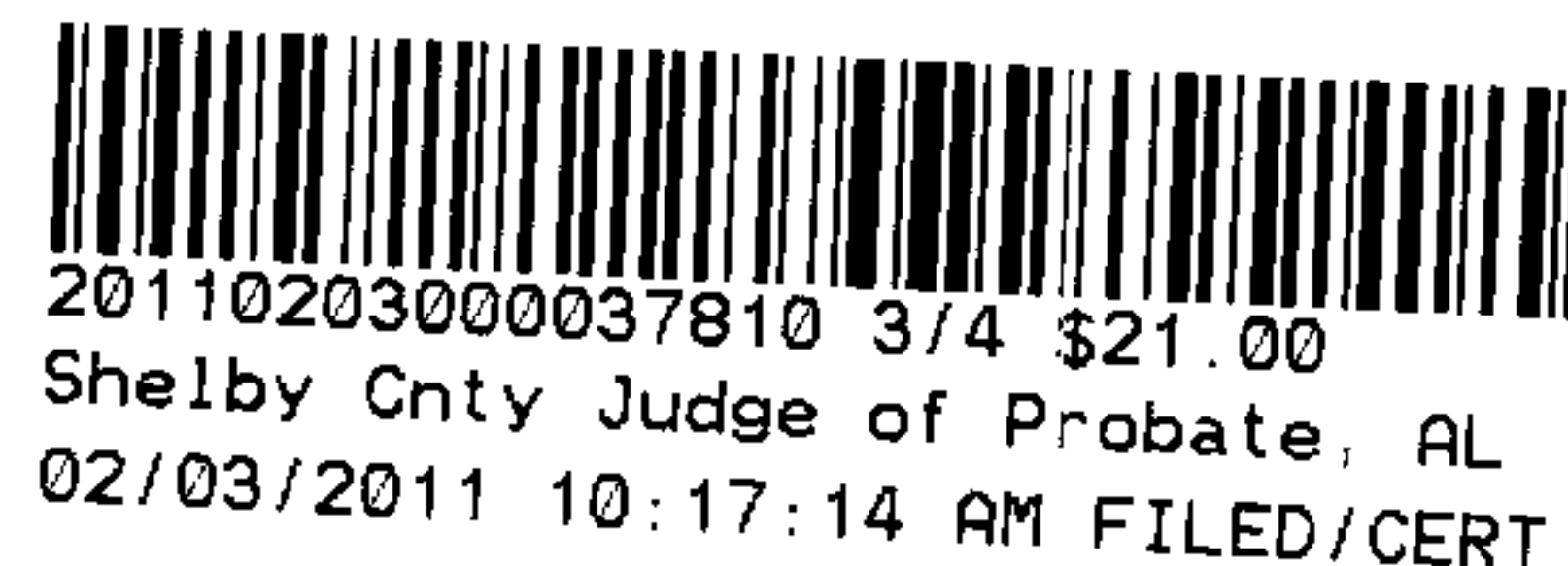
Date

This Instrument Prepared by:

Central State Bank
P.O. Box 180
Calera, AL 35040


20110203000037810 2/4 \$21.00
Shelby Cnty Judge of Probate, AL
02/03/2011 10:17:14 AM FILED/CERT

INDIVIDUAL ACKNOWLEDGMENT



STATE OF ALABAMA
COUNTY OF _____

I, _____, a Notary Public in and for said County, in said State, hereby certify that _____, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, _____, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this _____ day of _____.

Notary Public

My Commission expires: _____

INDIVIDUAL ACKNOWLEDGMENT

STATE OF ALABAMA
COUNTY OF _____

I, _____, a Notary Public in and for said County, in said State, hereby certify that _____, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, _____, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this _____ day of _____.

Notary Public

My Commission expires: _____

CORPORATE OR OTHER ACKNOWLEDGMENT

STATE OF ALABAMA
COUNTY OF Jefferson

On this 1st day of February, 2011, I, the undersigned authority, a Notary Public, in and for said County and in said State, hereby certify that Richard Bryant LaPoint and Michelle LaPoint, by Richard Bryant LaPoint, her attorney-in-fact by power of attorney, whose names as member of Dive Alabama, LLC, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of said conveyance, he, in his capacity as member and as such attorney-in-fact for Michelle LaPoint, member, and with full authority executed the same voluntarily for and as the act of the said Limited Liability Company and Michelle LaPoint on the day the same bears date.

Given under my hand and seal of office this 1st day of February, 2011.

Notary Public

My Commission expires: 11/26/11

EXHIBIT A

A parcel of land located in the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ and the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 14, Township 20 South, Range 3 West, Shelby County, Alabama, described as follows: Commence at the Northeast corner of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 14; thence run South along the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section 794.94 feet to a point on the centerline of the Lee Street; thence right 13 degrees 12 minutes 00 seconds and run southwesterly 588.83 feet along center of Lee Street; thence right 85 degrees 05 minutes 00 seconds leaving Lee Street in a westerly direction 618.24 feet to the point of beginning and the top edge of a quarry and run more or less along the top edge of said quarry the following angles and distances; thence right 128 degrees 24 minutes 45 seconds and run northeasterly 116.18 feet; thence right 12 degrees 18 minutes 49 seconds and run northeasterly 99.39 feet; thence left 21 degrees 57 minutes 13 seconds and run northeasterly 99.39 feet; thence left 21 degrees 57 minutes 13 seconds and run northerly 99.39 feet; thence left 21 degrees 57 minutes 13 seconds and run northerly 99.39 feet; thence left 22 degrees 49 minutes 22 seconds and run northwesterly 107.15 feet; thence right 61 degrees 12 minutes 05 seconds leaving top of quarry in a northeasterly direction 55.78 feet to the southerly right of way Industrial Park Road; thence left 92 degrees 28 minutes 38 seconds and run northwesterly along said right of way 146.74 feet to a point on a curve to the left having a central angle of 14 degrees 56 minutes 30 seconds and a radius of 609.31 feet; thence along the arc of said curve in a northwesterly direction 158.90 feet; thence run tangent to said curve in a northwesterly direction 300.00 feet; thence left 107 degrees 30 minutes 33 seconds leaving said right of way in a southerly direction 254.00 feet; thence right 97 degrees 01 minute 02 seconds and run 382.42 feet; thence left 33 degrees 06 minutes 09 seconds and run 47.20 feet; thence right 35 degrees 24 minutes 14 seconds and run 39.28 feet; thence left 34 degrees 48 minutes 34 seconds and run 103.62 feet; thence right 8 degrees 29 minutes 46 seconds and run 91.78 feet; thence left 20 degrees 14 minutes 59 seconds and run 241.36 feet; thence left 43 degrees 54 minutes 15 seconds and run 103.94 feet; thence left 3 degrees 20 minutes 24 seconds and run 115.39 feet; thence left 22 degrees 48 minutes 47 seconds and run 12.10 feet; thence left 78 degrees 45 minutes 52 seconds and run 9.38 feet; thence right 67 degrees 27 minutes 38 seconds and run southeasterly 39.58 feet; thence left 11 degrees 01 minute 43 seconds and run southeasterly 147.28 feet; thence left 7 degrees 41 minutes 18 seconds and run southeasterly 176.48 feet; thence right 34 degrees 50 minutes 53 seconds and run southerly 54.92 feet; thence left 30 degrees 32 minutes 14 seconds and run southeasterly 132.57 feet; thence right 3 degrees 05 minutes 06 seconds and run southeasterly 306.01 feet; thence left 44 degrees 37 minutes 55 seconds and run easterly 24.84 feet; thence left 10 degrees 00 minutes 00 seconds and run easterly for 145.00 feet; thence left 7 degrees 20 minutes 00 seconds and run northeasterly 100.00 feet; thence left 16 degrees 00 minutes 00 seconds and run northeasterly 176.27 feet; thence left 59 degrees 10 minutes 10 seconds and run northerly 64.87 feet; thence left 80 degrees 55 minutes 20 seconds and run northwesterly 0.53 feet; thence right 83 degrees 08 minutes 23 seconds and run northerly 43.81 feet; thence right 10 degrees 51 minutes 41 seconds and run northerly 41.49 feet; thence right 2 degrees 07 minutes 44 seconds northerly 61.23 feet; thence right 3 degrees 49 minutes 13 seconds northerly 38.45 feet; thence right 4 degrees 09 minutes 09 seconds and run northerly 31.53 feet; thence right 5 degrees 58 minutes 50 seconds and run northerly 28.80 feet; thence right 0 degrees 01 minute 35 seconds and run northerly 27.10 feet; thence left 6 degrees 49 minutes 20 seconds and run northerly 35.66 feet; thence left 0 degrees 20 minutes 07 seconds and run 70.61 feet; thence right 7 degrees 26 minutes 57 seconds and run 30.13 feet; thence right 69 degrees 37 minutes 55 seconds and run 29.65 feet to the point of beginning.

According to the survey of Rodney Shiflett, dated June 4, 2002.