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Prepared by and return to:  
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6389 Quail Hollow Road, Suite 202  
Memphis, Tennessee 38120  
901-767-6200

**DECLARATION OF RESTRICTIONS**

THIS DECLARATION OF RESTRICTIONS is made and entered into this 27 day of July, 2004, by FOLK BROTHERS, LLC, a Delaware liability limited company, (herein referred to as the "Folk ") and KISBER SOUTHERN HOLDINGS, LLC, a Mississippi limited liability company (herein called "Kisber").

WHEREAS, Folk is the owner of certain real property (herein referred to as the "Folk Property"), which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, and which Folk desires to place certain restrictive covenants on the real property; and

WHEREAS, Kisber is the owner of certain real property (herein referred to as the "Kisber Property"), which is more particularly described in Exhibits "B" and "C" attached hereto and incorporated herein by reference, and which Kisber desires to place certain restrictive covenants on the real property; and

WHEREAS, Starbucks Corporation; Hueys Southaven, LLC; Gilder, Howell & Associates; and Lennys of Mississippi, LLC (herein collectively referred to as "Tenants"), are tenants of Folk and Kisber, and occupy leasehold space on the Folk and Kisber Real Properties described in Exhibits "A", "B" and "C" attached hereto; and

WHEREAS, Folk and Kisber have agreed and desire to establish certain restrictions on the Folk and Kisber Real Properties, for the mutual benefit of Folk and Kisber, their successors and assigns in interest; and

STATE MS.-DESOTO CO. <sup>SS</sup>  
FILED <sub>SS</sub>  
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W.E. DAVIS CH. CLK.

NOW, THEREFORE, Folk and Kisber, their successors and assigns, do hereby impose the following covenants and restrictions on the Real Properties described in Exhibit "A", Exhibit "B" and Exhibit "C" attached hereto:

1. On the Folk Real Property described in Exhibit "A" attached hereto, and the Kisber Real Property described in Exhibit "B" attached hereto, Folk, and Kisber, their successors and assigns in interest, during the life of the Hueys Southaven, LLC Lease dated August 26, 1999, shall not lease any space on the Folk or Kisber Real Property described in Exhibit "A" and Exhibit "B" to a direct competitor of Hueys (including, without limitation, East End Grill, T. J. Mulligans, Belmont, Bottom Line, Fox & Hound, etc.) or to a restaurant in which sales of hamburgers and cheeseburgers combined exceeds 25% of total food sales; provided, however, such exclusive shall not restrict theme restaurants such as Chinese, Italian, French, steak, seafood, or other similar restaurants (including, without limitation, Houstons, Amerigos, Outback Steakhouse, Subway Sandwiches, Jason's Deli, Holiday Ham, Honeybaked Ham, Lennys Deli, etc.).

2. On the Kisber Real Property described in Exhibit "B" attached hereto, Kisber, its successors and assigns in interest, during the life of the Hueys Southaven, LLC Lease dated August 26, 1999, shall not lease space to any single lessee or multiple lessees, other than to Hueys, with combined seating on premises for the retail sale of food in excess of forty-five (45) seats.

3. On the Folk Real Property described in Exhibit "A" attached hereto, and the Kisber Real Property described in Exhibit "B" attached hereto, Folk and Kisber, their successors and assigns in interest, during the Gilder, Howell & Associates Lease dated July 3, 2000, shall

not lease any portion of the Folk or Kisber Real Property described in Exhibit "A" and Exhibit "B" attached hereto for an Attorney at Law office.

4. On the Folk Real Property described in Exhibit "A" attached hereto, and the Kisber Real Property described in Exhibit "B" hereto, Folk and Kisber, their successors and assigns in interest, during the life of the Lennys of Mississippi, LLC Lease dated January 1, 2000, shall not allow any other food service operation on the Folk Real Property described in Exhibit "A" and the Kisber real property described in Exhibit "B" whose primary product is sandwiches, including Steak Escape, Jersey Mike's, Jason's Deli, McAlister's or Subway. However, such exclusion shall not restrict theme restaurants whose main product is not sandwiches, such as, but not limited to, TCBY, Starbucks, Smoothies, Baskin Robbins, ice cream, coffee, or other similar restaurants.

5. On the Folk Real Property described in Exhibit "A" attached hereto and the Kisber Real Property described in Exhibit "B" and Exhibit "C" attached hereto, Folk and Kisber, their successors and assigns in interest, during the life of the Starbucks Corporation Lease dated December 7, 2000, shall not use or allow any other person or entity (except Starbucks, Fridays, and Malco Theatre) to use any portion of the Folk or Kisber Real Properties described in Exhibit "A", Exhibit "B" and Exhibit "C" attached hereto for the sale of: (a) freshly ground or whole coffee beans; (b) espresso, espresso-based coffee drinks or coffee; (c) tea or tea-based drinks; or (d) gourmet, brand identified brewed coffee. This restriction shall also apply to kiosks and carts. Notwithstanding the foregoing restriction, any restaurant on the Folk and/or Kisber Real Properties described in Exhibit "A", Exhibit "B" and Exhibit "C", shall have the right to sell brewed coffee or espresso-based drinks for on premises consumption only.

6. In the event of a breach of these restrictions, and if said breach can not be cured within thirty (30) days after written notice, the parties hereto, their successors and assigns in interest, shall have the right to take such legal action, including but not limited to injunctive relief to enforce the terms and conditions of this Declaration. The prevailing party shall be entitled to recover reimbursement of its attorney fees and court costs.

7. The agreements, restrictions, and covenants herein made shall be determined restrictive covenants running with the Real Properties described herein, and shall be binding upon the Real Properties described herein, and any person or entity who may from time to time acquire ownership, lease, or otherwise have an interest in the Real Properties described in Exhibit "A", Exhibit "B", and Exhibit "C", including but not limited to any successors and/or assigns in interest of Folk and Kisber.

8. This Declaration is made in and shall be construed pursuant to the laws of the State of Mississippi.

IN WITNESS WHEREOF, the undersigned parties have executed this Declaration the day and year first above written.

FOLK BROTHERS, LLC

By:  \_\_\_\_\_

Its: VICE PRESIDENT \_\_\_\_\_

STATE OF TENNESSEE

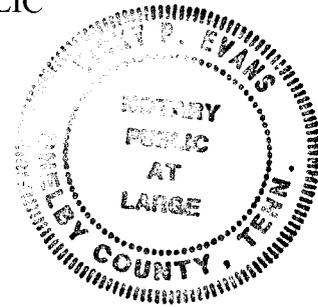
COUNTY OF SHELBY

Before me, the undersigned Notary Public within aforesaid County and State, duly commissioned and qualified, personally appeared Carey W. Folk, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Vice President of FOLK BROTHERS, LLC, a Delaware limited liability company, the within named bargainer and that he as such Vice President executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as such Vice President.

WITNESS my hand and Notarial seal at office this 27<sup>th</sup> day of July, 2004.

Lily P. Evans  
NOTARY PUBLIC

My Commission Expires:  
September 27, 2005



KISBER SOUTHERN HOLDINGS, LLC  
A Mississippi Limited Liability Company

By: *Michael E. Kiser*

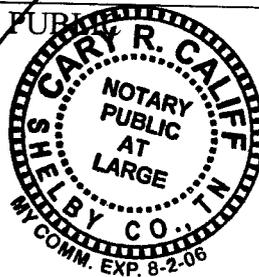
Its: *Chief Manager*

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public within aforesaid County and State, duly commissioned and qualified, personally appeared *Michael E. Kiser*, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the *Chief Mgr* of KISBER SOUTHERN HOLDINGS, LLC, a Mississippi limited liability company, the within named bargainor and that he as such *Chief Mgr* executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as such *Chief Mgr*.

WITNESS my hand and Notarial seal at office this *27* day of July, 2004.

*[Signature]*  
NOTARY PUBLIC



My Commission Expires:

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**EXHIBIT A****LEGAL DESCRIPTION OF  
PART OF LOT 8 OF DESOTO STATION SUDDIVISION**

Plat Book 51, Page 7

A 1.89, MORE OR LESS, ACRE PARCEL OF LAND BEING PART OF LOT 8 OF DESOTO STATION SUBDIVISION AND SITUATED IN SECTION 30, TOWNSHIP 1 SOUTH, RANGE 7 WEST, CITY OF SOUTHAVEN, DESOTO COUNTY, MISSISSIPPI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 30, TOWNSHIP 1 SOUTH, RANGE 7 WEST, CITY OF SOUTHAVEN, DESOTO COUNTY, MISSISSIPPI; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, 555.73 FEET TO A POINT; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 349.43 FEET TO AN IRON PIN (FOUND), SAID IRON PIN BEING THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 00 DEGREES 01 MINUTES 37 SECONDS EAST, ALONG THE EAST LINE OF THE PYRAMID PONTIAC LOT AND EAST LINE OF LOT 2 OF DESOTO STATION SUBDIVISION, 349.88 FEET TO AN IRON PIN (SET); THENCE SOUTH 89 DEGREES 46 MINUTES 40 SECONDS EAST, ALONG THE SOUTH LINE OF LOT 2 OF DESOTO STATION SUBDIVISION, 238.63 FEET TO A PK NAIL (FOUND); THENCE SOUTH 00 DEGREES 28 MINUTES 07 SECONDS EAST, ALONG THE WEST RIGHT OF WAY LINE OF MALCO BOULEVARD, 68.67 FEET TO A CHISEL MARK (FOUND); THENCE SOUTH 06 DEGREES 22 MINUTES 28 SECONDS WEST, ALONG THE WEST RIGHT OF WAY LINE OF MALCO BOULEVARD, 50.36 FEET TO A CHISEL MARK (FOUND); THENCE SOUTH 00 DEGREES 28 MINUTES 07 SECONDS EAST, ALONG THE WEST RIGHT OF WAY OF MALCO BOULEVARD, 228.89 FEET TO A CHISEL MARK (FOUND); THENCE SOUTH 89 DEGREES 40 MINUTES 08 SECONDS WEST, ALONG A DIVIDING LINE OF LOT 8 OF DESOTO SUBDIVISION, 235.64 FEET TO THE POINT OF BEGINNING, CONTAINING 1.89, MORE OR LESS ACRES OF LAND AND BEING SUBJECT TO ALL CODES, COVENANTS, REGULATIONS, RESTRICTIONS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD.

DATED: 06 FEBRUARY 2001 D.W.

**EXHIBIT B**

Lot 9A, Fourth Revision, DeSoto Station, 1<sup>st</sup> Amendment, in Section 30, Township 1 South, Range 7 West, City of Southaven, DeSoto County, Mississippi, as shown on plat appearing of record in Book 72, Page 27, in the Office of the Chancery Clerk of DeSoto County, Mississippi.

**EXHIBIT C**

Lot 9B, DeSoto Station, in Section 30, Township 1 South, Range 7 West, City of Southaven, DeSoto County, Mississippi, as shown on plat appearing of record in Plat Book 51, Page 7, in the Office of the Chancery Clerk of DeSoto County, Mississippi.