

STATE OF ALABAMA)

1223

SHELBY COUNTY)

PARTIAL RELEASE AND SUBORDINATION AGREEMENT

THIS PARTIAL RELEASE AND SUBORDINATION AGREEMENT is made this 19th day of October, 1983 by FIRST TENNESSEE BANK N.A. MEMPHIS, a national banking association, (the "Mortgagee").

W I T N E S S E T H:

WHEREAS:

- (a) On or about April 21, 1983, COLONIAL PROPERTIES, INC., an Alabama corporation, (the "Mortgagor") executed and delivered to the Mortgagee a Promissory Note in the sum of Three Million Two Hundred Thousand Dollars (\$3,200,000) (the "Note"), which Note was secured by a mortgage entitled "Alabama Mortgage" of even date therewith recorded in the Office of the Judge of Probate of Shelby County, Alabama in Volume 430 at Page 111 (the "Mortgage").
- (b) In addition to the Mortgage, the Mortgagor executed and delivered to the Mortgagee other documents, including the Assignment of Rents and Leases recorded in Volume 346 at Page 514 in said Probate Office and the financing statement (UCC No. 06210) filed for record on April 22, 1983 (all such other documents being referred to herein as the "Loan Documents").
- (c) The Mortgagor will soon close a sale with B & S Foods Realty, Inc., a Georgia corporation, ("B & S Foods") for the sale of that certain parcel of real property situated in Shelby County, Alabama and legally described as Lot 1 of the Colonial Properties Subdivision as recorded in Map Book 8 at Page 138 in the Probate Office of Shelby County, Alabama, said parcel being subject to the terms of the Mortgage and being hereinafter described as the "Wendy's Restaurant Property".
- (d) As a condition to closing that sale, B & S Foods has required this Partial Release and Subordination Agreement.

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NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, in hand paid to the Mortgagee, the receipt and sufficiency of which is whereby acknowledged, it is agreed as follows:

1. The Mortgagee does hereby release and satisfy the lien of the Mortgage and the Loan Documents now or hereafter additionally securing the indebtedness secured by the Mortgage in part so that the Wendy's Restaurant Property shall be, and is hereby acknowledged to be, free and clear of the lien of the Mortgage and the Loan Documents, to the same extent as if the Wendy's Restaurant Property had never been subject to the terms and provisions thereof or the lien created thereby; provided that the lien of the Mortgage and the Loan Documents shall continue without abatement or interruption with respect to all the Mortgagor's right, title and interest in and to the remaining portion of the real property being subject thereto and covered thereby.

2. The Mortgagee does hereby subordinate the Mortgage and the Loan Documents to the lien of the Declaration of Restrictions and Grant of Easements which is to be executed by the Mortgagor at the closing of the sale with B & S Foods and to be recorded in the Office of the Judge of Probate of Shelby County, Alabama, ~~and all extensions, modifications and renewals thereof~~, (the "Declaration") so that the Mortgage, and all extensions, modifications and renewals thereof, and all Loan Documents, and all extensions, modifications and renewals thereof, now or hereafter additionally securing the indebtedness secured by the Mortgage, shall be, are hereby made, and shall remain, completely subject and subordinate to the Declaration to the same extent as if the Declaration had been executed, delivered and recorded prior to the execution of the Mortgage and Loan Documents. *N.H.*

IN WITNESS WHEREOF, the undersigned, FIRST TENNESSEE BANK N.A. MEMPHIS, a national banking association, has caused these presents to be executed as of the day and year first above written.

(A copy of the Declaration is attached hereto, marked Exhibit "A")

FIRST TENNESSEE BANK N.A.
MEMPHIS, a national banking
association

By: *William J. Hall*

Its: *Vice President*

STATE OF TENNESSEE)

COUNTY OF Shelby)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William S. Hutton whose name as Vice President of FIRST TENNESSEE BANK N.A. MEMPHIS, a national banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act and deed of said association.

GIVEN under my hand and seal of office on this the 19th day of ~~September~~, 1983.
October

Synda S. Smith
Notary Public

MY COMMISSION EXPIRES JAN. 24, 1987
My Commission Expires: _____

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STATE OF ALABAMA)

COUNTY OF SHELBY)

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

THIS DECLARATION made this _____ day of _____, 1983 by COLONIAL PROPERTIES, INC., an Alabama corporation, (hereinafter called the "Declarant").

W I T N E S S E T H:

WHEREAS:

- (a) Declarant is the owner of two contiguous parcels of real property situated in Shelby County, Alabama and legally described as Lots 1 and 2 of the Colonial Properties Subdivision as recorded in Map Book 8 at Page 138 in the Probate Office of Shelby County, Alabama.
- (b) Declarant proposes to improve or cause to be improved Lot 2 of the Colonial Properties Subdivision (hereinafter called the "Development Property") under a general plan or scheme;
- (c) Declarant proposes to convey to B & S FOODS REALTY, INC., a Georgia corporation, (hereinafter called "B & S Foods") Lot 1 of the Colonial Properties Subdivision (hereinafter called the "Wendy's Restaurant Property");
- (d) B & S Foods intends to develop and construct a restaurant building with suitable parking facilities, driveways, and exits and entrances on the Wendy's Restaurant Property;
- (e) Declarant intends to convey the Wendy's Restaurant Property to B & S Foods subject to and together with the terms of this Declaration;
- (f) Declarant desires to hereby create and establish certain easements, restrictions and obligations pursuant to the general plan or scheme for the Entire Premises;

EXHIBIT "A" TO PARTIAL RELEASE AND SUBORDINATION AGREEMENT

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- (g) Declarant desires to establish and create for the benefit of the Wendy's Restaurant Property and the Development Property certain rights of use, ingress and egress, in, over and upon the driveways and exits and entrances;
- (h) Declarant desires to establish and create for the benefit of the Wendy's Restaurant Property certain rights of parking in, over and upon the parking areas of the Development Property; and
- (i) Declarant desires to establish and create for the benefit of the Development Property certain height and use restrictions with respect to improvements to be erected on the Wendy's Restaurant Property.

NOW, THEREFORE, Declarant as owner of the Entire Premises for itself, its legal representatives, successors and assigns, declares as follows:

1. EASEMENT FOR INGRESS AND EGRESS - WENDY'S RESTAURANT PROPERTY: Declarant does hereby establish and create for the benefit of the Development Property and does hereby give, grant and convey to each and every person, firm or corporation who may now or hereafter own or lease all or any portion of, or any interest in, the Development Property, their successors, assigns, lessees, customers, employees and invitees, a perpetual, nonexclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, as appropriate, for the purpose of ingress and egress in, to and over any and all the driveways and exits and entrances of the Wendy's Restaurant Property. The portions of the Wendy's Restaurant Property subject to the foregoing easements shall be kept, at the expense of the owner(s) of the Wendy's Restaurant Property, in a clean, neat and orderly condition so as to keep said area free of all paper, debris, snow, ice and other refuse.

2. EASEMENT FOR PARKING AND INGRESS AND EGRESS - DEVELOPMENT PROPERTY: Declarant does hereby establish and create for the benefit of the Wendy's Restaurant Property and does hereby give, grant, and convey to each and every person, firm or corporation hereafter owning all or any portion of, or any interest in, the Wendy's Restaurant Property for the benefit of such owners and their lessees, successors, assigns, customers, employees, and invitees, a perpetual, nonexclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, as

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appropriate, for the purpose of ingress, egress and parking in, to, upon and over any and all of the parking areas, driveways, exits and entrances of the Development Property; provided, however, that the employees of such owners or the employees of any tenants of such owners shall only have the right and privilege of parking in not more than eight parking spaces in the area to be designated "Employee Parking" on the Development Property. The portions of the Development Property subject to the foregoing easements shall be kept, at the expense of the owner(s) of the Development Property, in a clean, neat and orderly condition so as to keep said area free of all paper, debris, snow, ice and other refuse.

3. PARKING AREAS: The owners of the Wendy's Restaurant Property shall, at all times, provide and maintain sufficient parking areas to provide a minimum ratio of at least 5.0 automobile parking spaces for each 1,000 square feet of gross floor area of building in the Wendy's Restaurant Property.

4. STRUCTURES WITHIN WENDY'S RESTAURANT PROPERTY: No aboveground buildings or structures of any kind shall be erected on the Wendy's Restaurant Property exceeding eighteen (18) feet or one (1) story in height, and no aboveground building shall cover more than twenty-five per cent (25%) of the area of the parcel comprising the Wendy's Restaurant Property. The remainder of land in the parcel comprising the Wendy's Restaurant Property not used for building construction shall be reserved for use as vehicular parking areas, roadways, service areas, drives, entrance ways and exits and sidewalks and other pedestrian ways and as landscaped and planting areas, but permitting those necessary appurtenances for such use, including, without limitation, paving, light standards, curbing, directional signs, drainage facilities and underground facilities and pylon signs advertising the business or businesses conducted by the occupants of the commercial buildings on the parcel comprising the Wendy's Restaurant Property.

5. BARRIERS: The owners of the Wendy's Restaurant Property may erect curbs, landscaping or bumper stops on its premises in order to define the boundaries and traffic flow of same. However, the owners of the Wendy's Restaurant Property shall not erect any barriers to prohibit or prevent the perpetual, nonexclusive easement rights for access granted and established hereby.

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6. USE OF WENDY'S RESTAURANT PROPERTY: For so long as Colonial Properties, Inc. shall own all or any portion of the Development Property or for so long as Colonial Properties, Inc., American Medical International, Inc., Robert L. Lowder, Thomas H. Lowder or James K. Lowder, or any one or more of them, or any general partnership hereafter formed in which one or more of said persons or corporations shall be a general partner, shall be a general partner of any limited partnership hereafter formed for the purpose of owning, leasing, developing, improving or operating the Development Property, or any part thereof, no use shall be made of all or any portion of the Wendy's Restaurant Property which violates the following provisions of this Paragraph 6: The owner of the Wendy's Restaurant Property shall use the Wendy's Restaurant Property for the operation of a Wendy's Old Fashioned Hamburgers Restaurant serving lunch and dinner each day; provided, however, if the owner is unable or unwilling to continue to operate a Wendy's Old Fashioned Hamburgers Restaurant thereon (due to loss of franchise rights, destruction or condemnation of all or any portion of the Wendy's Restaurant Property, lack of profitability or any other bona fide purpose), the owner shall be entitled to operate a similar restaurant thereon; and provided, further, that if a restaurant establishment cannot be successfully operated on the Wendy's Restaurant Property, the owner shall be entitled to use same for any other lawful purpose upon obtaining the consent of Colonial Properties, Inc., if it shall then be the owner of the Development Property, or, if not, one or more of the persons, corporations, or general partnership named herein, who shall then be serving as the general partner or as the general partners of any limited partnership formed for the above-described purposes, which such consent shall not be unreasonably withheld.

7. BENEFICIARIES OF EASEMENTS: The easements, licenses, rights and privileges established, created and granted hereby shall be for the benefit of, and restricted solely to, the owners from time to time of portions of the Entire Premises, their customers, employees and invitees, and the lessees of such owners now or hereafter occupying any portions of the Entire Premises for the duration of such tenancy, and to the customers, employees and invitees of said lessees, but the same is not intended nor shall it be construed as creating any rights in, or for the benefit of, the general public.

8. RIGHT TO CLOSE: Declarant, for itself and the then owners in fee of all or any part of the Entire Premises, does, however, reserve the right to close temporarily all or any portion of the parking facilities and easements to such extent, in the opinion of Declarant or the then owners of all or any part of such parking facilities and easements, as may be legally necessary and sufficient to prevent a dedication thereof to the public or an accrual of any rights in any person other than as aforesaid or in the public generally. Any such temporary closing shall, however, be further subject to the reasonable consent of the owners of the Entire Premises or their lessees.

9. CONDEMNATION: No grantee or beneficiary of any easement hereunder shall be entitled to any portion of any award or any proceeds resulting from a taking or condemnation, or a conveyance in lieu of such taking or condemnation, of any portion of the Entire Premises except to the extent that such grantee or beneficiary shall own in fee such property so taken, condemned or conveyed.

10. DEDICATION: Notwithstanding anything contained in any other provision hereof to the contrary, any easement or rights herein established and created shall terminate and be of no further force or effect upon the dedication to and acceptance by the appropriate governmental authority of such easements or the rights created hereby; provided, however, that any dedication and acceptance of a portion of such easements or rights shall not affect the validity and effect of easements and rights not so dedicated and accepted.

11. AMENDMENTS AND MODIFICATIONS: The provisions of this Declaration may be abrogated, modified, rescinded or amended in whole or in part only with the consent of all the then owners of the Entire Premises, each and every lessor (in a sale-lease back) or mortgagee or beneficiary under any mortgage or deed of trust covering all or any part of the Entire Premises, by declaration in writing, executed and acknowledged by all said parties duly recorded in the Office of the Judge of Probate in and for Shelby County, Alabama; but this declaration may not be otherwise abrogated, modified, rescinded or amended, in whole or in part.

12. SUCCESSORS AND ASSIGNS: Except as otherwise provided in Paragraph 6 hereof, the terms, covenants, conditions and warranties herein shall run with the land and shall inure to the benefit of and shall be binding upon the Declarant and the respective executors, administrators, legal representatives, successors and assigns of the Declarant.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration on the day and year first above written.

ATTEST:

COLONIAL PROPERTIES, INC., an
Alabama corporation

Its Secretary

By: _____
Its President

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Thomas H. Lowder, whose name as President of Colonial Properties, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of the Corporation.

Given under my hand and official seal on this the _____ day of _____, 1983.

Notary Public

My Commission Expires: _____

This instrument was prepared by:

Jackson M. Payne, Attorney at Law
425 First Alabama Bank Building
Birmingham, Alabama 35203

STATE OF ALABAMA-SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1983 OCT 25 PM 3:50

Thomas H. Lowder, Jr.
JUDGE OF PROBATE

*Rec'd 13.50
Ind 1.00
TH 50*