

After Recording, Return to:
Baskin, McCarrill, McCaskill & Campbell, PA
PO Box 190
Southaven, MS 38671
(662) 349-0664

3/25/08 3:46:08
BK 125 PG 98
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

File No: 907151 Initials: Jm

COUNTY OF Desoto
STATE OF Mississippi

Prepared By and After
Recording Return to:
Susan M. Gordon, Esq.
Arby's Restaurant Group, Inc.
1155 Perimeter Center West, Suite 1200
Atlanta, Georgia 30338

To the Chancery Clerk of DeSoto County, Mississippi:
The real property described herein is situated in the
Northwest 1/4 of Section 18, Township 3, Range 7
West, Judicial District of DeSoto County, Mississippi.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT (the "Agreement"), is made and entered into as of the 19th day of February, 2008, by and among **RTM OPERATING COMPANY, LLC**, a Delaware limited liability company ("Tenant"), **HERNANDO DESOTO-LOT 1, LLC**, a Mississippi limited liability company (hereinafter "Landlord") and **BANCORPSOUTH BANK**, a Mississippi banking corporation (hereinafter called the "Lender").

W I T N E S S E T H:

WHEREAS, Lender has made a loan to Landlord (the "Loan") secured by that certain Land Deed of Trust, dated February 17, 2006, recorded at Book 2,415, Page 759, in the Chancery Clerk of DeSoto County, Mississippi (hereinafter collectively called the "Mortgage" and, collectively with any and all other documents evidencing, securing or pertaining thereto and/or to the Mortgage or the Loan, or to be secured, thereby, the "Mortgage Documents"), encumbering the Landlord's interest and title in and to certain premises as the same are described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Premises"), and such other properties and interests as are described therein, and encumbering all of Landlord's rights, title and interest in and to the Lease (as described below) and the leasehold estate created thereby to secure the payment of the indebtedness described in the Mortgage; and

WHEREAS, Landlord and Tenant have entered into that certain Lease Agreement dated as of December 19, 2007 evidenced by that certain Memo of Lease recorded at Book 125, Page 92 in the Chancery Clerk records of DeSoto County, Mississippi (as the same may have been modified and amended as of the date hereof, collectively, the "Lease"), pertaining to the leasing by Landlord, as "Landlord", to Tenant, as "Tenant" of the Premises, and which Lease is subject to the condition that this Agreement be executed and delivered by and among the parties hereto; and such Lease is incorporated herein by this reference and made a part hereof; and

WHEREAS, the parties hereto desire to enter into this Agreement in order to set forth the terms and conditions upon which Tenant shall attorn to Lender upon certain conditions, Lender shall recognize the Lease and agrees not to disturb same or Tenant's peaceful possession and quiet enjoyment of the Premises pursuant to the Lease, all upon certain conditions, and certain other matters.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, Lender, Landlord and Tenant, as Tenant, hereby covenant and agree as follows:

Baskin

1. **Non-Disturbance.** So long as no default exists nor any event has occurred which has continued to exist for such period of time (after notice, if any, required by the Lease) as would entitle the Landlord, as "Landlord" under the Lease to terminate the Lease or would cause, without any further action on the part of Landlord, the termination of the Lease or would entitle such Landlord to dispossess the Tenant thereunder, the Lease shall not be terminated, nor shall the Tenant's use, possession or enjoyment of the Premises be interfered with, nor shall the leasehold estate granted by the Lease be affected in any other manner, by any exercise of the power of sale contained in the Mortgage, or by any judicial or non-judicial foreclosure, conveyance in lieu of foreclosure or any action or proceeding instituted under or in connection with the Mortgage or in case the Lender takes possession of the property described in the Mortgage pursuant to any provisions thereof, unless the Landlord under the Lease would have had such right if the Mortgage had not been made; provided, that any such sale, foreclosure or taking of possession of the property shall be subject to the Lease and its terms, including, without limitation, any and all pre-clearance first refusal rights contained therein (if any) as well as any and all extension and renewal rights. Said Lease and its terms shall be binding upon the person or entity acquiring the interest of the Landlord under the Lease as a result of any such action or proceeding and the successors and assigns thereof (said person or entity and its successors and assigns being hereinafter called the "Purchaser"), except that the Purchaser shall not be: (a) liable for any act or omission of any prior Landlord under the Lease (except to the extent, if any, that the same constitutes a continuing dispute thereunder, and then only to the extent that such dispute occurs after the Purchaser has become the Landlord); or (b) subject to any offsets or defenses which the Tenant under the Lease might have against any prior Landlord under the Lease (except to the extent that the same accrue or arise after Lender becomes a mortgagee-in-possession or the Mortgagee or Purchaser becomes the Landlord under the Lease; or (c) bound by any base rent, or any other rental or other payments which the Tenant under the Lease might have paid for more than the current month (i.e. as of the month such party becomes the Landlord) to any prior Landlord under the Lease; or (d) bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior Landlord's interest, or (e) accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender, or (f) bound by any surrender, or termination of the Lease, or by any amendment or modification of the Lease made without the consent of Lender that has the effect of either (i) reducing the rent or other amounts due from Tenant thereunder, or (ii) reducing the term thereof, except as otherwise permitted in the Lease.

2. **Attornment and Recognition.** If the interests of the Landlord under the Lease shall be transferred by reason of the exercise of the power of sale or any other provision contained in the Mortgage, or by any foreclosure or other proceeding for enforcement of the Mortgage, (a) the Tenant thereunder shall be bound to the Purchaser under all of the terms, covenants and conditions of the Lease for the balance of the term thereof and any extensions of renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if the Purchaser were the original Landlord under the Lease, (b) Tenant, as Tenant under the Lease, does hereby attorn to the Purchaser, including the Lender if it be the Purchaser, as its Landlord under the Lease, and (c) Purchaser, including without limitation Lender if it be the Purchaser, does hereby recognize the Lease and the rights, title and interest of Tenant thereunder. Said attornment and recognition shall be effective and self-operative without the execution of any further instruments by Tenant or by Purchaser, upon the succession by Purchaser to the interest of the Landlord under the Lease. The respective rights and obligations of Purchaser and of the Tenant under the Lease upon such attornment and recognition, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth in the Lease, except as otherwise expressly provided herein.

3 **Subordination.** Subject to the terms and conditions of this Agreement, (a) Tenant hereby subordinates all of its right, title and interest, as Tenant under the Lease, to the right, title and interest of the Lender under the Mortgage, and (b) Tenant hereby agrees that the Lease now is and shall at all times

continue to be subject and subordinate in each and every respect to the Mortgage and to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage.

4. Use of Insurance or Condemnation Proceeds. Lender hereby covenants and agrees that any and all insurance proceeds payable under those policies of insurance maintained pursuant to the Lease and arising by reason of destruction or damage of the Premises, or any condemnation award acquired by Lender as a result of the condemnation of all or any part of the Premises, shall be used for restoration and repair to the extent required by the Lease, and shall otherwise be used and applied in accordance with and subject to the terms and conditions of the Lease.

5. Notice of Default by Landlord. Tenant, as Tenant under the Lease, and Landlord, as Landlord under the Lease, each hereby covenants and agrees to give Lender written notice properly specifying wherein the other party under the Lease has failed to perform any of the covenants or obligations of such party under the Lease simultaneously with the giving of any notice of such default to such party under the provisions of the Lease. Such notices to Lender shall be delivered to:

BancorpSouth Bank
6363 Poplar Ave.
Memphis, Tennessee 39119
Attn.: Regional President

or to such other address as the Lender shall have designated to Tenant by giving written notice to Tenant at the following notice address for Tenant: 1155 Perimeter Center West, Suite 1200, Atlanta, Georgia, Attn.: Melissa Nuss, Senior Director, Lease Management, with a copy to such address and Attn.: General Counsel, or to such other address as may be designated by written notice from Tenant to Lender, and as the Lender shall have designated by giving written notice to Landlord at the following notice address for Landlord: 7700 Wolf River Blvd., Germantown, Tennessee 38138, Attn: M. Spence Ray, or to such other notice as may be designated by written notice from Landlord to Lender.

6. Title of Paragraphs. The titles of the paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.

8. Provisions Binding. The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Lender, Purchaser, Landlord and Tenant, and upon such parties.

[Signatures Begin on Next Page]

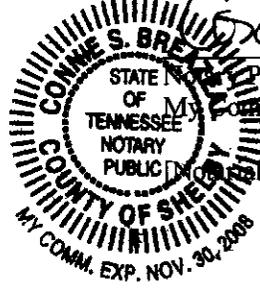
LANDLORD:

HERNANDO DESOTO-LOT 1, LLC, a
Mississippi limited liability company

By: 
Name: M. Spence Ray
Title: Chief Manager

STATE OF TENNESSEE)
) S.S.
COUNTY OF SHELBY)

PERSONALLY appeared before me, the undersigned authority in and for the said county and state, on this 12th day of February, 2008, within my jurisdiction, the within named M. Spence Ray, who acknowledged that he/~~she~~ is the Chief Manager of **HERNANDO DESOTO-LOT 1, LLC**, a Mississippi limited liability company and that for and on behalf of said company, and as its act and deed, he/~~she~~ executed the above and foregoing instrument, after having been duly authorized by said company so to do.

 Connie S. Brezina Public
STATE OF TENNESSEE Commission Expires: 11/30/08
NOTARY PUBLIC [Notary Seal]
COUNTY OF SHELBY
MY COMM. EXP. NOV. 30, 2008

[Signatures Continue on Next Page]

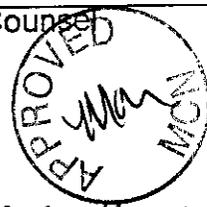
TENANT:

RTM OPERATING COMPANY, LLC
a Delaware limited liability company

By: [Signature]
Name: John A. Todd, Jr.
Title: SVP - Development

By: [Signature]
Name: Nils H. Okeson
Title: General Counsel

STATE OF Georgia)
COUNTY OF Fulton) S.S.



PERSONALLY appeared before me, the undersigned authority in and for the said county and state, on this 19th day of February, 2008, within my jurisdiction, the within named John A. Todd, Jr. and Nils H. Okeson, who acknowledged that they are the SVP - Development and General Counsel, respectively, of RTM OPERATING COMPANY, LLC, a Delaware limited liability company, and that for and on behalf of said corporation, and as its act and deed, they executed the above and foregoing instrument, after having been duly authorized by said corporation so to do.

[Signature]
Notary Public
My Commission Expires: _____

[Notarial Seal]



[Signatures Continue on Next Page]

LENDER:

BANCORPSOUTH BANK, a Mississippi banking corporation

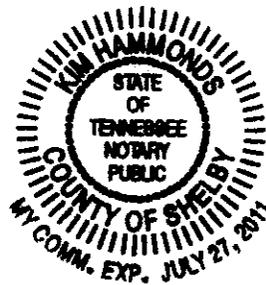
By: *Jeff L. Billions*
Name: Jeff L. Billions
Title: Vice President

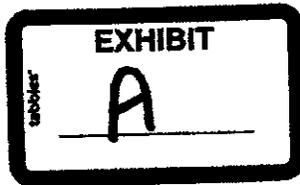
STATE OF Tennessee)
) S.S.
COUNTY OF Shelby)

PERSONALLY appeared before me, the undersigned authority in and for the said county and state, on this 8th day of February, 2008, within my jurisdiction, the within named Jeff Billions, who acknowledged that he/she is the Vice President of **BANCORPSOUTH BANK**, a Mississippi banking corporation and that for and on behalf of said Bank, and as its act and deed, he/she executed the above and foregoing instrument, after having been duly authorized by said Bank so to do.

Kim Hammonds
Notary Public
My Commission Expires: 7-27-2011

[Notarial Seal]





A TRACT OF LAND DESCRIBED AS LOT 1 , MCINGVALE - COMMERCE COMMERCIAL PLAZA, IN THE NW 1/4 OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 7 WEST, AS SHOWN ON THE RECORDED PLAT IN PLAT BOOK 105, PAGE 48, IN THE OFFICE OF THE CHANCERY CLERK OF DESOTO COUNTY, MISSISSIPPI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

COMMENCING FROM A PK NAIL SET AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER (NE 1/4), SECTION 18, TOWNSHIP 3 SOUTH, RANGE 7 WEST; RUN THENCE N 70 DEGREES 48 MINUTES 59 SECONDS EAST FOR A DISTANCE OF 45.58 FEET TO A 1/2" REBAR SET AT THE BEGINNING OF A CIRCULAR CURVE TO THE RIGHT AND THE NORTH RIGHT-OF-WAY LINE OF EAST COMMERCE STREET AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE ON A CURVE WITH A RADIUS OF 22.0 FEET AND A CHORD LENGTH OF 27.75 FEET A BEARING OF N 46°40'12" W TO A POINT, THENCE N 02°54'59" W A DISTANCE OF 125.41 FEET TO A POINT, THENCE N 58° 07'12" E A DISTANCE OF 14.80 FEET TO A POINT, THENCE N 89° 54'30" E A DISTANCE OF 250.69 FEET TO A POINT, THENCE S 45°04'32" E A DISTANCE OF 21.21 FEET TO A POINT, THENCE S 00°03'35" E A DISTANCE OF 107.40 FEET TO A POINT, THENCE N 90°00'00" W A DISTANCE OF 12.90 FEET TO A POINT, THENCE S 00°00'00" E A DISTANCE OF 29.89 FEET TO A POINT, THENCE S 89°56'25" W A DISTANCE OF 238.93 FEET TO THE POINT OF BEGINNING, SAID TRACT OF LAND CONTAINING 0.94 ACRES MORE OR LESS.