

**SUBORDINATION, ATTORNMENT AND NONDISTURBANCE AGREEMENT**

THIS AGREEMENT is made as of this 13th day of September, 2002, between ASSOCIATED FOODS, INC., an Alabama corporation ("Tenant"); SOUTHTRUST BANK, an Alabama banking corporation ("Lender") and WESLEY L. BOWDEN, JR. AND NORA M. BOWDEN, husband and wife ("Mortgagors").

**WITNESSETH:**

WHEREAS, Mortgagors are the owners of a parcel of land as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Tenant is the lessee and Mortgagors are the lessors under that certain Lease Agreement dated May 1, 2001, (the "Lease") and as further evidenced by that certain Short Form Lease dated December 17, 1999, and recorded in the office of the Judge of Probate of Shelby County, Alabama at Instrument No. 2000-2969, (the "Demised Premises") and more particularly described in the Leases; and

WHEREAS, Lender has made or will make a loan to Wesley L. Bowden, Jr. ("Bowden") (the "Loan") to be evidenced by a promissory note (the "Note") and secured by a Mortgage and Security Agreement and an Assignment of Rents and Leases with respect to the Property (collectively, as the same may hereafter be amended, the consent of Tenant to which is not required, the "Security Documents"); and

WHEREAS, Lender is willing to agree that Tenant's possession of the Demised Premises shall not be disturbed as a result of a foreclosure of the Security Documents or a transfer in lieu of foreclosure so long as Tenant is not in default under the Lease and provided Tenant subordinates the Lease to the lien of the Security Documents and attorns to the purchaser at the foreclosure sale or transferee taking title in lieu of foreclosure and recognizes said purchaser or transferee as lessor under the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lender, Tenant and Mortgagors do hereby mutually covenant and agree as follows:

1. **Subordination.** Tenant hereby subordinates the Lease, all extensions, modifications and renewals thereof, and all of Tenant's rights and interests thereunder, to the Security Documents and the lien thereof, and to all modifications, renewals and extensions of same, to the extent of all advances heretofore or hereafter made to Bowden secured by the Security Documents.

2. **Non-Disturbance and Attornment.** Provided Tenant complies with this Agreement and is not in default (beyond any period of time given Tenant to cure) as of the date Lender commences foreclosure proceedings or accepts a deed in lieu of foreclosure, or at any time thereafter, then no default under the Security Documents, as modified, extended, increased, spread or consolidated, and no proceeding to foreclose the same or other acquisition of the

*Alabama Title*

Demised Premises (whether by deed in lieu of foreclosure or otherwise) by Lender or other third party will disturb Tenant's possession under said Lease, and the Lease will not be affected or terminated thereby. Notwithstanding any such foreclosure or other acquisition of the Demised Premises (whether by deed in lieu of foreclosure or otherwise) by Lender or any third party, Tenant shall attorn to Lender or such third party, and the Lease will be recognized as a direct Lease from Lender or any other party acquiring the Demised Premises upon the foreclosure sale or other such acquisition except that Lender, or any subsequent owner, shall not (a) be liable for any previous act or omission of Mortgagors or any prior landlord (collectively, "Landlord") under the Lease except for offsets which accrue after notice by Tenant of a default of Landlord is received by Lender, (b) be subject to any offset, claim or defense which shall have accrued against Landlord except for offsets which accrue after notice by Tenant of a default of Landlord is received by Lender, (c) have any obligation with respect to any security deposited under the Lease unless such security has been physically delivered to Lender, (d) be bound by any previous modification of the Lease or by any previous prepayment of rent for a period greater than one (1) month in advance of its due date under the Lease, unless such modification or prepayment shall have been expressly approved in writing by Lender or (e) be obligated to construct, renovate or improve the Demised Premises or any other space or reimburse Tenant for any such construction, renovation or improvement of the Demised Premises or any other space. No voluntary termination of the Lease shall be effective without Lender's prior written consent, except for termination rights expressly provided in the Lease. Upon written notice from Lender that a default exists under the Security Documents and that Lender exercises its rights to receive rents, Tenant will make all payments of rents and other sums under the Lease to Lender, and Mortgagors hereby agree that Tenant shall receive credit for any amounts paid to Lender after such notice.

3. **Further Assurances.** Tenant will upon request by Lender, or any subsequent owner, execute a written agreement in the form of this Agreement in which Tenant will attorn to Lender or any such subsequent owner and will affirm Tenant's obligations under the Lease and agree to pay all rentals and charges then due or to become due as they become due to Lender or such subsequent owner; provided that such subsequent owner recognizes Tenant's interest under the Lease and agrees not to disturb Tenant's possession of the Demised Premises.

4. **Notices to Landlord.** From and after the date hereof, Tenant shall send to Lender a copy of any notice or statement of default under the Lease or of any intent to assign or sublet any portion of the Demised Premises at the same time such notice or statement is sent to Landlord under the Lease.

5. **Termination of Lease.** Tenant will not terminate or seek to terminate any of the Lease by reason of a default by Landlord under the Lease, or exercise any right under the Lease to make deductions from or reductions in rental payments, except as expressly permitted under the Lease and then only after Tenant shall have given written notice of such default to Lender and Lender's cure period as hereinafter provided shall have expired. Tenant will allow Lender the same time allowed to Landlord (but not less than thirty (30) days following such notice to Lender) within which Lender shall have the right, but shall not be obligated, to remedy such act, omission or other default, and Tenant will accept such performance by Lender; provided, however, if the act, omission or other default cannot with due diligence be remedied within such period, then Lender shall have a reasonable time in which to remedy the same provided Lender



commences to remedy the same within such period and thereafter proceeds with due diligence to complete the remedy thereof.

Notwithstanding the foregoing, Tenant shall have the right without prior notice to Lender to make repairs if Tenant determines in good faith that a bonafide emergency precludes the giving of such notice. In the event of such an emergency, Tenant may present to Landlord a demand for reimbursement to the extent permitted under the Lease, but Tenant will not make deductions from or reductions in rental to recoup such expenses until Tenant shall give Lender notice of such repairs and such demand and a thirty (30) day period to cause such reimbursement to be made.

6. **No Impairment of Security Documents.** Nothing contained in this Agreement shall in any way impair or affect the lien created by the Security Documents, except as specifically set forth herein, or in any manner limit the right of Lender to have a receiver appointed or to seek any other appropriate relief or remedy under any one or more of the Security Documents.

7. **Tenant's Certifications.** Tenant hereby confirms and certifies to Lender the following:

(a) that the Lease are in full force and effect and have not been modified, altered or amended and constitute complete statement of the agreements between Landlord and Tenant with respect to leasing of the Demised Premises;

(b) that, as of the date hereof, Tenant has no charge, lien or claim of offset or credit against rentals or other charges coming due under the Lease, nor have rentals been prepaid except as expressly provided by the terms of the Lease;

(c) that there are no payments due to Tenant by Landlord under the terms of the Lease;

(d) that Tenant has been notified that the Lease has been or will be assigned to Lender as security for the Loan, and Tenant has no notice of a prior assignment, hypothecation or pledge of rents or the Lease;

(e) that there are no actions, either voluntary or involuntary, pending against the Tenant or any guarantor of Tenant's obligations pursuant to the Lease under the bankruptcy laws of the United States, or under similar laws of any state;

(f) that to the knowledge of Mortgagors and Tenant, no party to the Lease is in default thereunder;

(g) that minimum fixed monthly rentals (combined, exclusive of contributions for insurance, taxes or common area maintenance and percentage rent, if any) are \$4,500.00 and the Lease terms currently expire as shown on April 30, 2021, subject to any express extension or renewal options contained in the Lease;

(h) that this certification is made with the knowledge that Lender is relying on this certification in making certain advances under the Loan to Bowden.

8. **Survival.** This instrument shall survive any foreclosure of the Demised Premises, or any other succession by Lender or any other third party to the interest of the Landlord with respect to the Demised Premises, and shall remain in full force and effect until the end of the Lease term and all exercised option extension periods, or upon satisfaction of the Security Documents (other than by foreclosure or acceptance of a deed in lieu of foreclosure) and all renewals, modifications, consolidations, replacements, and extensions thereof, whichever shall first occur.

9. **Limitation of Lender's Liability.** Tenant shall look solely to the Lender's interest in the Property for recovery of any judgment or damages from Lender, its successors and assigns, and neither Lender nor its successors or assigns shall have any personal liability, directly or indirectly, under or in connection with the Lease or this Agreement or any amendment or amendments made at any time or times, heretofore or hereafter, and Tenant hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation on liability applicable to Lender, its successors and assigns, provided by law or by any other contract, agreement or instrument.

10. **Approvals.** The Mortgagors have joined in this Agreement for the purpose of expressing their consent and agreement to be bound by the provisions hereof.

11. **Waivers to be in Writing.** No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claims or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

12. **Successors and Assigns.** This Agreement shall inure to the benefit of the parties hereto, their successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, all obligations and liabilities of Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Lender's interest is assigned or transferred.

13. **Notice.** All notices or demands hereunder shall be sufficient if sent by United States registered or certified mail, postage prepaid, or FedEx or other national overnight courier, fees prepaid, and addressed as follows:

If to Lender:

SouthTrust Bank  
Attention: Commercial Lending  
420 North 20th Street (35203)  
P.O. Box 2554  
Birmingham, Alabama 35290

with a copy to:

SouthTrust Bank  
Attention: Commercial lending  
Post Office Box 759  
Alexander City, Alabama 35011

If to Tenant:

Associated Foods, Inc.  
P.O. Box 145  
Sylacauga, AL 35150

If to Mortgagors:

Wesley L. Bowden, Jr. & Nora M. Bowden  
P.O. Box 145  
Sylacauga, Alabama 35150

Or such other single address in the United States as any party may hereafter designate in writing to the other.

14. **Governing Law.** This Agreement shall for all purposes be governed by and construed in accordance with the laws of the State of Alabama.

\* \* \*

**IN WITNESS WHEREOF**, the parties hereto have respectively signed and sealed this Agreement of the day and year first above written.

**TENANT:**

ASSOCIATED FOODS, INC.,  
a Alabama corporation

By: Wesley L. Bowden, Jr.

Its: President

[SEAL]



STATE OF ALABAMA )

COUNTY OF Jefferson)

This 13<sup>th</sup> day of September, 2002, personally came before me Wesley L. Bowden Jr., who, being by me duly sworn, says that he is the President of Associated Foods, Inc., an Alabama corporation, that the seal affixed to the foregoing instrument in writing is the corporate seal of the corporation, and that said writing was signed and sealed by him, in behalf of said corporation, by its authority duly given. And the said officer acknowledged the said writing to be the act and deed of said corporation.

[NOTARY SEAL]

Judy D. Baker  
NOTARY PUBLIC  
My commission expires: 4/6/2004

**LENDER:**

SOUTHTRUST BANK,  
an Alabama banking corporation

[SEAL]

BY: JL Webb  
Its City President

STATE OF Alabama)

COUNTY OF Jefferson)

This 13<sup>th</sup> day of September, 2002, personally came before me John Webb, who, being by me duly sworn, says that (s)he is the City President of SouthTrust Bank, an Alabama banking corporation, that the seal affixed to the foregoing instrument in writing is the corporate seal of the banking corporation, and that said writing was signed and sealed by her/him, in behalf of said banking corporation, by its authority duly given. And the said City President acknowledged the said writing to be the act and deed of said banking corporation.

[NOTARY SEAL]

Judy D. Baker  
NOTARY PUBLIC  
My commission expires: 4/6/2004

**MORTGAGORS:**

Wesley L. Bowden, Jr.  
Wesley L. Bowden, Jr.

Nora M. Bowden  
Nora M. Bowden

STATE OF ALABAMA     )  
COUNTY OF Jefferson     )

I, Judy D. Baker a Notary Public in and for said County, in said State, hereby certify that Wesley L. Bowden, Jr. an individual, says that the foregoing instrument was executed voluntarily by him for the purposes stated therein.

Given under my hand this 13<sup>th</sup> day of September, 2002.

[NOTARY SEAL]

Judy D. Baker  
NOTARY PUBLIC  
My commission expires: 4/6/2004

STATE OF ALABAMA     )  
COUNTY OF Jefferson     )

I, Judy D. Baker a Notary Public in and for said County, in said State, hereby certify that Nora M. Bowden, an individual, says that the foregoing instrument was executed voluntarily by her for the purposes stated therein.

Given under my hand this 13<sup>th</sup> day of September, 2002.

[NOTARY SEAL]

Judy D. Baker  
NOTARY PUBLIC  
My commission expires: 4/6/2004

## EXHIBIT A

### Description of Property

Parcel 2 (5275 US Hwy 280, Harpersville, Shelby County, Alabama 35078)

From the true Southwest corner of the Southwest 1/4 of Section 28, Township 19 South, Range 2 East, run thence East along the true South boundary of said Southwest 1/4 of Southeast 1/4 a distance of 582.97 feet; thence turn 72°06'48" left and run 135.73 feet to a point on the North Boundary of Kymulga Ferry Road, being the Southeast corner of the McDaniel Investment, Inc. lot as described in Instrument 1993-32023, being the point of beginning of herein described lot; thence continue along said course and along the East line of the McDaniel Investment, Inc. lot a distance of 265.18 feet to an iron pin on the South boundary of U.S. Highway 280 (120 foot right-of-way); thence turn 99°09' right and run a chord distance of 256.71 feet to a concrete monument on said Highway boundary; thence turn 75°58'30" right and run 133.95 feet along a right-of-way flair-back to a concrete monument on the North boundary of Kymulga Ferry Road; thence turn 78°11'15" right and run 100.10 feet along said road boundary to a concrete monument; thence turn 90°17'50" left and run 10.0 feet to a concrete monument on said road boundary; thence turn 89°58'20" right and run 179.73 feet along said road boundary to the point of beginning herein described lot; being situated in Shelby County, Alabama.

DEED 788 216  
Recorded In Above Book and Page  
09/16/2002 11:52:22 AM  
Billy Atkinson  
Probate Judge  
Talladega County, AL