


20070418000180720 1/11 \$41.00
Shelby Cnty Judge of Probate, AL
04/18/2007 02:16:59PM FILED/CERT

UNIT # 7850
Alabaster, Alabama

COUNTY OF SHELBY
STATE OF ALABAMA

Cross-Reference to:
Document 20060111000019860;
Document 20060111000019870; and
Shelby County, Records

After Recording Return to:

Susan M. Gordon, Esq.
Arby's Restaurant Group, Inc.
1155 Perimeter Center West
Suite 1200
Atlanta, Georgia 30338

**OWNER'S RECOGNITION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS OWNER'S RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "**Agreement**") made as of the 31 day of January, 2007, between THE COMMERCIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALABASTER, ALABAMA ("**Owner**"), HIGHWAY 31 ALABASTER TWO, LLC, an Alabama limited liability company ("**Landlord**") and RTM ALABAMA, INC., an Alabama corporation ("**Tenant**")

RECITALS:

WHEREAS by that certain Ground Lease and Option Agreement by and between Owner (as landlord) and Colonial Realty Limited Partnership ("**CRLP**") (as tenant) dated December 1, 2005, a Memorandum of which has been recorded in the Office of the Judge of Probate of Shelby County, Alabama at 20060111000019860, as assigned by CRLP to Landlord by that certain Assignment of Ground Lease and Option Agreement dated December 20, 2005, recorded at 20060111000019870, aforesaid records (as assigned, the "**Ground Lease**"), Owner has leased to Landlord and Landlord has leased from Owner all of that certain property in the City of Alabaster, County of Shelby, State of Alabama, more particularly described in the Ground Lease (the "**Ground Lease Parcel**"), which Ground Lease Parcel includes (but is not limited to) the property described on Exhibit A attached hereto and incorporated herein by this reference (the "**Premises**"); and

WHEREAS, by a Sublease Agreement dated January 4, 2007, a Memorandum of which shall be recorded in aforesaid records (the "**Sublease**"), Landlord has subleased to Tenant and Tenant has subleased from Landlord the Premises; and

WHEREAS, Tenant desires to be assured of and Owner desires to assure Tenant of Tenant's right to continued occupancy and possession of the Premises under the terms of the Sublease subject to the provisions of this Agreement.

NOW THEREFORE, in consideration of the sum of ten dollars (\$10.00) in hand paid and other good and valuable consideration, receipt of which is hereby acknowledged, and for and in consideration of their respective covenants herein made, the parties agree as follows:

1. All capitalized terms contained herein shall have the same meanings as are ascribed to them in the Ground Lease and/or Sublease, as the context requires or permits and as the case may be, unless otherwise specifically provided herein.

2. Owner hereby consents to the Sublease and recognizes Tenant as the subtenant thereunder.

3. If the Ground Lease expires or is terminated (or Owner reenters the Premises by summary proceedings or otherwise as provided in the Ground Lease) for any reason whatsoever and on the date of such expiration or termination (or reentry) the Sublease is in full force and effect:

(a) the Sublease shall not terminate or otherwise be affected by reason of such expiration or termination of the Ground Lease;

(b) Tenant shall not be joined as a party defendant in any action or proceeding which may be instituted or taken with respect to or pursuant to the provisions of the Ground Lease;

(c) Tenant shall not be evicted from the Premises by Owner or any assignee whose rights derive from, under or through Owner and Tenant's right of possession and other rights under the Sublease shall not be terminated, disturbed, extinguished, diminished or interfered with;

(d) the Sublease shall continue in full force and effect as a direct lease between Owner, as landlord, and Tenant, as tenant, for a term equal to the unexpired term of the Sublease (and inclusive of any rights of renewal or extension thereof), and all of the other terms, covenants and conditions contained in the Sublease, without necessity for executing a new lease;

(e) as of the date that Owner succeeds to Landlord's interest in the Sublease, Tenant shall attorn to Owner, and recognize Owner as landlord, Owner shall accept Tenant's attornment and recognize Tenant as tenant under the Sublease and the terms, covenants and conditions of the Sublease and the rights, remedies and obligations thereunder shall be binding upon and inure to the benefit of Tenant and Owner as if the Sublease had been made by Tenant as tenant and Owner as original landlord;

(f) Owner shall comply with all of the covenants and obligations of the Landlord under the Sublease accruing after the time Owner so succeeds to Landlord's interests in and to the Sublease and Tenant attorns to Owner (including, but not limited to, the obligation to cure non-monetary defaults of Landlord continuing after such

succession, provided Tenant gives Owner written notice of such default and a reasonable time (in any event not less time than that granted by the Sublease) within which to cure such default); and

(g) Tenant shall have the right to enforce Landlord's right and option to purchase the Ground Lease Parcel under Section 19 of the Ground Lease; provided, however, that Owner shall convey the Ground Lease Parcel to Landlord, not Tenant.

4. Owner shall, from and after the date hereof, so long as the Sublease is in full force and effect, give to Tenant, in the manner provided herein for the giving of notice, copies of all notices of default that Owner may give or is required to give to Landlord pursuant to the Ground Lease. Owner acknowledges and agrees that Tenant shall be entitled, at Tenant's option (and without obligation), to (a) cure any default by Landlord under the Ground Lease, within the same grace or cure periods as are available to Landlord under the Ground Lease (and Owner agrees to afford Tenant access to such portions of the Property as may be reasonably necessary to cure such default), and (b) exercise any of Landlord's rights or options under the Ground Lease (to the extent permitted under the Sublease), including, without limitation, Landlord's right to (i) renew or extend the term of the Ground Lease to the extent that Tenant shall have exercised any corresponding right it may have to renew or extend the term of the Sublease and that such exercise shall be reasonably necessary to insure Tenant of all of its rights under the Sublease, including its right to possession of the Premises for the balance of Tenant's Sublease and any renewals contained in the Sublease, (ii) contest Real Estate Taxes (as defined in the Sublease), (iii) grant easements and rights of way, (iv) participate in any condemnation proceedings, and (v) pay directly any rent or other charges due from Landlord under the Ground Lease. Owner agrees to accept performance by Tenant of any of Landlord's obligations under the Ground Lease as if same were performed by Landlord.

5. Neither the Ground Lease nor any other instrument executed in connection therewith shall cover or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed in the Premises by Tenant or its subtenants or licensees regardless of the manner or mode of attachment thereof ("**Tenant's Property**"). Although the provisions of this Section 5 shall be self-operative without any further action by Owner or Tenant, Owner agrees that if any lender to which Tenant shall grant a security interest in Tenant's Property or any lessor who shall lease Tenant's Property to Tenant shall request that Owner confirm that it has waived any lien which Owner may have thereupon by operation of law or otherwise, Owner shall promptly execute and deliver to Tenant an instrument so requested of it in form reasonably satisfactory to such lender or lessor and to Owner. Owner agrees that any lender to whom Tenant shall grant a security interest in Tenant's Property, as aforesaid, or any lessor of Tenant's Property, shall have the right to enter upon the Premises for the purposes of removing Tenant's Property, and that Owner shall not hinder or delay such removal, provided that such lender or lessor shall (a) repair any damage to the Premises caused by such removal, (b) indemnify Owner and hold Owner harmless from and against all claims for personal injury or property damage caused by the negligence or willful misconduct of such lessor or lender or its employees, agents, servants or representatives and (c) otherwise comply with the terms of the Ground Lease in connection with such removal.

6. Except for legal process which may also be served as by law provided (other than by tacking), all notices required or desired to be given with respect to this Agreement shall be in writing and shall be deemed to have been given when hand delivered and/or, if sent by certified mail return receipt requested or by same day or overnight receipted courier service, when deposited with the carrier; but all cure periods shall run from the date of actual receipt of such notice. All notices shall be addressed as follows:

- (i) To Owner: The Commercial Development Authority
of the City of Alabaster, Alabama
201 First Street North
Alabaster, Alabama 35007
Attention: Chairman
- (ii) To Landlord: Highway 31 Alabaster Two, LLC
c/o Colonial Realty Limited Partnership
2101 6th Avenue North
Suite 750
Birmingham, Alabama 35203
Attention: Legal Department
- (iii) To Tenant: RTM Alabama, Inc.
c/o Arby's Restaurant Group
1155 Perimeter Center West
Suite 1200
Atlanta, Georgia 30338
Attn: Melissa C. Nuss,
Sr. Director Lease Administration

The period in which a response to any such notice must be given or taken shall run from the date of personal delivery or the date of actual receipt as evidenced on the return receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt.

7. The provisions hereof shall be construed in accordance with the laws of the State of Tennessee without reference to its principle of conflicts of laws.

8. The provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns, and all covenants, conditions and agreements herein contained shall be construed as running with the land.

9. The word "Owner" as used herein shall mean not only the original Owner named in the first paragraph of this instrument but also all future owners of the Property. Upon transfer of the Premises to a new owner, the transferring owner shall be released from all obligations hereunder, except as to such obligations that accrued prior to the transfer; provided, however, nothing in this Agreement will release Owner from its Ground Lease obligations unless so provided for in the Ground Lease. The word "Landlord" as used herein shall mean not only the

original Landlord named in the first paragraph of this Agreement, but also all future holders of the Landlord's leasehold estate under the Ground Lease, including, without limitation, any leasehold mortgagee who becomes the holder of the Landlord's leasehold estate under the Ground Lease. Upon assignment of Landlord's interest in the Premises under the Ground Lease and obligations under the Sublease, Landlord shall be released from all obligations hereunder, except as to obligations that accrued prior to the transfer; provided, however, nothing in this Agreement will release Landlord from its Ground Lease obligations unless so provided for in the Ground Lease. The word "Tenant" as used herein shall mean not only the original Tenant named in the first paragraph of this Agreement, but also all future holders of the Tenant's subleasehold estate under the Sublease, including, without limitation, any subleasehold mortgagee who becomes the holder of the Tenant's subleasehold estate under the Sublease. Upon assignment of Tenant's interest in the Premises under the Sublease, Tenant shall be released from all obligations hereunder, except as to obligations that accrued prior to the transfer; provided, however, nothing in this Agreement will release Tenant from its Sublease obligations unless so provided for in the Sublease.

10. The provisions of this Agreement shall be self-operative. However, Tenant agrees to execute and deliver to Owner or to any person to whom Tenant herein agrees to attorn such other reasonable instrument as either shall reasonably request in order to effectuate said provisions. If any provision of this Agreement shall be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. This Agreement may not be changed, amended or modified in any manner other than by an agreement in writing specifically referring to this Agreement and executed by Owner, Landlord and Tenant. This Agreement may be executed in counterparts.

[Signatures Begin on Next Page]



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IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals
as of the day, month and year first above written.

Signed, sealed and delivered in the
Presence of:

Linda G. Warner
Witness

Nancy Burns
Witness

Signed, sealed and delivered in the
Presence of:

Linda Weisman
Witness:

Susan DePri
Witness:

JD
BM/JBPP
JK

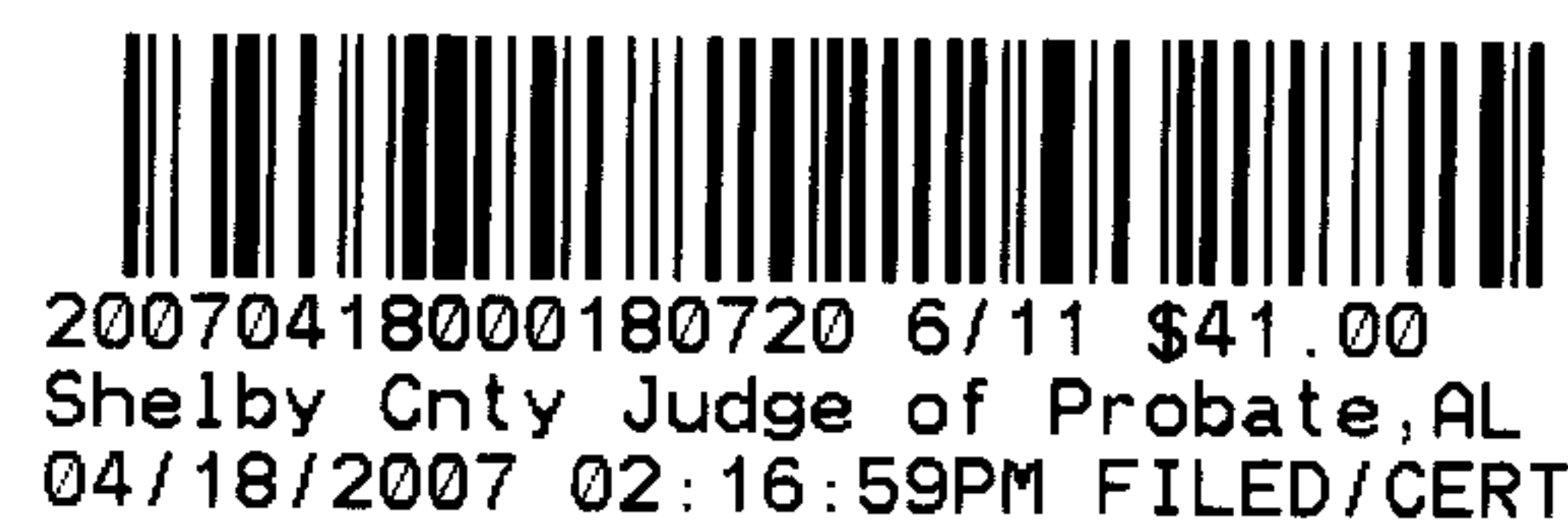
Owner:

The Commercial Development Authority
of the City of Alabaster, Alabama

By: Dennis Kelton

Its: C. HARRIS

[SEAL]



Landlord:

Highway 31 Alabaster Two, LLC,
an Alabama limited liability company

By: Brian J. Neltner
Its: **BRIAN J. NELTNER**
SENIOR VICE PRESIDENT

[SEAL]

Signed, sealed and delivered in the
Presence of:

Tracey C. Fraser
Witness

Witness

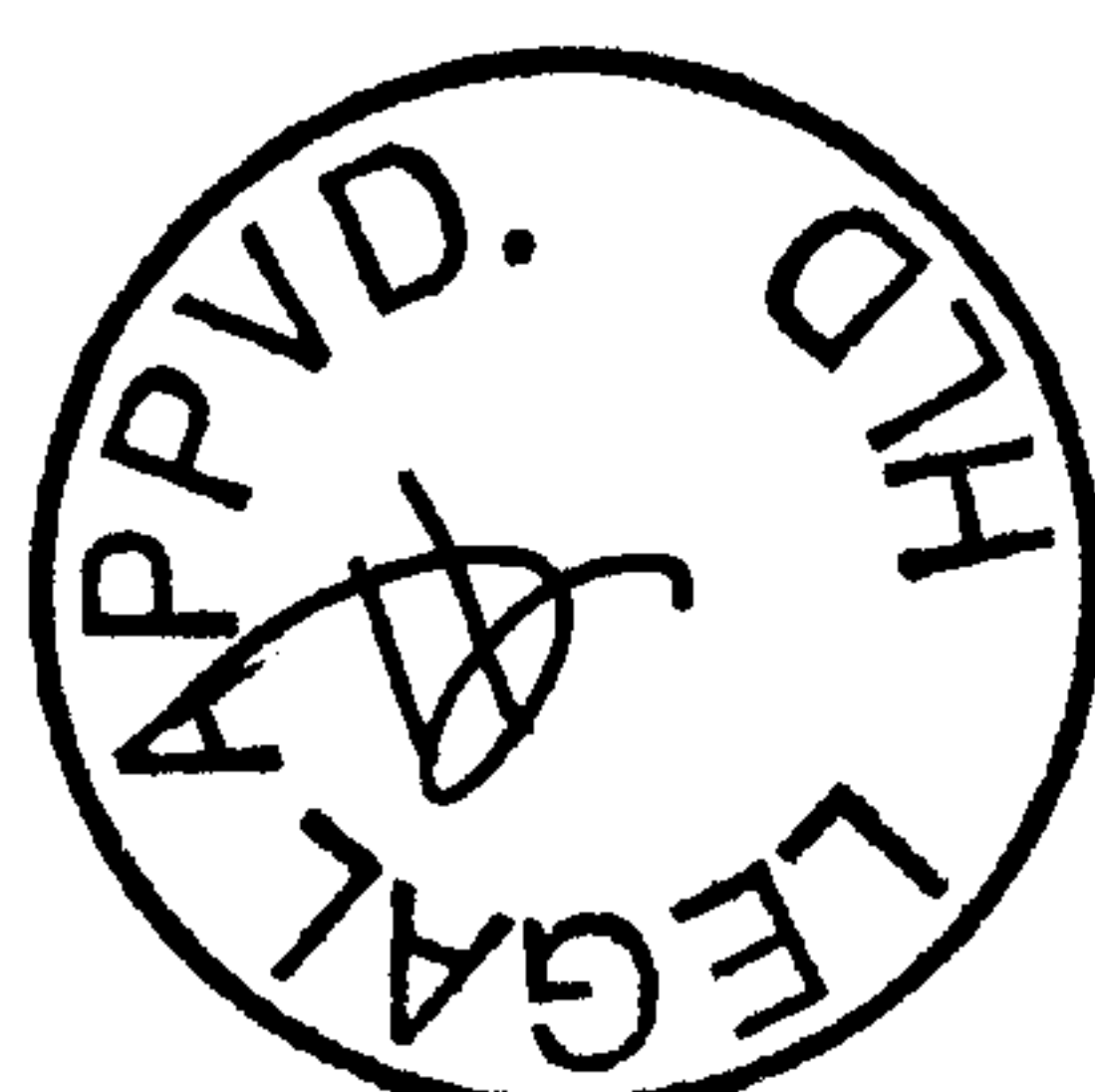
Tenant:

RTM ALABAMA, INC.

By: Susan M. Gordon
Its: **Susan M. Gordon - VP**

~~By: _____~~
~~Its: _____~~

[CORPORATE SEAL]



STATE OF: Alabama)

COUNTY OF: Shelby)

I, THE UNDERSIGNED AUTHORITY, a Notary Public in and for said County in said State, hereby certify that Dennis Rother, whose name as Chairman of The Commercial Development Authority of the City of Alabaster, Alabama 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/she as such officer and with full authority executed the same voluntarily for and as the said officer of said corporation.

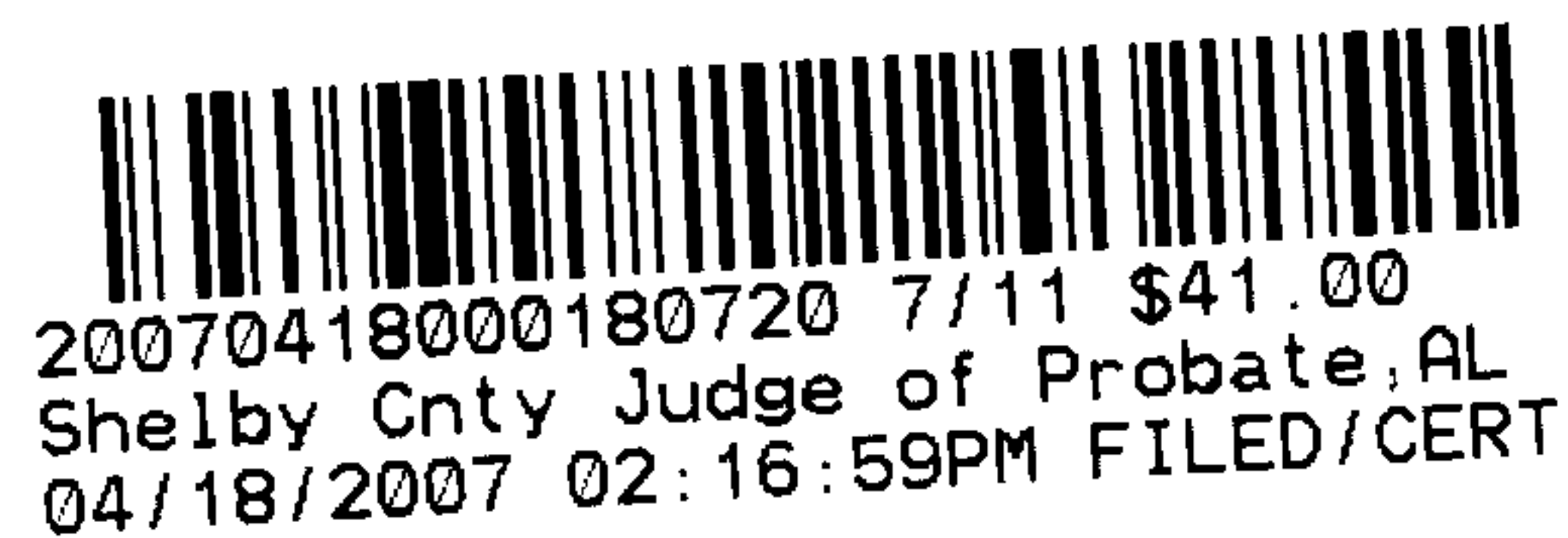
GIVEN UNDER my hand and official seal this 24th day of January, 2007.

Lisa J. Rother
Notary Public

My Commission expires:
My Commission Expires Feb 2, 2010
(NOTARIAL SEAL)

STATE OF: Alabama)

COUNTY OF: Jefferson)



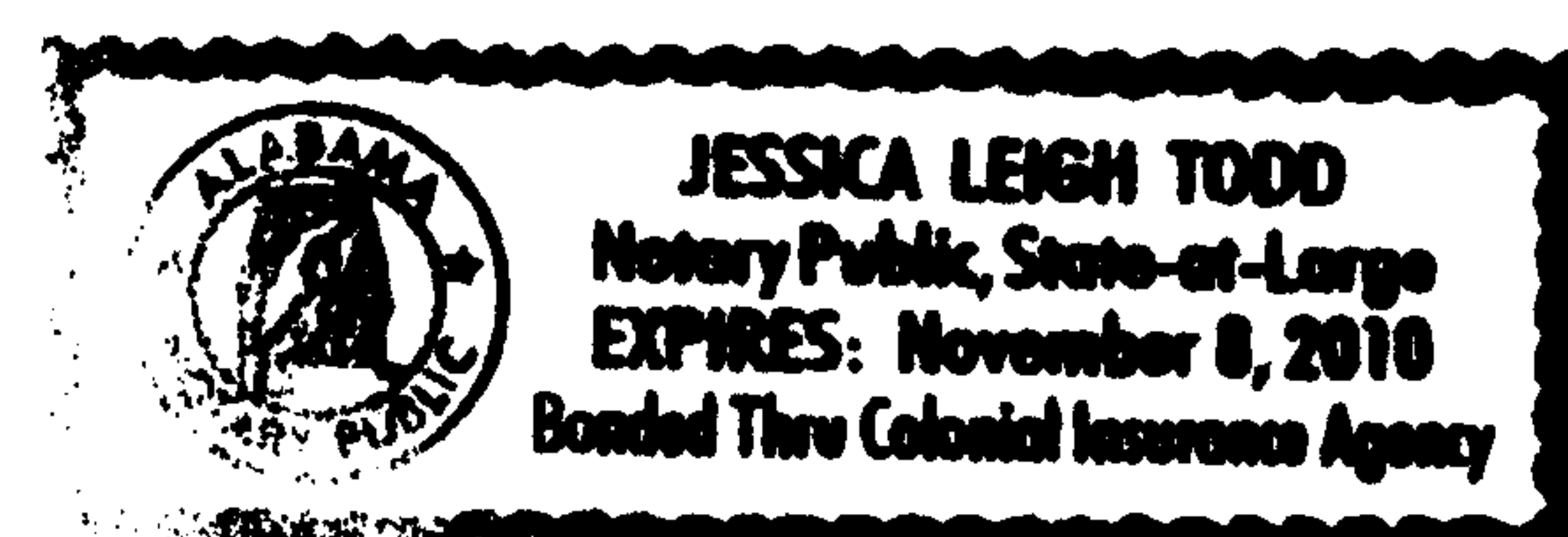
BEFORE ME personally appeared Brian J. Nemer, whose name as Senior vice president of HIGHWAY 31 ALABASTER TWO, LLC, an Alabama limited liability company, and to me well known to be the person(s) described in and who executed the foregoing Memorandum of Sublease, and he/she acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that he/she executed said instrument for the purposes therein expressed on behalf of the Landlord therein named.

WITNESS my hand and official seal this 31st day of January, 2007.

Jessica Leigh Todd
Notary Public

My Commission expires: Nov. 8, 2010

(NOTARIAL SEAL)



STATE OF: Georgia)

COUNTY OF: DeKalb)

I, THE UNDERSIGNED AUTHORITY, a Notary Public in and for said County in said State, hereby certify that Susan M. Gordon and _____, whose names as Vice President and _____ respectively, of RTM Alabama, Inc. 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 said instrument, they as such officers and with full authority executed the same voluntarily for and as the said officers of said corporation.

GIVEN UNDER my hand and official seal this 8 day of February, 2007.

[Signature]
Notary Public

My Commission expires:

(NOTARIAL SEAL)



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EXHIBIT A
[TO ORNDA]

Premises



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LEGAL DESCRIPTION



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PROPOSED LOT 6

COMMENCE AT THE SW CORNER OF THE NW $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ OF SECTION 12, TOWNSHIP 21 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA; THENCE RUN SOUTH $87^{\circ} 31' 35''$ EAST FOR 621.77 FEET TO A POINT; THENCE RUN NORTH $20^{\circ} 13' 35''$ WEST FOR 92.37 FEET TO A POINT; THENCE RUN SOUTH $69^{\circ} 47' 27''$ WEST FOR 11.01 FEET TO A POINT; THENCE RUN NORTH $21^{\circ} 13' 42''$ EAST FOR 100.02 FEET TO A POINT; THENCE RUN NORTH $69^{\circ} 47' 27''$ EAST FOR 9.88 FEET TO A POINT; THENCE RUN NORTH $23^{\circ} 28' 05''$ WEST FOR 138.80 FEET TO A POINT; THENCE RUN NORTH $66^{\circ} 31' 55''$ EAST FOR 50.00 FEET TO A POINT; THENCE RUN NORTH $23^{\circ} 28' 05''$ WEST FOR 152.38 FEET TO THE POINT OF BEGINNING OF SAID ARBY'S ALABASTER SITE, PROPOSED LOT 6, COLONIAL PROMENADE; THENCE RUN NORTH $23^{\circ} 28' 05''$ WEST FOR 155.00 FEET TO A POINT; THENCE RUN NORTH $66^{\circ} 31' 55''$ EAST FOR 164.96 FEET TO A POINT, SAID POINT BEING ON THE WESTERLY RIGHT-OF-WAY LINE ON US HIGHWAY 31, SAID POINT BEING ON A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 2162.01 FEET, SUBTENDING A CENTRAL ANGLE OF $04^{\circ} 09' 00''$; HAVING A CHORD BEARING OF SOUTH $31^{\circ} 34' 04''$ EAST 156.56 FEET, AND ALONG THE ARC OF SAID CURVE AND WESTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 31 FOR 156.60 FEET TO THE END OF SAID CURVE; THENCE RUN SOUTH $66^{\circ} 31' 55''$ WEST FOR 187.02 FEET TO THE POINT OF BEGINNING OF PROPOSED LOT 6. SAID PARCEL CONTAINS 27,419 SF OR 0.63 ACRES MORE OR LESS.

