

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made this 10 day of November, 1998, by and among:

LENDER: COMPASS BANK, an Alabama state banking corporation

LESSEE: GMRI, INC., a corporation

and

OWNER: SOUTHMARK PROPERTIES, L.L.C., an Alabama limited liability company
INTERSTATE RESTAURANT INVESTORS, L.L.P., an Alabama limited
liability partnership
FRANK C. ELLIS, JR.

WHEREAS:

(1) SOUTHMARK PROPERTIES, L.L.C., an Alabama limited liability company, INTERSTATE RESTAURANT INVESTORS, L.L.P., an Alabama limited liability partnership and FRANK C. ELLIS, JR. (collectively, "Owner") is the owner of the real property interest described in **Exhibit A** attached hereto and incorporated herein by reference;

(2) Compass Bank ("Lender") has made or is making a loan to Owner to provide financing for Owner to purchase land on the real property described in **Exhibit A**, such loan to be secured by a Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement on such property (the "Mortgage");

(3) By Lease effectively dated December 2, 1998 (the "Lease"), the Owner, as Lessor, leased to Lessee a portion of said real property or the improvements located thereon ("Leased Premises") for a term of fifteen (15) years [with three (3) options to extend said lease term for

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SHELBY COUNTY JUDGE OF PROBATE

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additional periods of five (5) years each so that the total or aggregate number of possible lease years under said Lease is a total of thirty (30) years, at the rental and upon the terms and conditions set forth in said Lease;

(4) Lender desires to assure the Lessee possession of the Leased Premises upon the terms and conditions set forth in the Lease for the entire original term and any optional renewal term therein provided without regard to any default under the terms of the Mortgage between Owner and Lender;

(5) Lessee desires to assure Lender that the Lessee will attorn to the Lender under the circumstances set forth in this Agreement and under the Lease;

(6) Lender desires to assure Lessee that its possession of the Leased Premises and rights under the Lease will not be disturbed so long as Lessee is not in default under the Lease or the terms of this Agreement;

(7) Lessee has agreed to subordinate the Lease and its interest therein to the Mortgage.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by each of the parties hereto to the other, of other good and valuable consideration, and of the mutual promises contained herein, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the Lender and Lessee covenant and agree as follows:

1. LESSEE TO ATTORN TO LENDER.

- (a) In the event it should become necessary to foreclose the Mortgage, the Lender thereunder will not, unless otherwise required by law, join the Lessee under said Lease in summary or foreclosure proceedings so long as the Lessee is not in default under the Lease;
- (b) In the event that the Lender shall succeed to the interest of Owner under such Lease, the Lease shall continue with the same force and effect as if the Lender, as Lessor, and the Lessee had entered into a Lease for a term equal to the then unexpired term of the Lease, containing the same terms, conditions and covenants as those contained in the Lease; including but not limited to any rights of renewal therein, and the Lessee shall be bound to the Lender under all of the provisions of the Lease for the remaining term thereof with the same force and effect as if the Lender were the Lessor under the Lease, and the Lessee hereby attorns and agrees to attorn to the Lender as its landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of either of the parties hereto

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immediately upon the succession of Lender to the interest of Owner under the Lease. The Lessee shall be under no obligation to pay rent to the Lender until the Lessee receives written notice from the Lender that an Event of Default under the Mortgage, or other loan documents has occurred, or that it has succeeded to the interest of the Owner under the Lease. The Owner agrees that upon receiving such notice from Lender, Lessee shall pay all rents directly to Lender without any liability therefor to Owner; provided, however, that if Owner in good faith disputes that such an Event of Default has occurred, Owner may promptly notify in writing Lessee and Lender, and upon receipt of such notice, Lessee shall thereafter deposit all rents into an appropriate court having jurisdiction over the Leased Premises, with notice of such deposit to Lender and Owner (and in such event Owner consents for the Court to remit to Lender from such deposit the debt service required under the Mortgage). Nothing contained herein shall in any manner limit or restrict the right of Lender to have a receiver appointed or to seek any other appropriate relief or remedy under the Mortgage, or other related loan documents. The respective rights and obligations of the Lessee and the Lender upon such attornment and their relationship shall be as tenant and landlord respectively, for the remaining term of the Lease, including any renewal periods set forth in said Lease. All parties acknowledge that they have in their possession and have fully reviewed an executed copy of the Lease and are fully aware of its terms and conditions;

- (c) Lessee agrees that it shall not, without the express consent of Lender, prepay any minimum rental under the Lease to Owner in excess of one (1) month's advance minimum rental; and
- (d) In the event that the Lender shall succeed to the interest of the Owner under the Lease, the Lender agrees to be bound to the Lessee under all of the terms, covenants and conditions of the Lease, provided, however, that Lender shall not be:
 - (i) liable for any act or omission of any prior landlord (including the Owner); or
 - (ii) subject to any offsets not specifically provided for in the Lease which the Lessee might have or thereafter have against any prior landlord (including the Owner); or
 - (iii) bound by any prepayment of more than one month's minimum rental under the Lease to any prior landlord (including the Owner); or
 - (iv) bound by any material amendment or modification or by any surrender of the Lease made without its consent.

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2. **LENDER'S RIGHT TO PROCEED AGAINST LESSEE.** In the event the Lender shall succeed to the interest of the Owner under the Lease, the Lender will have the same remedies by entry, action or otherwise for the nonperformance of any agreement contained in the Lease, for the recovery of rent, for the doing of any waste or for any other default, as Owner had or would have had the succession not taken place, and this right shall exist whether or not the Lease is formally terminated; in any such action, Lessee waives the necessity of Owner being made a party to such proceeding.

3. **RIGHT OF LENDER TO CURE DEFAULTS.** If any default shall occur under the Lease on the part of the Owner, which would give Lessee the right (or under which Lessee might claim the right), to cancel or terminate the Lease, Lessee shall promptly give notice thereof to Lender, and Lender shall have thirty (30) days from the date of such notice to cure any such default, or if such default is not reasonably capable of being cured in such period of time, Lender shall have the right within such time to commence remedying such default and shall proceed diligently to complete the same. In the event any such default is so cured, the Lease shall not be deemed to be in default, and Lessee's duties thereunder shall continue unabated. Nothing herein shall be deemed to be a duty on the part of Lender to cure any such default but only a right on its behalf.

4. **SUBORDINATION.** Except to the extent expressed herein, the Lease, and all rights of Lessee thereunder, are and shall be subject and subordinate in all respects to the Mortgage, to each and every advance made or hereafter to be made under the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage. Notwithstanding any provisions of the Lease to the contrary, and for as long as the Mortgage and any modification or extensions thereof shall remain unsatisfied, the Lease shall be superior to any subsequent financing or other encumbrances with a party other than Lender, its successors or assigns, with respect to the Leased Premises, and Lessee and Owner agree that each will not at any time prior to satisfaction of the Mortgage voluntarily subordinate the Lease to any deed of trust, mortgage or encumbrance to a party other than Lender, its successors or assigns, respecting the Leased Premises which is junior in priority to the mortgage.

5. **NON-DISTURBANCE PROVISIONS.** In the event the Mortgage shall be foreclosed, or in the event Lender otherwise succeeds to the interest of the Owner under the Lease, and provided that Lessee is not then in default under the Lease, the Lease shall not terminate on account of such foreclosure or other such succession, by operation of law or otherwise so long as the Lessee continues to pay the rents reserved in the Lease and otherwise does not become in default under the Lease. So long as Lessee is not in material default under the Lease, Lender recognizes and agrees to honor all of Lessee's rights under the Lease and all of the Owner's obligations under the Lease, including without limitation, the use and distribution of insurance and condemnation proceeds.

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6. **LENDER'S APPROVAL OR CONSENT.** Wherever Lender's consent or approval under the Lease is required, Lender agrees to not unreasonably withhold such consent, and it is understood and agreed that Lender shall not be deemed to have unreasonably withheld such consent or approval, wherein Lender's reasonable discretion to give such approval or consent would reduce the value, decrease the size or impair the structural integrity of the Leased Property or otherwise impair the security granted under the Mortgage.

7. **SURVIVAL.** This instrument shall survive any foreclosure of the Leased Premises, or any other succession by Lender to the interest of the Owner with respect to the Leased Premises, and the sale of the Leased Premises to Lessee, and shall remain in full force and effect until the end of the Lease term and all exercised optional extension periods, or upon satisfaction of the Mortgage and all renewals, modifications, consolidations, replacements, and extensions of such Mortgage, whichever shall first occur.

8. **APPROVALS.** The Owner has joined in this Agreement for the purpose of expressing its consent and agreement to be bound by the provisions of Paragraph I (b) and Paragraph 4 hereof.

9. **NOTICES.** All notices or demands hereunder shall be sufficient if sent by United States registered or certified mail, postage prepaid, addressed as follows:

If to Lender: Compass Bank
P.O. Box 10566
Birmingham, Alabama 35296
Attention: Commercial Real Estate Loan Department

If to Lessee: GMRI, Inc.
Attention: Beth M. Tanner
Development Law Department
1751 Directors Row
Orlando, Florida 32809

If to Owner: Southmark Properties, L.L.C.
Interstate Restaurant Investors, L.L.P.
Frank C. Ellis, Jr.
100 Centerview Drive - Suite 120
Birmingham, Alabama 35216

or such other address as either party may hereafter designate in writing to the other.

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10. BINDING EFFECT. This Agreement and all of the covenants, terms, conditions and obligations herein contained shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective on the day and year first above written.

WITNESS OR ATTEST:

By: Brenda Bivens
Its:

WITNESS OR ATTEST:

By: [Signature]
Its:

WITNESS:

Monique Tinney

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LENDER:

COMPASS BANK

By: [Signature]
Its: V.P.

LESSEE:

GMRI, INC.

By: [Signature]
Its: [Signature]

OWNER:

SOUTHMARK PROPERTIES, L.L.C.,
an Alabama limited liability company

By: [Signature]
James A. Bruno
Its Duly Authorized Manager

WITNESS:

Monique Tinney

WITNESS:

Paula Head

INTERSTATE RESTAURANT, L.L.P.,
an Alabama limited liability partnership

By: John Mc Geever
John McGeever
Its Partner

Frank C. Ellis, Jr.
FRANK C. ELLIS, JR.

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Acknowledgment for Lender

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned, a notary public in and for said county in said state, hereby certify that R. Scott Pulliam, whose name as Vice President of **COMPASS BANK**, an Alabama banking 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 such instrument, he/she, 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 4th day of June, 1999.

Barbara Ann Moore
Notary Public

My Commission Expires: 11-27-2002

[Notarial Seal]

Acknowledgment for Lessee

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, the undersigned, a notary public in and for said county in said state, hereby certify that James D. Smith, whose name as Senior Vice President of **GMRI, INC.**, a 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 such instrument, he/she, 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 8th day of March, 1999.



[Notarial Seal]

Donna Wickman
Notary Public
My Commission Expires: 6-5-2000

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Acknowledgment for Owner

STATE OF ALABAMA)
)
COUNTY OF Tefferson)

I, the undersigned, a notary public in and for said county in said state, hereby certify that James A. Bruno, whose name as the duly authorized Manager of **Southmark Properties, L.L.C.**, an Alabama limited liability company, 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 such instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 30th day of March, 1999.

[Notarial Seal]




Notary Public
My Commission Expires: MAY 17, 2002
MY COMMISSION EXPIRES
MAY 17, 2002

STATE OF ALABAMA)
)
COUNTY OF Tefferson)

I, the undersigned, a notary public in and for said county in said state, hereby certify that John McGeever, whose name as a partner of **Interstate Restaurant Investors, L.L.P.**, an Alabama limited liability partnership, 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 such instrument, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 30th day of March, 1999.

[Notarial Seal]



Notary Public
My Commission Expires: MAY 17, 2002
MY COMMISSION EXPIRES
MAY 17, 2002

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STATE OF ALABAMA)

COUNTY OF Jefferson)

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 such instrument, he executed the same voluntarily.

Given under my hand and official seal this 30 day of March, 1999.

[Notarial Seal]



Notary Public

My Commission Expires:

MY COMMISSION EXPIRES
MAY 17, 2002

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