

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is by and between GMRI, Inc., as "TENANT", and LaSalle Bank National Association., as "MORTGAGEE", and Southmark Properties, LLC. (successor-in-interest to Southmark Properties, LLC, Interstate Restaurant Investors, LP and Frank C. Ellis, Jr.), as "LANDLORD".

### RECITALS:

A. On December 3, 1998, Southmark Properties, LLC, Interstate Restaurant Investors, LP and Frank C. Ellis, Jr. and TENANT entered into a Net Ground Lease, for certain premises in the City of Birmingham, County of Shelby, and State of Alabama, which are more particularly described in Exhibit "A" ("PREMISES"), as amend and assigned, incorporated into this Agreement by reference with the same force and effect as if set forth at length (the "LEASE").

B. MORTGAGEE may become a holder of a lien and encumbrance on the PREMISES as security for the obligation of LANDLORD pursuant to certain documents to be recorded in the public records of Shelby County, Alabama ("MORTGAGE"); and

C. The parties desire to acknowledge TENANT's interest in the PREMISES and its rights under the PREMISES so long as TENANT is not in default under the LEASE.

THEREFORE, in consideration of the mutual covenants contained in this Agreement, TENANT, MORTGAGEE and LANDLORD agree as follows:

1. Non-disturbance and Subordination. MORTGAGEE recognizes and agrees to honor all of TENANT's rights under the LEASE and all of LANDLORD's obligations under the LEASE, including without limitation, the use and distribution of insurance and condemnation proceeds. So long as TENANT is not in default, past the applicable cure period, in the performance of any of the terms of the LEASE, TENANT's possession of the PREMISES and TENANT's rights and privileges under the LEASE, including any renewal options, will not be disturbed, diminished or interfered with by MORTGAGEE, MORTGAGEE will continue to honor LANDLORD's obligations under the LEASE and TENANT will not be made a party defendant to any foreclosure proceeding. Subject to the terms of this Agreement, TENANT hereby subordinates its right, title and interest in the LEASE to the lien of the MORTGAGE, including all renewals, modifications, consolidations and extensions thereof.

2. Attornment. In the event MORTGAGEE succeeds to the interest of the LANDLORD under the LEASE, through foreclosure of the MORTGAGE, deed in lieu of foreclosure, or other means, TENANT will be bound to MORTGAGEE under all of the terms of the LEASE for the balance of the term with the same force and effect as if MORTGAGEE were the landlord named in the LEASE, and TENANT will attorn to MORTGAGEE as its landlord, the attornment to be effective and self-operative, without the execution of any further instruments, immediately upon MORTGAGEE succeeding to the interest of the landlord under the LEASE. MORTGAGEE agrees that TENANT will be under no obligation to pay rent to MORTGAGEE until MORTGAGEE has succeeded to the interest of the landlord under the LEASE and has so notified TENANT in writing. The respective rights and obligations of TENANT and MORTGAGEE upon such attornment will, for the balance of the term of the LEASE, be the same as now set forth in the LEASE, it being the intention of the parties for this purpose to incorporate the LEASE into this Agreement by reference with the same force and effect as if set forth at length.

3. Landlord's Obligations. In the event that the MORTGAGE is foreclosed for any reason and MORTGAGEE succeeds to the interest of the LANDLORD under the LEASE, MORTGAGEE will be bound to TENANT under all of the terms of the LEASE, and TENANT will, from and after such event, have the same remedies against MORTGAGEE for the breach of an agreement contained in the LEASE that TENANT might have had under the LEASE against the prior LANDLORD.



4. Tenant's Obligations. Notwithstanding anything herein to the contrary, TENANT shall not be deemed to be in default under any of the terms or conditions of this Agreement, until TENANT has received a fully executed original copy of this Agreement.

5. Binding Effect. The rights and obligations of TENANT and MORTGAGEE will bind and inure to the benefit of their respective successors and assigns.

Signed in the presence  
of:

Mayge Mathews  
Print Name: Mayge Mathews

Fran Erich  
Print Name: FRAN ERICH

GMRI, Inc.  
(TENANT)

By: James O. McIntosh  
James O. McIntosh  
VP, Development Law  
Date: July 18, 2006

Signed in the presence  
of:

Lucinda C. Royal McQuinn  
Print Name: Lucinda C. Royal McQuinn  
Meghan McGuire  
Print Name: Meghan McGuire

LaSalle Bank National Association  
(MORTGAGEE)

By: Timothy Erwin  
Date: 8/14, 2006

Signed in the presence  
of:

Jamie Walker  
Print Name: JAMIE WALKER  
Sharm Huffstetter  
Print Name: Sharm Huffstetter

Southmark Properties, LLC  
(LANDLORD)

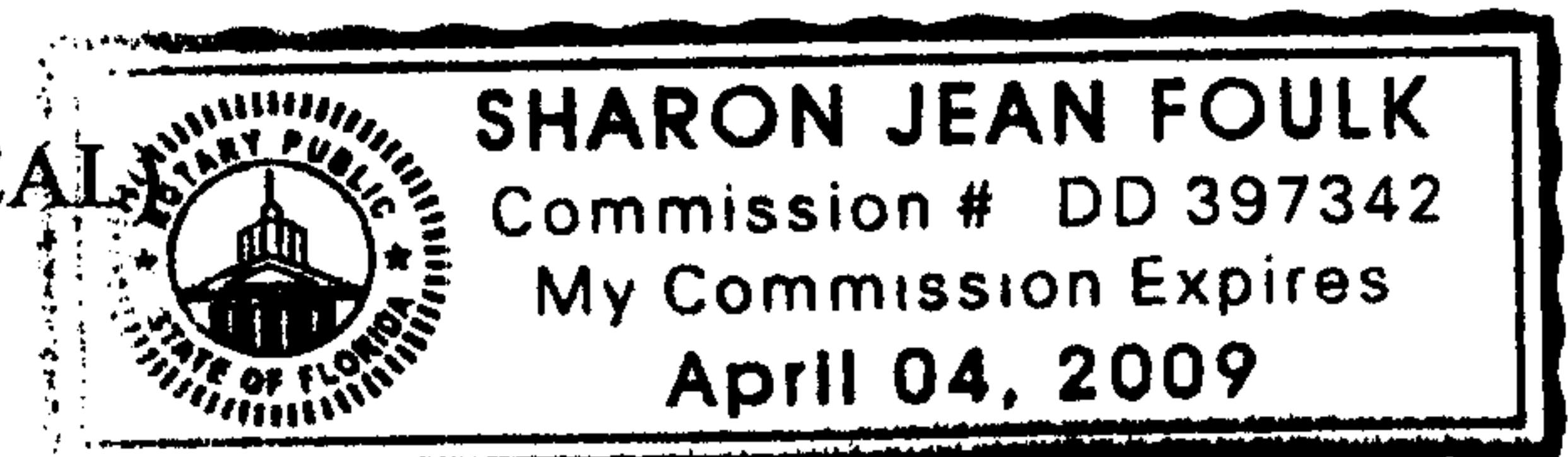
BY: Jan R. Bui  
Date: Aug. 2, 2006

STATE OF FLORIDA  
COUNTY OF ORANGE


The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of July, 2006 by James O. McIntosh, the VP, Development Law, of GMRI, Inc., a Florida corporation, on behalf of the corporation. He is personally known to me and did not take an oath.

Sharon Jean Foulk (Signature)  
Sharon Jean Foulk (Print or Type Name)  
Notary Public (Title or Rank)  
DD 397342 (Serial/Commission Number)  
My Commission Expires: 4/4/09

(NOTARY'S SEAL)



STATE OF ILLINOIS     )  
  ) ss.:  
COUNTY OF KANE        )

  
20060821000406940 3/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
08/21/2006 01:51:10PM FILED/CERT

I, Mark Brabec, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Timothy Ervin, the Managing Director of LaSalle Bank National Association, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the use and purposes therein set forth.

Given under my hand and notorial seal this 14<sup>th</sup> day of August, 2006

  
\_\_\_\_\_  
Notary Public

My commission expires: 01/09/2010





STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006 by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.


\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print or Type Name)  
Notary Public \_\_\_\_\_ (Title or Rank) (NOTARY'S SEAL)  
\_\_\_\_\_  
(Serial/Commission Number)  
My Commission Expires: \_\_\_\_\_

STATE OF Alabama  
COUNTY OF Jefferson

The foregoing instrument was acknowledged before me this 2 day of August, 2006 by JAMES A. BRUND, the Manager of Southbrook Properties, LLC a limited liability company on behalf of the corporation. He/~~She~~ is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

Betty L. Widner  
(Signature)  
\_\_\_\_\_  
(Print or Type Name)  
Notary Public \_\_\_\_\_ (Title or Rank) (NOTARY'S SEAL)  
\_\_\_\_\_  
(Serial/Commission Number)  
My Commission Expires: \_\_\_\_\_  
**BETTYE L. WIDNER**  
**NOTARY PUBLIC STATE OF ALABAMA AT LARGE**  
**MY COMMISSION EXPIRES MARCH 29, 2009**

Bahama Breeze #3008  
Birmingham, AL



20060821000406940 5/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
08/21/2006 01:51:10PM FILED/CERT

Exhibit "A"  
Legal Description of PREMISES

**Legal Description**

Lot 2-A, according to the Map of Resource Center, recorded at Map Book 24, Page 118,  
being a part of the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West,  
Shelby County, Alabama; being situated in Shelby County, Alabama.