

STATE OF ALABAMA
JEFFERSON COUNTY

Inst # 1993-21695
07/23/1993-21695
12:27 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
012 MCD 37.00

**TENANCY IN COMMON
OPERATING AGREEMENT**

THIS AGREEMENT made and entered into on this 13th day
of July, 1993, by and between:

Interstate Restaurant Investors, an Alabama General
Partnership composed of John McGeever, William R.
Robertson, and John G. Benner (hereinafter referred
to as the "Partnership")

and

Frank C. Ellis, Jr., hereinafter referred to as "Ellis"

W I T N E S S E T H

WHEREAS,

A. The Partnership shall acquire a fifty percent (50%)
undivided interest in certain real property more particularly
described in Exhibit "A" attached hereto and incorporated herein by
reference, together with all buildings and improvements situated
thereon (hereinafter referred to as the "Subject Property").

B. Ellis shall also acquire a fifty percent (50%)
undivided interest in the subject property.

C. The Partnership and Ellis, as tenants in common,
desire to enter into this Agreement in order to provide for the
collection and distribution of all income, if any, derived from the
ownership of the Subject Property, and the payment of all expenses
relating to the ownership of the Subject Property.

NOW, THEREFORE, in consideration of the mutual promises
and covenants hereinafter set forth, the parties do hereby agree as
follows:

1. OWNERSHIP OF SUBJECT PROPERTY. The Subject Property
is and shall be owned and held by the Partnership and Ellis as
tenants in common, subject to the terms and conditions of this
Agreement. The percentage of ownership of the Subject Property is

Berkowitz

as follows:

PARTY	PERCENTAGE OWNERSHIP
Interstate Restaurant Investors	50%
Frank C. Ellis, Jr.	<u>50%</u>
TOTAL	100%

Nothing herein contained shall be construed to consider the parties as partners or joint venturers, nor, except as herein specifically provided, to constitute either party the agent of the other or in any manner limit the parties in the carrying on of their respective businesses or activities. The provisions of this Agreement shall relate only to the specified purposes herein contained and shall not extend to any other matters relating to the conduct of the respective businesses of the Partnership or Ellis.

2. PURPOSE. The sole purpose of this Agreement and the promises and covenants herein contained are as follows:

(a) To establish an efficient method for the collection and distribution of all income derived from the ownership and operation of the Subject Property via sales and/or leases, and for the payment of all expenses relating to the ownership and operation of the Subject Property;

(b) To provide a first right of refusal in favor of either party in the event the other party desires to sell its interest in the Subject Property; and

(c) To provide for the mandatory sale or purchase of the interest of either party by the other upon the occurrence of certain events as hereinafter provided.

3. MANAGEMENT. The management and operation of the Subject Property, including, without limitation, all questions relating to the management and operation of the Subject Property shall be determined by the mutual consent of both the Parties; provided, however, in no event shall either party hereto have the right, without the prior written consent of the other party, to:

(i) Endorse any note or act as an accommodation party, or otherwise become a surety for the other party;

(ii) Borrow or lend money, or make, deliver or accept any commercial paper or execute any mortgage, bond or lease,

or purchase, or contract to purchase, or sell or contract to sell any property, whether real or personal, for or on behalf of the other party;

(iii) Sell, assign, mortgage or otherwise encumber its interest in the Subject Property or enter into any agreement as a result of which any other party shall obtain any interest in the Subject Property; or

(iv) Do any act detrimental to the best interests of the other party or which would make it impossible to carry out the purposes contemplated by this Agreement.

4. COLLECTION AND DISTRIBUTION OF INCOME:

(a) All income derived from the ownership and operation of the Subject Property, including specifically, all income derived under any leases, shall be collected from any and all tenants, if any, of the Subject Property by Crest Realty, as agent (the "Agent") for the parties hereto. The Agent designated herein may be changed from time to time and at any time upon the mutual consent of the parties hereto. All amounts and other sums collected by the Agent arising out of or in connection with the operation of the Subject Property (the "Income") shall be held in trust by the Agent for the benefit of the Partnership and Ellis. The Income shall be distributed by the Agent between the Partnership and Ellis in accordance with the provisions of Paragraph 1, subject to the provisions of Paragraph 4(b) and Paragraph 5 below.

(b) All Income shall be disbursed and distributed by the Agent in the following manner:

(i) First, to the payment of all expenses incident to the operation, upkeep, maintenance and repair of the Subject Property;

(ii) Second, the balance, if any, shall be distributed between the Partnership and Ellis in accordance with the percentage interests of each party set forth in Paragraph 1 hereof, subject to the provisions of Paragraph 5 below.

5. ADDITIONAL CONTRIBUTIONS.

(a) The parties hereto acknowledge that the income derived from the Subject Property may not be sufficient to pay all expenses arising therefrom.

Accordingly, each party agrees to contribute its proportionate share of additional funds (in accordance with the percentage of ownership of the Subject Property set forth in Paragraph 1 hereof) which may be necessary for the continued maintenance, upkeep, repair and operation of the Subject Property, including, without limitation, all sums necessary to: (i) pay for site improvement costs; (ii) pay for repairs and improvements to the Subject Property, including all necessary replacement and restoration costs incident thereto; (iii) pay all insurance and taxes with respect to the Subject Property; (iv) pay all debt service which at any time may be due with respect to the Subject Property; and (v) all other costs relating to the operation, upkeep, maintenance and repair of the Subject Property. The obligation to contribute additional funds shall be mandatory and shall constitute a continuing lien upon the interest of each party in the Subject Property for the benefit of the other party.

(b) Each party does hereby indemnify the other party from and against any and all claims, costs, damages, actions, causes of action, demands, costs and expenses, including reasonable attorney fees, suffered, paid or incurred by the other party arising out of or in connection with the failure of either party to comply with and perform the obligations set forth in Paragraph 5(a) above.

(c) In the event any party (the "Defaulting Party") fails to pay its proportionate share of additional capital as required above within ten (10) days after notice of the amount due has been given, then the other party (the "Non-defaulting Party") shall have the right, alternatively or cumulatively, to exercise either of the following rights:

(i) The Non-defaulting Party may elect to advance the amount due from the Defaulting Party and such an advance shall be treated as a loan from the Non-defaulting Party to the Defaulting Party which shall be payable upon demand, and shall bear interest from the date of the advance at the prime rate plus five percent (5%) as such prime rate may be in effect from time to time at First Alabama Bank. Any such loan shall be secured by a continuing lien on the Defaulting Party's interest in the Subject Property which may be enforced by all methods available for the enforcement of liens, including foreclosure in the manner provided in a mortgage or deed of trust lien on real property. Each party hereby grants to the other party a power of sale in connection with said lien. The Non-defaulting Party, acting on behalf of

the Defaulting Party, shall have the right and power to bid at foreclosure sale of the Defaulting Party's interest in the Subject Property and to acquire, hold, lease, mortgage and convey said interest. In the event the Non-defaulting Party shall elect to advance the amount due from the Defaulting Party, the Non-defaulting Party shall be entitled to all distributions of income otherwise due the Defaulting Party until the advance together with all interest accrued thereon has been repaid in full; or

(ii) The Non-defaulting Party may bring suit against the Defaulting Party for breach of this Agreement and may seek specific performance of the Defaulting Party's obligations hereunder as well as damages sustained by the Non-defaulting Party by reason of such breach. In the event the Non-defaulting Party prevails in any such action, the Defaulting Party shall reimburse the Non-defaulting Party for all costs and expenses, including attorneys' fees, incurred by the Non-defaulting Party in connection therewith.

(d) The Non-defaulting Party shall notify the Defaulting Party, within sixty (60) days after default, of the option to be exercised under this Paragraph 5(c). The selection of one option in the case of default shall not preclude the selection of any other option in the event of any further default.

(e) Each party hereby constitutes and appoints the other party as its agent and attorney in fact for the purpose of executing and delivering any and all instruments or documents necessary to give full force and effect to any of the provisions of this Paragraph 5. The power of attorney granted herein, being coupled with an interest, is irrevocable and shall not be revoked by the death of either party or the sale by either party of all or any portion of its interest in the Subject Property.

6. RESTRICTIONS ON TRANSFER.

(a) Except as hereinafter set forth, neither of the parties hereto shall sell, dispose of, transfer, assign, mortgage or otherwise encumber all or any part of their respective undivided interests in the Subject Property, without the prior written approval of the other party. In the event of any such disposition, transfer or encumbrance with the prior written consent of the remaining party, the assignee of such undivided interest in the Subject Property shall take such interest subject to all the terms

and conditions of this Agreement and shall execute such additional instruments as counsel for the remaining party shall reasonably deem proper, acknowledging that such assignee is bound by the terms of this Agreement and assuming all obligations of the assignor under this Agreement from and after the effective date of the transfer.

(b) Notwithstanding anything to the contrary provided herein, each party does hereby waive any and all rights to further partition the Subject Property or any part thereof; it being expressly understood and agreed that this Agreement shall at all times govern the ownership and operation of the Subject Property.

(c) Notwithstanding anything to the contrary provided herein, the partners of the Partnership may elect to dissolve the partnership and transfer their interests in the Subject Property to the individual partners (John McGeever, William R. Robertson or John G. Benner).

(d) Notwithstanding anything to the contrary provided herein, Ellis' interest in the Subject Property as well as any such interest owned individually by McGeever, Robertson or Benner pursuant to Paragraph 6(c) above may be demised and bequeathed to one or more of their respective heirs, said heirs to be subject to the terms and conditions of this Agreement.

7. RIGHT OF REFUSAL. Subject to the provisions of Paragraph 6 above, if either party to this Agreement desires to sell all or any part of its interest in the Subject Property (including any undivided interest of such party), such party (the "Selling Party") does hereby grant the other party the first right of refusal to purchase such interest as hereinafter provided and may sell the same to any other prospective bona fide purchaser only if such first right of refusal is not exercised, all in accordance with the following:

(a) The Selling Party shall give written notice to the other party (hereinafter sometimes referred to as the "Offeree") that the Selling Party has a bona fide offer for the purchase of such interest, which notice shall set forth the interest to be sold, the name and address of the prospective purchaser, the sales price and all other terms and conditions of the proposed sale.

(b) For a period of thirty (30) days after delivery of such notice, the Offeree shall have the first right to purchase the same on the same terms and conditions set

forth in such bona fide offer. In the event the Offeree exercises the right of first refusal granted herein, the Selling Party shall, on or before thirty (30) days after receipt of the Offeree's notice of its election to exercise the right of first refusal granted herein, convey to the Offeree the interest so offered for sale by warranty deed, subject only to existing mortgages, liens, encumbrances, easements, restrictions, leases, and other matters or record at the time of execution of this Agreement.

(c) If the Offeree fails to elect to purchase the interest of the Selling Party within said period, then the Selling Party shall be free to sell the same to the prospective purchaser at the price and upon the terms and conditions set forth in such bona fide offer; provided, however, that such sale must be consummated within three (3) months following the termination of the Offeree's first right of refusal.

(d) Any bona fide purchaser shall be bound by the terms of this Agreement in the place and stead of the Selling Party. Any such Selling Party shall nevertheless remain liable with respect to any accrued personal obligations undertaken with respect hereto, but shall not be liable for obligations accruing after the date of such sale if all of the interest of the Selling Party is sold.

(e) If any such sale is not consummated between the Selling Party and its bona fide purchaser within the three (3) month period provided in Paragraph 7(c) hereof, all of the terms, conditions and restrictions of this Agreement shall be reinstated and the right of the Selling Party to sell said interest to such purchaser shall terminate.

8. MANDATORY PURCHASE AND SALE.

(a) From and after one year from the date of this Agreement, either party (the "Offeror") shall have the right to deliver an offer in writing (the "Offer") to the other party: (the "Offeree"), stating the cash price at which the Offeror would be willing to purchase the entire interest of the Offeree in the Subject Property or at which the Offeror would be willing to sell its entire interest in the Subject Property. The Offer shall become irrevocable upon receipt of the Offer by the Offeree.

(b) Upon receipt of the Offer, the Offeree shall be obligated to either: (i) purchase the Offeror's entire interest in the Subject Property at the price stated in the Offer; or (ii) sell to the Offeror the entire interest of the Offeree in the Subject Property at the price stated in the Offer.

(c) The Offeree shall give the Offeror written notice of his election under Paragraph 8(b) above within thirty (30) days after receipt of the Offer by the Offeree. Failure of the Offeree to give the Offeror notice of such election within such thirty (30) day period shall be conclusively and irrevocably deemed an election by the Offeree to sell its entire interest in the Subject Property to the Offeror at the price stated in the Offer. Said time period shall be increased to ninety (90) days in the event either the Offeror or Offeree has become the estate of any of the individual parties to this Agreement.

(d) If the Offeree elects to purchase the entire interest of the Offeror in the Subject Property as provided herein, the Offeree shall purchase, and the Offeror shall sell, the Offeror's entire interest in the Subject Property in accordance with the terms hereunder and the terms of the Offer.

(e) If the Offeree elects to sell his entire interest to the Offeror in the Subject Property as provided herein, the Offeror shall purchase, and the Offeree shall sell, the Offeree's entire interest in the Subject Property in accordance with the terms hereunder and the Offer.

(f) The closing of the purchase and sale hereunder shall occur at a time and place mutually agreeable to the Offeror and Offeree, and shall occur not later than fifteen (15) days after the earlier of: (i) the Offeror's receipt of the election by the Offeree; or (ii) expiration of the offer period; provided, however, that if the Offeree elects to purchase the Offeror's entire interest in the Subject Property, such closing shall occur no later than thirty (30) days after receipt by the Offeror of such election by the Offeree.

(g) If following an election by the Offeree to purchase, the Offeree is not ready, willing and able to consummate the purchase within the applicable time provided in Paragraph 8(f) above and in accordance with the offer, the Offeree shall be deemed to be a Defaulting Party, in which event the Offeror shall have all rights and remedies available at law or in equity against the Defaulting Party and the right to acquire the entire interest of the Offeree in the Subject Property upon all of the terms and

conditions of the Offer except at a price which is fifty percent (50%) less than the cash price stated in the Offer.

(h) If following an election by the Offeree to sell, the Offeror is not ready, willing and able to consummate the purchase within the applicable time provided in Paragraph 8(f) above and in accordance with the Offer, the Offeror shall be deemed to be a Defaulting Party, in which event the Offeree shall have all rights and remedies available at law or in equity against the Defaulting Party and the right to acquire the entire interest of the Offeror in the Subject Property upon all of the terms and conditions of the Offer except at a price which is fifty percent (50%) less than the cash price stated in the Offer.

(i) The parties agree that if an event described in Paragraph 8(g) or 8(h) above occurs, the party other than the Defaulting Party shall be irreparably damaged in the event this Agreement is not specifically enforced. Should any dispute arise concerning the applicability of either of Paragraph 8(g) or 8(h) above, an injunction may be issued restraining any interference in the operation of the Subject Property by the Defaulting Party pending the determination of the controversy. Such injunction shall be in addition to any other remedy which the parties may have.

(j) At the closing, the Selling Party shall convey to the other party all of the Selling Party's interest in the Subject Property by warranty deed, free and clear of all liens, encumbrances other than existing mortgages, liens, encumbrances, easements, restrictions, lease and other matters of record existing at the time of execution of such Offer.

(k) The party purchasing the interest of the other party in the Subject Property in accordance with any provision of this Paragraph 8 shall also agree to personally indemnify and hold harmless the Selling Party for all guaranties and other endorsements or other personal liabilities of such Selling Party for obligations arising out of or in connection with the ownership and operation of the Subject Property, including any and all expenses (including attorneys' fees) and other charges related hereto.

(l) Upon the sale of the interest of either party hereto the appointment and employment of Crest Realty as "Agent" shall terminate.

9. MISCELLANEOUS.

(a) The term of this Agreement shall commence on the date hereof and shall continue until the occurrence of the first of the following: (i) mutual agreement to terminate this Agreement by the parties hereto; (ii) the sale of the entire interest of both parties hereto in the Subject Property; or (iii) the expiration of fifty (50) years from the date hereof.

(b) Any notices and demands hereunder shall be in writing and shall be deemed to have been given and received forty-eight (48) hours after the same shall have been deposited in the United States Registered or Certified Mail, postage prepaid, addressed to the parties hereto as follows:

TO: Interstate Restaurant Investors
c/o Crest Realty, Inc.
100 Vestavia Parkway, Suite 110
Birmingham, Alabama 35216

TO: Frank C. Ellis, Jr.
Post Office Box 587
Columbiana, Alabama 35051

The parties shall each have the right by notice, in writing, given to the other to change, from time to time, the respective addresses at which such notices shall be given to them.

(c) This Agreement shall be governed by the laws of the State of Alabama.

(d) The captions or headings in this Agreement are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions of this Agreement.

(e) This Agreement shall be binding upon all the parties hereto, and their respective heirs, executors, administrators, successors and assigns, provided that no assignment shall be made except in strict conformity with this Agreement.

(f) The provisions of this Agreement shall be severable and if any provisions shall be invalid, void or unenforceable, in whole or in part for any reason, the remaining provisions shall remain in full force and effect.


(g) This Agreement may not be changed modified or amended orally. Any modifications must be in writing signed by the parties hereto.

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

PARTNERSHIP:

Interstate Restaurant Investors,
an Alabama Partnership

By: 
John McGeever

By: 
William R. Robertson

By: 
John G. Benner


Frank C. Ellis, Jr.

The undersigned Crest Realty hereby accepts the appointment as Agent and agrees to perform the duties and responsibilities provided in Paragraph 4, but reserves the right to terminate its appointment as Agent upon a thirty (30) day notice to the parties to this Agreement.

CREST REALTY, INC.

By: 
John McGeever

STATE OF ALABAMA
JEFFERSON COUNTY

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that John McGeever, William R. Robertson and John G. Benner, whose names as General Partners of Interstate Restaurant Investors, an Alabama general partnership, are signed to the foregoing instrument, and who are known to me,

acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such General Partners, executed the same voluntarily, for and as the act of said partnership.

Given under my hand and official seal this the 13th day of July, 1993.

Maulynn L. Evans Hill
Notary Public

My Commission Expires:

April 9, 1996

STATE OF ALABAMA
JEFFERSON COUNTY

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that Frank C. Ellis, Jr., whose name 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 the foregoing instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 13th day of July, 1993.

Maulynn L. Evans Hill
Notary Public

My Commission Expires:

April 9, 1996

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