

796
SHORT FORM LEASE

THIS SHORT FORM LEASE is made and entered into on this 14th day of JULY, 1987, by and between MELINA F. DAVIS and SAMELIA F. THOMAS, (hereinafter referred to as "Lessor") and RTM ALABAMA, INC. (hereinafter referred to as "Lessee").

W I T N E S S E T H :

FOR AND IN CONSIDERATION of the sum of TEN DOLLARS (\$10.00) and other good and valuable considerations paid by Lessee to Lessor, the receipt and sufficiency of which are hereby acknowledged by Lessor, Lessor hereby leases, rents and demises to Lessee, and Lessee hereby hires, leases and takes from Lessor, upon and subject to the covenants and agreements set forth herein and in that certain Agreement of Lease (the "Lease") between Lessor (as "Lessor" therein) and Lessee (as "Lessee" therein) dated of even date herewith, the following described premises and improvements located in Shelby County, Alabama:

That certain parcel of land outlined in red and described in Exhibit "A" as Parcel "A", attached hereto and incorporated by reference herein.

Together with an easement for use, repair and maintenance of existing utility line, poles, cables and related facilities upon, over, under and across the cross-hatched property shown on Exhibit "A" and across other lands of Landlord adjacent to the demised premises.

Together with all right, title and interest of Lessor in and to any and all improvements (including, without limitation, all buildings, fixtures, parking facilities and landscaping located thereon), appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, and any right, title and interest of Lessor in or to any land lying in the bed of any street, alley, road or highway (open or proposed) to the center line thereof, in front of or adjoining said parcel of land, all being hereinafter referred to as the "demised premises." Landlord and Tenant agree that the demised premises shall not include any interest in the billboard located near the southeasterly line of the demised premises on Parcel C.

Except, however, any and all electrical signs and stands, equipment, machinery and supplies, now or to be hereafter situated on the demised premises, whether or not attached to the real property, shall not be deemed part of the demised premises but shall remain the

BOOK 140 PAGE 452

✓ Land Title

BOOK 140 PAGE 453

property of the Lessee and may be removed by Lessee in accordance with the terms and conditions contained herein.

Subject to, however, a non-exclusive easement reserved in Landlord to enter upon that portion of Parcel "A" shown hatched on Exhibit "A-1" attached and by this reference made a part hereof (the "Easement Area") for purposes of filling same to grade at the level of the parking facilities adjacent to the Easement Area as long as Tenant's operations are not materially, adversely affected thereby and the drainage on the other areas of the demised premises is not thereby increased. At such time as the Easement Area is so filled, Tenant agrees to release said Easement Area from the demised premises provided that Landlord intends to develop such Easement Area, such development shall not materially, adversely impact on Tenant's operations and/or facilities on the remaining portions of the demised premises and Tenant retains a non-exclusive easement over and across such Easement Area for vehicular and pedestrian ingress, egress and parking, structural support and any other uses not inconsistent with Landlord's use thereof in accordance herewith.

The Lease, which is incorporated by reference as fully as if set forth herein in its entirety and to which reference is made for all after terms, conditions and agreements between the parties, contains the following paragraphs bearing the paragraph numbers as hereinafter set out:

"2. Term. The term of this Lease shall commence on the date hereof and shall end on midnight of the 31st day of December, 2003 (hereinafter referred to as the "Termination Date").

4. Option to Extend Lease.

(a) Provided that Lessee is not in default hereunder, Lessor hereby grants to Lessee the option to extend this Lease beyond the original term for four (4) additional and successive five (5) year terms, such option to be exercised by written notification to Lessor not later than nine (9) months prior to the expiration of the original term or any extension term thereof.

5. Use. The demised premises shall be used for the operation of a fast-food restaurant with associated facilities. Lessee shall use the demised premises for no other purpose without the prior written consent of Lessor, and Lessee shall not

discontinue operation of such restaurant during the term of this Lease, except that Landlord acknowledges that Lessee shall not be required to open for business for a period of sixteen (16) weeks from the date hereof.

6. Compliance with Laws. Lessee shall comply, at all times and in all respects, with all laws and ordinances of all Federal, State, County, City and any other political subdivisions, and all rules and regulations of any duly constituted authority affecting or respecting the demised premises, or the use or occupancy of same, including the business at any time thereon transacted by Lessee.

7. Taxes.

(a) Lessee shall during the term of this Lease and any extension thereof, pay and discharge punctually, as and when the same become due and payable, all property taxes, street improvement assessments, water rents, charges and assessments levied or imposed against the demised premises or any part thereof, including any increase thereof whether or not attributable to the construction and/or operation of any improvements thereon.

(b) All real estate taxes and street improvements assessments which Lessee assumes and agrees to pay pursuant to this Lease which become due and payable for and during the first and last lease years of the term of this Lease, shall be apportioned pro rata between Lessor and Lessee in accordance with the respective number of months of such year during which this Lease is in effect.

(c) Lessee at its own expense shall have the right to contest or review by legal, administrative or other proceedings the amount or validity of any tax or assessment imposed against the demised premises in such manner as it deems suitable. Nothing herein shall imply any right on the part of Lessee to postpone or defer such payment, unless such proceedings shall prevent or stay the collection thereof and the sale of the demised premises to satisfy the same. Lessor shall join in such

BOOK 140 PAGE 455

proceedings properly, but Lessor shall not be liable for and shall be reimbursed by Lessee for any expenses, including attorney fees, in connection therewith. Lessee shall indemnify and save Lessor harmless from any such expenses. The proceedings herein referred to shall include, but shall not be limited to, appropriate appeals from any judgments, decrees or orders made in any such proceedings. In the event of any reduction, cancellation or discharge of such taxes or assessments as a result of such proceedings and if Lessee has not already paid same, then Lessee shall do so as they are finally levied, assessed or imposed. If there shall be any refund payable by any governmental authority with respect thereto, Lessee shall be entitled to receive and retain same, subject, however, to apportionment as provided herein during the first and last lease years of the term of this Lease, if applicable.

(d) Nothing herein or in this Lease otherwise contained shall require or be construed to require Lessee to pay any inheritance, estate, succession, transfer, gift, franchise, income, receipts or profit taxes, that are or may be imposed upon Lessor, its successors or assigns.

8. Utilities. Lessee will pay all charges for water, electricity and other utilities used, rendered or supplied upon or in connection with the demised premises during the term of this Lease as same become due. The Lessee will pay all sewer rents or charges becoming due during the term of this Lease and chargeable against the demised premises as soon as such charges become due.

9. Repairs and Maintenance.

(a) Lessee shall, during the term of this Lease, at its own expense, keep and maintain in a good and safe condition the entire demised premises, including without limitation, the improvements located thereon, and the equipment and appurtenances, and will make all necessary repairs thereto.

(b) Except as set forth in (d) below, Lessor shall not be required to make any repairs or alterations in or to the demised premises. Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, maintenance and management of the demised premises.

(c) If at any time during the term of this Lease, or any extension thereof Lessee shall be in default of this Paragraph 9, Lessor may give Lessee written notice of such default. If Lessee does not commence in good faith to make such repairs within ten (10) days from the date of such notice, Lessor may elect to make the needed repairs at its own expense, and any such repairs made by Lessor shall be reimbursed by Lessee immediately upon receipt of written notice from Lessor. Notwithstanding any action taken by Lessor pursuant to this Paragraph 9(c), Lessor shall not be required to make any such repairs or alterations and all rights contained in Paragraph 18 shall be retained by Lessor.

(d) Lessee agrees, subject to capacity and receipt of all governmental approvals and permits that Lessor shall be entitled to install water and sewer lines across the demised premises to benefit Parcel B as shown on Exhibit "B" attached and by this reference made a part hereof during the ~~eight (8)~~ ^{SIXTEEN (16)} week period following execution hereof and to install sewer lines only across the demised premises to benefit Parcel C as shown on Exhibit "B", at any time during the Lease Term or any renewals thereof, provided Lessor, at its sole cost and expense, shall restore the affected areas of the demised premises (including, without limitation, all pavement and improvements located thereon) to a condition following such work at least equal to the condition which existed prior to such work. Lessor shall also keep all facilities so installed in good order and repair at its expense. Lessor agrees to indemnify and hold Lessee harmless from and against any and all loss, cost, damage, expense or liability suffered or incurred by Lessee as a result of Lessor's exercise of its rights hereunder.

10. Insurance.

(a) Lessee shall, at its own cost and expense, carry and keep in effect at all times comprehensive general liability insurance in the name of both Lessor and Lessee, covering the demised premises and improvements thereon for personal injury or death and property damage with limits not less than Three Hundred Thousand and no/100 Dollars (\$300,000.00) with respect to injury or death to any one person, and not less than Five Hundred Thousand and no/100 Dollars (\$500,000.00) with respect to injury or death to more than one person in any one accident or other occurrence, and One Hundred Thousand and no/100 Dollars (\$100,000.00) with respect to damages to property. Lessee shall furnish Lessor with copies of such policies evidencing the above coverage.

(b) Lessee shall insure in the name of both Lessor and Lessee the building and improvements for their full insurable value against fire and other casualty and shall furnish Lessor a copy of a policy or policies which shall contain standard fire and extended coverage provisions.

(c) Such public liability insurance shall be obtained under enforceable policies issued by insurers of recognized responsibility licensed to do business in the State of Alabama. At least fifteen (15) days prior to the expiration date of any policy, copies of the renewal policy for such insurance or certificates or insurance certifying that such insurance is in full force and effect shall be delivered by Lessee to Lessor. Within fifteen (15) days after the premium on any policy shall become due and payable, Lessee shall furnish to Lessor evidence of its payment.

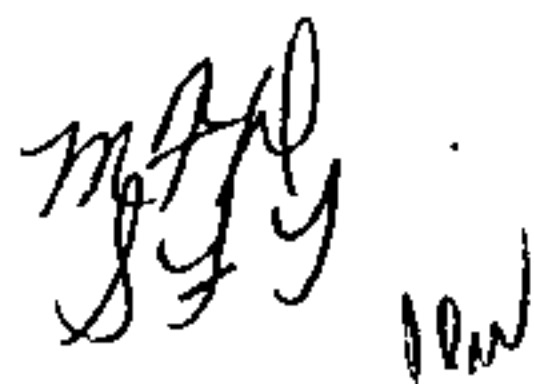
(d) If Lessee provides any insurance required by this Lease in the form of a blanket policy, Lessee shall furnish satisfactory proof that such blanket policy complies in all respects with the provisions of this Lease, and that the coverage is at least equal to the coverage which would be provided under a separate policy for the coverage required hereunder.

11. Indemnification of Lessor. Lessee will indemnify Lessor and save it harmless from and against any and all claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the demised premises or the occupancy or use by Lessee of the demised premises or any part thereof, or occasioned, wholly or in part, by any act or omission of Lessee, its agents, contractors, employees, servants, lessees or concessionaires. In case Lessor shall, without fault on its part, be made a party to any litigation commenced by or against Lessee, the Lessee shall protect and hold Lessor harmless and shall pay all costs and attorney's fees incurred or paid by Lessor in connection with such litigation. Lessee shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Lessor in enforcing the covenants and agreements in this Lease.

12. Waiver of Subrogation. Subject to the other provisions of Paragraph 10, all fire and casualty insurance policies carried by Lessee covering the demised premises, and the improvements and contents, shall expressly waive any right on the part of the insuror against the Lessor and Lessee agrees that its policies will include such waiver clause or endorsement as long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the Lessor pays such extra cost. If extra cost shall be chargeable therefor, Lessee shall advise the Lessor thereof and of the amount of the extra cost, and the Lessor, at its election, may pay the same and acquire the benefit of waiver of subrogation, but shall not be obligated to do so.

13. Alterations and Trade Fixtures.

(a) At any time during the term of this Lease and without the consent of the Lessor, Lessee may make any alterations, additions, or improvements, structural or nonstructural, to the demised premises as deemed desirable by Lessee for conduct



of its business. Lessee shall bear the cost of any alterations and shall promptly discharge any mechanics' or materialmen's lien filed in connection with such alterations.

140 459
BOM (b) All trade fixtures and personal property installed by Lessee on the demised premises, whether owned or leased and regardless of the manner of attachment, including, without limitation, refrigeration machines, controls, piping, coils, and conduits appurtenant thereto, incinerators, compactors, food storage boxes, counters, seating facilities, shelves, racks, signs, and other personal property, shall be considered personal property, shall not be deemed a part of the demised premises, and shall remain the property of Lessee or Lessee's lessor. Lessor recognizes that Lessee may not own the trade fixtures and other personal property situated on the demised premises, waives any provision of law granting a lien upon, or the right of distraint upon, such trade fixtures or personal property of Lessee or Lessee's lessor, and agrees to execute and deliver to Lessee, or its designee, any lien waivers or subordination agreements respecting such trade fixtures or personal property requested by the Lessee. At any time during the term of this Lease or within a period of thirty (30) days after the expiration date, Lessee or Lessee's lessor may, but without any obligation, remove any or all trade fixtures from the demised premises.

14. Liens. Lessee shall not permit any liens for work, labor, material, or services to be filed or attached to the demised premises or improvements, but any such liens so filed shall be discharged by Lessee within thirty (30) days after written notice from Lessor to Lessee of the filing thereof. Lessee shall have the right to contest such lien with due diligence, but in such event, shall first notify Lessor and at Lessor's request shall furnish a surety bond with a company satisfactory to Lessor. The recording of this Lease or a short form hereof constitutes public notice that in no event shall Lessor be liable or otherwise responsible for the cost of any

material, improvements, work or labor furnished to the demised premises by any materialman or mechanic and any filing of a lien against the demised premises with respect to any such labor or materials so furnished shall not be effective with respect to the demised premises, but shall attach only as to and against the leasehold estate created hereby.

BOOK 140 PAGE 460
15. Transfer or Assignment by Lessee. Lessee shall not assign this Lease in whole or in part, nor sublet all or any part of the demised premises, without the prior written consent of Lessor in each instance, which consent shall not be unreasonably withheld. No such consent shall be necessary for an assignment incident to or following foreclosure of a leasehold mortgage granted by Lessee pursuant to Paragraph 18(b) hereof. The consent by Lessor of any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. If this Lease be assigned, or if the demised premises or any part thereof be subleased or occupied by anybody other than Lessee, Lessee may collect rent from the assignee, sublessee or occupant and apply the net amount collected to the rent herein reserved, but no such assignment, sublease, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, sublessee or occupant as tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of the Lessee herein contained. Notwithstanding any assignment or sublease, Lessee shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease.

16. Eminent Domain.

(a) If the whole of the demised premises shall be acquired or condemned by eminent domain for any public or quasi public use or purpose, then the term of this Lease shall cease

and terminate as of the date of such acquisition or condemnation and any unearned rent paid in advance by Lessee shall be refunded.

(b) If twenty-five percent (25%) or more of the demised premises shall be acquired or condemned as aforesaid, and in the event that such partial taking or condemnation shall, in Lessee's judgment, render the demised premises unsuitable for the business of Lessee, or if any portion of the building situated on the demised premises is acquired or condemned as aforesaid or access to the demised premises is materially impaired thereby (Tenant agreeing that access shall not be deemed materially impaired so long as the demised premises has at least one curb-cut for direct access to Highway 280 at least twenty-five (25) feet in width), then the term of this Lease shall cease and terminate as of the date of such acquisition or condemnation and any unearned rent paid in advance by Lessee shall be refunded. In the event of a partial taking or condemnation of less than twenty-five percent (25%) or the taking or condemnation is not extensive enough to render the premises unsuitable for the business of the Lessee, this Lease shall continue in full force and effect with an equitable reduction of the Minimum Guaranteed Rent proportionate to the reduction in size of the leased premises.

(c) In the event of any such acquisition or condemnation by eminent domain as aforesaid, Lessee shall have no claim against Lessor nor the condemning authority for the value of any unexpired term of this Lease; and the Lessor shall be entitled to all of the award attributable to the value of the land, as well as all severance damages, and with respect to that part of the award which is attributable to the value of the Improvements constructed by Lessee, said amount shall be divided upon the following basis: Lessee shall be entitled to a fraction thereof, the numerator of which is the number of months remaining from the date of such acquisition or condemnation by eminent domain to the

expiration date of the fourth renewal term of this Lease and the denominator of which is four hundred thirty-eight (438) months (the number of months in the original term and all renewal terms) and Lessor shall be entitled to the remainder thereof.

(d) Notwithstanding the foregoing, Lessee shall have the right to claim and recover from the condemning authority, but not from Lessor, such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of any and all damage to Lessee's business by reason of the condemnation and for or on account of any cost or loss to which Lessee might be put in removing Lessee's merchandise, furniture and fixtures.

17. Destruction of Leased Premises.

(a) In the event that, at any time during the term of this Lease, the building and improvements on the demised premises shall be destroyed or damaged in whole or in part by fire or other casualty within the coverage of the insurance carried by Lessee in accordance with this Lease, then Lessee shall, at its own expense, cause the same to be repaired, replaced or rebuilt within a period of time which, under prevailing circumstances, shall be reasonable. During any such time in which Lessee shall undertake the repair or restoration of the damaged or destroyed building and improvements, any insurance proceeds received as a result of such fire or other casualty shall be applied by Lessee to the repair or restoration of the demised premises and any surplus insurance proceeds after completion of such repairs or restoration shall belong to the Lessee. During any such period of restoration or repair there shall be no abatement of rent.

(b) In the event that such damage or destruction occurs during the last three (3) years of the term of this Lease or during the last three (3) years of any extension thereof, then Lessee shall have the right to elect to terminate this Lease and not repair or restore the damaged or destroyed building and improvements, provided that Lessee exercises this option by giving written notice of termination to Lessor within sixty (60)

days after the occurrence of such damage or destruction. Should Lessee fail to give the above written notice to Lessor within sixty (60) days after the occurrence of such damage or destruction, Lessee shall be obligated to fully repair or restore the building and all improvements to the condition of said building and improvements prior to the damage or destruction. In the event Lessee elects to terminate this Lease pursuant to this Paragraph 17(b), all insurance proceeds attributable to the value of the buildings and improvements on the demised premises shall be assigned to Lessor.

18. Mortgages.

(a) During the term of this Lease or any extension thereof, Lessor shall have the right or power to mortgage or otherwise create a mortgage or security interest affecting the fee interest in the demised premises, and to renew, modify, extend or refinance any such mortgage, subject however, to the following:

(1) This Lease shall be subordinate to the lien of any mortgage, whether presently existing or created at any time, during the term of this Lease;

(2) The leasehold interest of Lessee in the demised premises and the rights and privileges of Lessee under this Lease shall not be disturbed, diminished or interfered with by the holder of any mortgage upon the demised premises or by and purchaser in any mortgage foreclosure proceedings, provided that Lessee is not in default in the payment of rent or in the performance of any terms of this Lease;

(3) Lessee shall attorn to any holder of any mortgage to which this Lease is subordinate or to a purchaser of any foreclosure of said mortgage;

(4) Lessee shall execute any documents as may be reasonably required by any mortgagee acknowledging that this Lease is subordinate to such mortgage and providing for such attornment and Lessor shall obtain for the benefit of Lessee

an agreement, in form and substance satisfactory to Lessee, from the mortgagee approving the nondisturbance provisions contained in this Paragraph 18(a).

(b) During the term of this Lease, or any extension thereof, Lessee shall have the right to obtain a mortgage loan or mortgage loans (including a temporary or initial construction mortgage loan) on the leasehold interest of Lessee in the demised premises, on the following terms and conditions:

(1) Lessee's right to mortgage shall extend only to Lessee's leasehold interest in this Lease and shall in no event extend to the fee interest of Lessor.

(2) Said mortgage shall secure an indebtedness of Lessee for the purposes herein stated in an amount not exceeding the cost of construction of Improvements, and all costs directly related thereto, on the demised premises.

(3) Any such mortgage shall by its terms mature and the entire indebtedness secured thereby shall be due and payable within thirteen (13) years and six (6) months from the Commencement Date of this Lease.

(4) That Lessor will give to any such mortgagee simultaneously with service on Lessee a duplicate of any and all notices or demands given by Lessor to Lessee and no such notice to Lessee shall be effective unless a copy is so serviced upon the mortgagee.

(5) In the event of any default by Lessee hereunder, or under the terms of the mortgage, such mortgagee shall have the privilege of performing any of Lessee's covenants or of curing any defaults by Lessee or of exercising any election, option or privilege conferred upon Lessee by the terms of this Lease.

(6) Lessor shall not terminate this Lease or Lessee's right of possession for any default of Lessee if, within a period of thirty (30) days after the expiration of the period of time within which Lessee might cure such default

and if such default is cured or caused to be cured by such mortgagee, or if within a period of thirty (30) days after the expiration of the period of time within which Lessee might commence to eliminate the cause of such default, such mortgagee commences to eliminate the cause of such default and proceeds therewith diligently and with reasonable dispatch. If Lessee has been in default following notice and cure more than once in any calendar year period, Lessor shall be entitled to avoid the provisions of this Paragraph 18(b)(6) by payment in full of the balances due Lessee's mortgagee, in which event Lessee shall surrender the demised premises to Lessor in accordance herewith within thirty (30) days and neither party shall have any further rights, duties, obligations or liabilities hereunder, it being understood that Lessee shall have no obligation to reimburse Lessor for any amounts expended in paying off such mortgage; provided, however, this Lease shall not terminate if, within such thirty (30) day period, Lessee reimburses Lessor for any amounts expended in paying off such mortgage and reasonable attorneys' fees incurred in connection therewith and if Lessee otherwise cures its default under this Lease and provided further, however, that under no circumstances shall Landlord be required to accept such reimbursement and allow Tenant to avoid termination of this Lease in excess of one (1) time in any five (5) year period during the Term of this Lease or any renewal thereof.

(7) The execution and delivery of a leasehold mortgage or deed of trust and a conditional assignment of this Lease as collateral security therefor shall not be deemed a Lease assignment for any other purpose.

(8) No modification or amendment to this Lease shall be effective or binding against such mortgagee without its prior written consent.

MPD
JYY
W

(9) Lessor shall from time to time execute any documents as may be reasonably required by any mortgagee acknowledging that this Lease remains in full force and effect and has not been amended, and stating Lessor's agreement to the provisions contained in this Paragraph 18(b).

19. Default of Lessee.

(a) Upon the happening of any one or more of the events as expressed below in (1) and (6), inclusive, the Lessor shall have any and all of the rights and remedies set forth in Paragraphs 18(b) to (i), inclusive:

(1) In the event Lessee should fail to pay any one or more said monthly installments of rent, or any other sums required to be paid hereunder, as and when the same become due, and such default should continue for ten (10) days after written demand for payment is made by Lessor (Lessee agrees to pay attorneys' fees incurred by Lessor in giving such notice; provided such fee does not exceed \$50.00).

(2) In the event a petition in bankruptcy (including any reorganization proceedings under the Bankruptcy Act) be filed by or against the Lessee and such petition is not dismissed within sixty (60) days from the filing thereof, or in the event Lessee is adjudged a bankrupt.

(3) In the event Lessee shall become insolvent or file any debtor proceedings or enters into an arrangement or composition with creditors.

(4) In the event Lessee makes an assignment for the benefit of creditors.

(5) In the event of an appointment by any court of a receiver, trustee or other court officer of all or substantially all of Lessee's property and such receivership is not dismissed within sixty (60) days from such appointment.

(6) In the event Lessee violates or fails to perform any other of the terms, conditions or covenants of this Lease to be observed or performed by Lessee for more than thirty (30) days after written notice of such default shall have been given to Lessee.

(b) In the event of any such default, Lessor shall have the right, at the option of Lessor, to terminate this Lease upon ten (10) days' written notice to Lessee, and to thereupon re-enter and take possession of the demised premises with or without legal process.

BOOK 140 PAGE 467
(c) In the event of any such default, Lessor shall have the right, at the option of Lessor, from time to time, without terminating this Lease, to re-enter and relet the demised premises, or any part thereof, with or without legal process, as the agent of Lessee for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Lessor, in its sole discretion, may deem advisable, in which event the rents received upon any such reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from Lessee to Lessor; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorney's fees and all costs of alterations and repairs as may be reasonably necessary in order to relet the demised premises; third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Lessor and applied in payment of future rent as the same may become due and payable hereunder, and if a sufficient sum shall not be thus realized or secured to pay the rents and other sums payable by Lessee to Lessor as provided in this Lease, Lessee shall pay Lessor any deficiency monthly, notwithstanding Lessor may have received rent in excess of the rent stipulated in this Lease in previous or subsequent months, and Lessor may bring an action therefor as such monthly deficiency shall arise. The Lessor shall not, in any event, be

required to pay Lessee any surplus of any sums received by Lessor on a reletting of the said premises in excess of the rent provided in this Lease.

(d) In the event of any such default, should Lessor at any time terminate this Lease for any default, in addition to any other remedies it may have, it may recover from Lessee all damages it may incur by reason of such default, including the cost of recovering the demised premises and reasonable attorney's fees.

(e) The Lessor, in addition to other rights and remedies it may have, shall have the right to remove all or any part of the Lessee's property from said premises and any property removed may be stored in any public warehouse or elsewhere at the cost of, and for the account of Lessee and the Lessor shall not be responsible for the care and safekeeping thereof, and Lessee hereby waives any and all loss, destruction and/or damage or injury which may be occasioned by any of the aforesaid acts.

(f) No such re-entry or taking possession of said demised premises by Lessor shall be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee. Notwithstanding any such reletting without termination, Lessor may at all times thereafter, elect to terminate this Lease for such previous default.

(g) Any re-entry by Lessor shall be allowed by Lessee without service of notice or resort to legal process, and Lessor shall not be liable in damages for any such reentry or guilty of trespass or forcible entry.

(h) Any and all rights, remedies and options given in this Lease to Lessor shall be cumulative and in addition to and without waiver of or in derogation of any right or remedy given to it under any law now or hereafter in effect.

(i) In the event of employment by Lessor of any attorney to collect any rents or sums due hereunder by Lessee, or to enforce the performance of any obligation hereunder, or on

account of the breach by Lessee of any term, condition or covenant hereof, Lessee will pay all costs and expenses thereof, including a reasonable attorney's fee.

20. Quiet Enjoyment.

(a) Lessor covenants and agrees with Lessee that if Lessee shall pay the rent and all other sums and charges to be paid by it as herein provided, and observes and keeps all covenants, warranties, agreements and conditions of this Lease on its part to be kept, that Lessee shall quietly have and enjoy the demised premises during the term of this Lease, without hindrance or molestation by any one.

(b) Lessor shall deliver to Lessee, at Lessee's cost, evidence of title, which shall be in the form of a title binder or other title evidence satisfactory to Lessee issued not earlier than the date of execution of this Lease to be followed by a title insurance policy acceptable to Lessee based upon an examination of records in the county in which the demised premises are located issued not earlier than the date hereof. The evidence of title shall show that Lessor is vested with fee simply title to the demised premises, free and clear of all liens and encumbrances and of any defects which would affect the peaceful enjoyment of the demised premises for the intended use of the Lessee during the full term of the Lease. If such evidence of title shows defects in title which, in the sole judgment of Lessee, would affect such peaceful enjoyment, Lessee may, within thirty (30) days after receipt, by notice in writing to Lessor, elect to terminate this Lease, providing Lessor has not eliminated those items found objectionable by Lessee within said thirty (30) days. This provision shall not be construed as a limitation upon the covenants and warranties of the Lessor in this Lease, nor as a substitute therefor, nor as a lack of reliance by Lessee thereupon.

21. Limitation of Liability. Notwithstanding anything to the contrary provided in this Lease, or by law, it is specifically agreed and understood that there shall be absolutely no personal liability on the part of Lessor, or any successor in interest, with respect to any of the terms, covenants and conditions of this Lease, and Lessee or any other party shall look solely to the equity of Lessor or such successor in interest in the fee estate of Lessor in the demised premises, for the satisfaction of each and every claim, suit or action against the Lessor or such successor in interest, such exculpation of personal liability to be absolute and without any exception whatsoever.

22. Waste or Nuisance. Lessee shall not commit or suffer to be committed any waste upon the demised premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any one possessing or owning any property or property interest in any surrounding property.

23. Rules and Regulations and Sanitation and Safety Requirements. Lessee will not permit an unsightly or unsanitary accumulation of trash or similar refuse upon, about or near the leased premises. Lessee shall have appropriate arrangements for removal of garbage, trash and refuse and shall install a dumpster for such purpose on the demised premises.

24. Notices. All notices and demands authorized or required to be given by either party to the other shall be in writing sent by personal delivery or by registered or certified mail addressed to each party as follows, or as may be hereafter changed by written notice:

To Lessor: Shades Ridge Holding Company, Inc.
Post Office Box 283
Pelham, Alabama 35124

To Lessee: RTM Alabama, Inc.
2130 LaVista Executive Park
Tucker, Georgia 30084
Attn: Mr. J. Russell Welch

Notice shall be effective upon delivery to the address referred to above if personally delivered, or if sent by mail upon placing in the United States Mails, postage prepaid, and properly addressed.

25. Surrender of Premises. The building and all improvements and additions constructed by Lessee upon the demised premises shall adhere to the demised premises and become the property of Lessor upon the termination of this Lease. Upon termination of this Lease, Lessee shall have the right to remove any electric signs and stands, equipment, machinery, supplies and any other property which the general public may identify with Arby's restaurants from the demised premises, provided all terms, conditions and covenants of this Lease have been complied with by Lessee and Lessee repairs any damage caused by such removal. All other improvements or additions, including the building and air conditioning and heating equipment shall be surrendered to Lessor in good order, condition and repair, wear and tear excepted.

26. Covenant Not to Compete.

(a) Lessor covenants and agrees that, during the term of this Lease, Lessor shall not, except with the written consent of the Lessee, directly or indirectly, engage in or lease or permit to be occupied as a fast food restaurant with the same or similar menu as Lessee any premises owned or leased by Lessor within a radius of two (2) miles from the demised premises, including, without limitation, McDonald's, Burger King, Wendy's, Hardees, or Bojangles. If Lessor is a corporation, this covenant shall apply to its officers, directors, subsidiaries, and affiliates.

27. Right of First Refusal. Lessee shall have the right of first refusal to purchase the demised premises as hereinafter set forth in this paragraph. If at any time during the term, or any renewal or extension thereof, Lessor shall receive a bona fide offer from a third person for the purchase of the demised premises, which offer Lessor shall desire to accept, Lessor shall

BOOK 140 PAGE 472

promptly deliver to Lessee a copy of such offer, and Lessee may, within thirty (30) days thereafter, elect to purchase the demised premises on the same terms as those set forth in such offer. If Lessor shall receive an offer for the purchase of the demised premises, which is not consummated by delivering a deed to the offeror, Lessee's right of first refusal shall remain applicable to subsequent offers. If Lessor shall sell the demised premises after a failure of Lessee to exercise its right of first refusal, such sale shall be subject to this Lease, and the right of first refusal shall continue and shall be applicable to subsequent sales of the demised premises. If any acceptable third party offer to Lessor for the demised premises shall include other property, Lessee's right of first refusal shall be applicable to the demised premises alone, at a purchase price which shall be that part of the price offered by the third person which the value of the demised premises shall bear to the value of all the property included in such third party offer. If the demised premises shall be conveyed to Lessee under this right of first refusal, any prepaid rent shall be apportioned and applied on account of the purchase price.

28. Miscellaneous.

(a) Holding Over. Any holding over after the expiration of the term hereof, with the consent of the owner, shall be construed to be a tenancy at will.

(b) Waiver. The waiver by Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent. No

MAF
SYY
HAW

covenant, term or condition of this Lease shall be deemed to have been waived by Lessor, unless such waiver be in writing by Lessor.

(c) Accord and Satisfaction. No payment by Lessee or receipt by Lessor of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

BOOK 140 PAGE 473
(d) Entire Agreement. This Lease and the exhibits and rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the demised premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by them.

(e) Captions. The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of the paragraphs or this Lease nor in any way affect this Lease.

(f) Successors. All rights and liabilities herein given to or imposed upon, the respective parties hereto shall extend to and bind the respective successors and assigns of the said parties. No rights, however, shall inure to the benefit of any assignee of Lessee unless the assignment for such assignee has been approved by Lessor in writing as hereinabove provided.

(g) Recording. In the event Lessor or Lessee desire to record this Lease, or any short form lease, Lessee shall pay all of the cost of said recording. If a short form of this Lease is recorded, said short form lease shall include notice to the public of the provisions contained in Paragraph 13."

IN WITNESS WHEREOF, THE PARTIES hereto have executed this Short Form Lease on this 14th day of July, 1987.

LESSOR:

ATTEST:

WITNESS

WITNESS

Melina F. Davis (L.S.)
MELINA F. DAVIS

Samelia F. Thomas (L.S.)
SAMELIA F. THOMAS

LESSEE:

RTM ALABAMA, INC.

By:

Title:

ATTEST:

WITNESS

Q79RTM45
23578.1

STATE OF Alabama
Shelby COUNTY

)
)
)

I, the undersigned, a Notary Public in and said for County, in said State, hereby certify that Melina F. Davis and Samelia F. Thomas, whose names are signed to the foregoing Lease Agreement, and who are known to me, acknowledged before me on this day, that, being informed of the contents thereof, they, as such owners, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 14th day of July, 1987.

(Notarial Seal)

Martha B. Laguarda
Notary Public
My commission expires: 9/25/88

BOX 140 PAGE 475

STATE OF ALABAMA
JEFFERSON COUNTY

)
)
)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert E. Willis whose name as Vice President of RTM ALABAMA, INC., is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 14 day of June, 1987.

(Notarial Seal)

Joanne O. Barber
Notary Public
My commission expires: 6/21/89

my 2nd
SY
W

EXHIBIT "A"

PARCEL A

BOOK 140 PAGE 476

Begin at the Northeast corner of Section 35, Township 18 South, Range 2 West, Shelby County, Alabama; thence run in a Southerly direction along the East line of said Section for a distance of 277.11 feet to a point which is on the Northeasterly right of way line of U.S. Highway #280; thence turn an angle to the right of 131 degrees, 20' 37" to the tangent of the following described course, said course being situated on a curve to the left having a general angle of 4 degrees, 22' 52" and a radius of 5,879.58 feet; thence run along the arc of said curve in a Northwesterly direction along the Northeasterly right of way line of U.S. Highway #280 for a distance of 449.58 feet to a point on the North line of Section 35, Township 18 South, Range 2 West; thence turn an angle to the right of 144 degrees, 08' 15" and run in an Easterly direction along the North line of said section for a distance of 348.62 feet to the point of beginning. LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCELS "B" AND "C" LYING WITHIN THE ABOVE DESCRIBED PROPERTY: PARCEL "B": Commence at the Northeast corner of Section 35, Township 18 South, Range 2 West, run thence in a westerly direction along the North line of said Section for a distance of 202.57 feet to the point of beginning. From the point of beginning thus obtained, thence continue along last described course for a distance of 146.05 feet to a point on the Northeasterly right of way line of U.S. Highway #280; thence turn an angle to the left of 144 degrees, 08' 15" to the tangent of the following described course, said course being situated on a curve to the right having a central angle of 1 degree, 18' 16" and a radius of 5,879.58 feet; thence run along the arc of said curve to the right in a southeasterly direction along the Northeasterly right of way line of U.S. Highway 280 for a distance of 133.86 feet; thence turn an angle to the left from the tangent of the last described course of 60 degrees, 32' 01" and run in a Northeasterly direction for a distance of 70.58 feet; thence turn an angle to the left of 93 degrees, 38' and run in a Northwesterly direction for a distance of 57.98 feet to the point of beginning. PARCEL "C": Begin at the Northeast corner of Section 35, Township 18 South, Range 2 West, Shelby County, Alabama, thence run in a Southerly direction along the East line of said Section for a distance of 277.11 feet to a point of beginning which is on the Northeasterly right of way line of U.S. Highway #280; thence turn an angle to the right of 131 degrees, 20' 37" to the tangent of the following described course, said course being situated on a curve to the left having a central angle of 4 degrees, 22' 52" and a radius of 5,879.58 feet; thence turn along the curve of the arc of said curve in a Northwesterly direction along the Northeasterly right of way line of U.S. Highway #280 for a distance of 90 feet; thence turn an angle of 90 degrees, 00' 00" to a point on the East line of said Section 35; thence in a Southerly direction to the point of beginning.

FURTHER LESS AND EXCEPT FROM THE ABOVE DESCRIBED PROPERTY THAT PORTION OF PROPERTY SHOWN CROSS-HATCHED ON EXHIBIT "A-1" ATTACHED AND BY REFERENCE MADE A PART OF THIS EXHIBIT "A".

MAF
JY
JH

BOOK 140 PAGE 477

SECRET

MPD
S 79

BOOK 140 PAGE 478

STATE OF ALA. SHELBY CO. *of*
I CERTIFY THIS
INSTRUMENT WAS FILED
ON 4: 10

1987 JUL 14 PM 4:10

1987 352
Thomas A. Swanson, Jr.
 JUDGE OF PROBATE

[illegible]

sewer

water

1-57007
STUCCO
RESTAURANT

sewer

11/11/2005 11:11:11 AM

James D. Bergland.
 -son, Engineer and Surveyor.

[illegible]

begin at the Northeast corner of Section 35, Township 18 South, Range 2 West, Shelby County, Alabama; thence run in a southerly direction for a distance of 221.11 feet to a point on the East line of said section for a distance of 221.11 feet to a point on the Northeastly right-of-way line of U.S. Highway 280; thence run in the Northeastly right-of-way line of U.S. Highway 280, at an angle to the right of 110°20'17" to the tangent of the following described arc, said curve being situated on a curve to the left having a central angle of 17°52' and a radius of 5,379.58 feet; thence run along the arc of said curve in a westerly direction along the Northeastly right-of-way line of U.S. Highway 280 a distance of 149.36 feet to a point on the West line of Section 35, Township 18 South, Range 2 West; thence run an angle to the right of 144°42'15" and run in an Easterly direction a distance of 149.36 feet to a point on the North line of Section 35, Township 18 South, Range 2 West; thence run an angle to the right of 144°42'15" and run in an Easterly direction a distance of 149.36 feet to the point of beginning.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCELS "A" AND "B" WHICH ARE LOCATED ON THE NORTH LINE OF SAID SECTION FOR A DISTANCE OF 149.36 FEET.

PARCEL "A": Commence at the Northeast corner of Section 35, Township 18 South, Range 2 West; run thence in a westerly direction along the East line of said section for a distance of 221.11 feet to the point of beginning. Thence run thence in a southerly direction along the East line of said section for a distance of 221.11 feet to a point on the Northeastly right-of-way line of U.S. Highway 280; thence run in the Northeastly right-of-way line of U.S. Highway 280, at an angle to the right of 110°20'17" to the tangent of the following described arc, said curve being situated on a curve to the left having a central angle of 17°52' and a radius of 5,379.58 feet; thence run along the arc of said curve in a westerly direction along the Northeastly right-of-way line of U.S. Highway 280 a distance of 149.36 feet to a point on the West line of Section 35, Township 18 South, Range 2 West; thence run an angle to the right of 144°42'15" and run in an Easterly direction a distance of 149.36 feet to a point on the North line of Section 35, Township 18 South, Range 2 West; thence run an angle to the right of 144°42'15" and run in an Easterly direction a distance of 149.36 feet to the point of beginning.

PARCEL "B": Commence at the Northeast corner of Section 35, Township 18 South, Range 2 West; run thence in a westerly direction along the East line of said section for a distance of 221.11 feet to the point of beginning. Thence run thence in a southerly direction along the East line of said section for a distance of 221.11 feet to a point on the Northeastly right-of-way line of U.S. Highway 280; thence run in the Northeastly right-of-way line of U.S. Highway 280, at an angle to the right of 110°20'17" to the tangent of the following described arc, said curve being situated on a curve to the left having a central angle of 17°52' and a radius of 5,379.58 feet; thence run along the arc of said curve in a westerly direction along the Northeastly right-of-way line of U.S. Highway 280 a distance of 149.36 feet to a point on the West line of Section 35, Township 18 South, Range 2 West; thence run an angle to the right of 144°42'15" and run in an Easterly direction a distance of 149.36 feet to a point on the North line of Section 35, Township 18 South, Range 2 West; thence run an angle to the right of 144°42'15" and run in an Easterly direction a distance of 149.36 feet to the point of beginning.