

ASSIGNMENT OF LEASES AND RENTS

THE STATE OF ALABAMA §
 §
COUNTY OF SHELBY §

THIS ASSIGNMENT OF LEASES AND RENTS (“Assignment”) dated this 31st day of October, 2014, is executed and delivered by **Alabaster Alabama Properties, LLC, an Oregon limited liability company**, whose address is 15261 NW Aberdeen Dr., Portland, Oregon 97229 (“Assignor”), in favor of **PlainsCapital Bank** (“Lender”), whose address is 150 E. Sonterra Blvd., Suite 150, San Antonio, Texas 78258.

RECITALS:

1. Assignor is the owner of the real property described herein (the “Land”) and, together with all improvements now or hereafter constructed thereon or relating thereto (herein collectively called the “Mortgaged Premises”) more fully described as follows:

SEE EXHIBIT “A” ATTACHED HERETO AND INCORPORATED HEREIN.

2. Lender has required Assignor, and Assignor has agreed, to assign to Lender to provide a source of future payment of the Indebtedness (as defined herein) certain rights in respect of all present and future leases (hereinafter referred to individually as “Lease” and collectively as “Leases”) of the Mortgaged Premises.

3. The term “Indebtedness” as used in this Assignment shall mean and include the indebtedness, present and future, owing and to become owing to Lender, as follows:

- a. All indebtedness now and hereafter evidenced and to be evidenced by that certain Real Estate Lien Note (the “Note”) of even date herewith in the original principal sum of One Million One Hundred Eighty Thousand and No/100 Dollars (\$1,180,000.00), executed by Assignor, of even date herewith, and bearing interest at the rate or rates therein stated, principal and interest payable to the order of Lender on the dates therein stated;
- b. Any renewals, extensions, increases, modifications and rearrangements of and substitutions for the Note;
- c. Any and all sums, together with interest accruing thereon as herein provided, which may hereafter be advanced by Lender and/or owed to Lender under and pursuant to the terms of this Assignment; and
- d. All obligations and indebtedness of Assignor or any other person or entity under any document or instrument now or hereafter evidencing or securing payment or performance of all or any part of the Note (the Note and all such other documents or instruments now or hereafter evidencing or securing payment or performance of all or any part of the Note being herein collectively called the “Security Instruments”) and all modifications and amendments thereof; subject, however, to the terms, provisions and conditions herein set forth.

AGREEMENTS AND COVENANTS:

For and in consideration of the foregoing and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor does hereby assign and covenant as follows:

1. Assignor does hereby TRANSFER, ASSIGN and CONVEY unto Lender all of Assignor’s right, title and interest in and to all Leases in connection with the Mortgaged Premises, including but not limited to that certain Lease Agreement dated effective September 29, 2014 by and between Assignor and Whataburger Real Estate LLC, a Texas limited liability company. Each time Assignor enters into a Lease covering any of the Mortgaged Premises, said Lease shall automatically become subject to this Assignment without further action of either of the parties thereto. Without limiting the effect of the prior sentence, Assignor agrees to deliver copies of all Leases presently in force in connection with the Mortgaged Premises to Lender contemporaneously with the execution of this Assignment and when future Leases are executed, copies thereof shall be delivered to Lender forthwith. Each such copy shall contain a statement signed by Assignor that such Lease is subject to this Assignment. The assignment contained in this Assignment of Leases and Rents is absolute, unconditional and presently effective.

2. Assignor will not, except in the ordinary course of business, without the prior

written consent of Lender, reduce the rent under the Leases; collect or accept payment of any rents thereunder in advance of the time when such rents become due; substantially modify the terms thereof in any way, either orally or in writing; grant any substantial concession in connection with any such Lease, either orally or in writing; or consent to the assignment of the lessee's interest in any such Lease, or to a subletting; and any of such acts, if done without the written consent of Lender, shall be null and void.

3. In no event shall this Assignment operate to impose any duty or obligation upon Lender to demand, sue for or otherwise make collection of rents or other sums from time to time due and owing by a lessee under any of the Leases.

4. This Assignment, prior to entry upon the Mortgaged Premises by Lender, shall not operate to make Lender a mortgagee in possession nor to place responsibility for the control, care, management or repair of the Mortgaged Premises upon Lender, nor to place responsibility on Lender for carrying out any of the terms and conditions of the Leases, nor shall it operate to make Lender responsible or liable for any waste committed on the property by any lessee or other party, or for any negligence in the management, upkeep, repair or control of the Mortgaged Premises resulting in loss or injury or death to any lessee, licensee, employee or stranger. No liability shall be asserted or enforced against Lender, all such liability being hereby expressly waived and released by Assignor, and should any such action be brought against Lender by reason of this Assignment, then Assignor agrees to reimburse Lender, immediately upon demand, for all costs, expenses and reasonable attorneys' fees incurred.

5. Until receipt from Lender of notice of the occurrence of a default specified in the Security Instruments (hereinafter called a "Notice of Default"), each lessee under the Leases may pay rents under the Leases directly to Assignor and Assignor shall have the right to receive such rents provided that Assignor shall apply such rents, to the extent necessary to fulfill current obligations, before using any part of the same for any other purposes, first, to the payment of taxes and assessments upon the Mortgaged Premises before penalty or interest is due thereon; second, to the cost of insurance, maintenance and repairs required by the terms of the Security Instruments; third, to the satisfaction of all of Assignor's obligations specifically set forth in the Leases; and, fourth, to the payment of interest and principal due on the Note. Upon receipt from Lender of a Notice of Default, each lessee under the Leases is hereby authorized and directed to pay directly to Lender all rents thereafter accruing and the receipt of rents by Lender shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Notice of Default shall be sufficient authorization for such lessee to make all future payments of rents directly to Lender and each such lessee shall be entitled to rely on such Notice of Default and shall have no liability to Assignor for any rents paid to Lender after receipt of such Notice of Default. Rents so received by Lender for any period prior to foreclosure under the Security Instruments or acceptance of a deed in lieu of such foreclosure shall be applied by Lender to the payment (in such order as Lender shall determine) of: (a) all expenses of managing the Mortgaged Premises, including but not limited to the reasonable salaries, fees and wages of a managing agent and such other employees as Lender may deem necessary or desirable; all expenses of operating and maintaining the Mortgaged Premises, including but not limited to all taxes, assessments, charges, claims, utility costs and premiums for insurance, and the cost of all alterations, renovations, repairs or replacements; and all expenses incident to taking and retaining possession of the Mortgaged Premises and/or collecting the rents due and payable under the Leases; and (b) the Note and other indebtedness secured by the Security Instruments, principal, interest, attorneys' and collection fees and other amounts, in such order as Lender in its sole discretion may determine. In no event will this Assignment of Leases and Rents reduce the Indebtedness, except to the extent, if any, that rents are actually received by Lender and applied upon or after said receipt to the Indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Lender may, at its option, at any time and from time to time, release to Assignor rents so received by Lender or any part thereof. As between Assignor and Lender, and any person claiming through or under Assignor, other than any lessee under the Leases who has not received a Notice of Default pursuant to this Paragraph 5, this Assignment of Leases and Rents is intended to be absolute, unconditional and presently effective and the provisions of this Paragraph 5 for notification of lessees under the Leases upon the occurrence of a default specified in the Security Instruments are intended solely for the benefit of each such lessee and shall never inure to the benefit of Assignor or any person claiming through or under Assignor, other than a lessee who has not received such notice.

At any time during which (i) an event of default exists under the Security Instruments (after the expiration of any notice and opportunity to cure, if applicable) and (ii) Assignor is receiving rents directly from lessees under the Leases, Assignor shall, upon receipt of written direction from Lender, make demand and/or sue for all rents due and payable under one or more Leases, as directed by Lender, as it becomes due and payable, including rents which are past due and unpaid. In the event Assignor fails to take such action, or at any time during which Assignor is not receiving rents directly from lessees under the Leases, Lender shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Assignor, all rents due and payable under the Leases, as it becomes due and payable, including rents which are past due and unpaid.

6. To the extent not prohibited by applicable law, the Assignor will pay all reasonable costs and expenses and reimburse Lender for any and all reasonable expenditures of every character incurred or expended from time to time, regardless of whether or not a default shall have occurred, in connection with Lender's evaluating, monitoring, administering and protecting any collateral ("Collateral") now or hereafter securing payment of the Note, and creating, perfecting and realizing upon Lender's security interests in and liens on any Collateral, and all reasonable costs and expenses relating to Lender's exercising any of its rights and remedies hereunder or under any of the other Security Instruments or at law, including, without limitation, all appraisal fees, consulting fees, filing fees, taxes, brokerage fees and commissions, Uniform Commercial Code Search fees, fees incident to other title searches and reports, escrow fees, attorneys' fees, legal expenses, court costs, auctioneer fees and other fees incurred in connection with liquidation of any Collateral and all other professional fees. Any amount to be paid hereunder by the Assignor to Lender shall be a demand obligation owing by the Assignor to Lender and shall bear interest from the date of expenditure until paid at the per annum rate provided in the Note for interest on past due payments of principal and interest.


7. Assignor hereby covenants and warrants to Lender that Assignor has not executed any prior assignment of the Leases or rentals therefrom nor has Assignor performed any act, or executed any other instruments which might prevent Lender from operating under any of the terms and conditions of this Assignment, or which limit Lender in such operation.

8. None of the rights or remedies of Lender under the Note or any of the Security Instruments or under any other instrument now or hereafter evidencing or securing payment of all or any part of the Indebtedness shall be delayed or in any way prejudiced by virtue of this Assignment, and this Assignment is intended to be cumulative of and in addition to all such rights and remedies.

9. Upon satisfaction of the Indebtedness described herein and termination of the obligation, if any, of the Lender to make any further advances under the Note, this Assignment shall be deemed null and void and of no further force and effect.

10. All covenants and agreements hereinabove contained on the part of either party shall apply to and bind their, legal representatives, successors and assigns.

The absolute assignment of the rents under the Leases contained in this Assignment is in addition to and not in lieu of, the collateral conveyance contained in the Security Instruments. It is the intent of Assignor and Lender that no conflict exist between the absolute assignment contained in this Assignment and the collateral conveyance contained in the Security Instruments. However, if and to the extent a conflict is perceived to exist as to the rents under the Leases, such conflict shall be resolved in favor of the absolute assignment contained in this Assignment.


20141112000355150 3/5 \$26.00
Shelby Cnty Judge of Probate, AL
11/12/2014 09:21:32 AM FILED/CERT

EXECUTED effective as of the date first above written.

“ASSIGNOR”

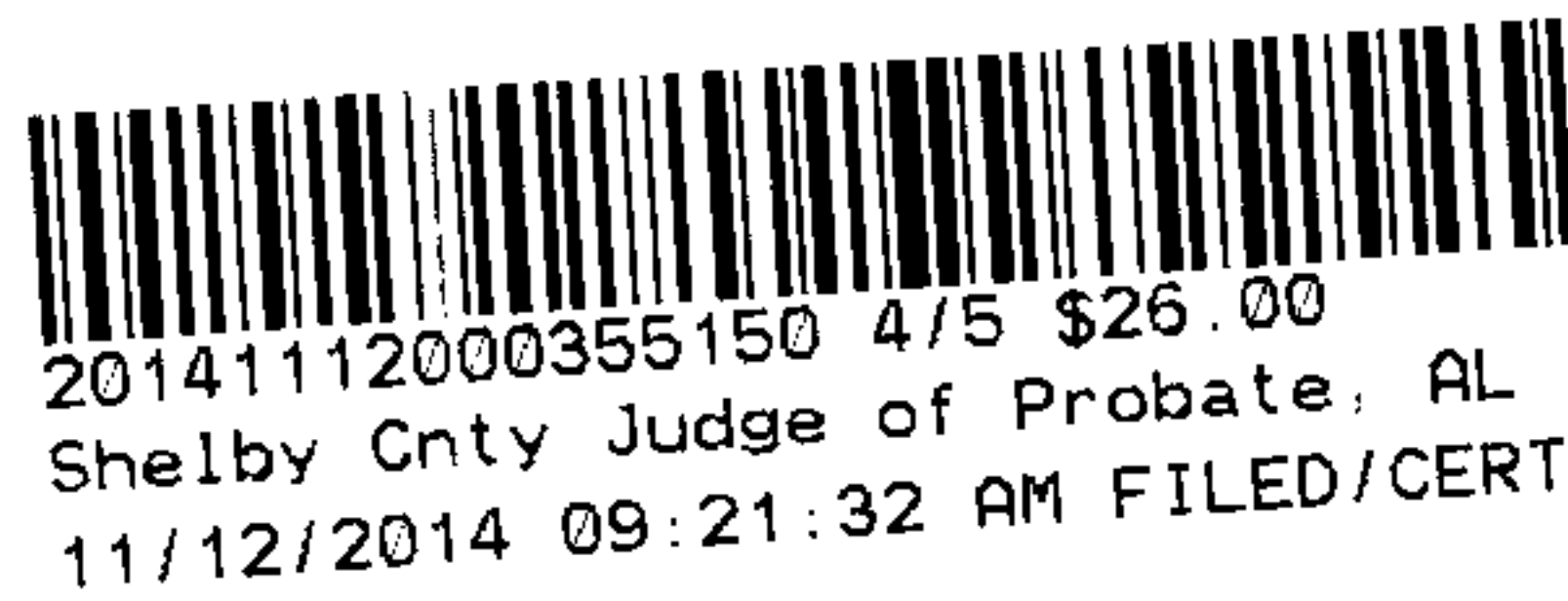
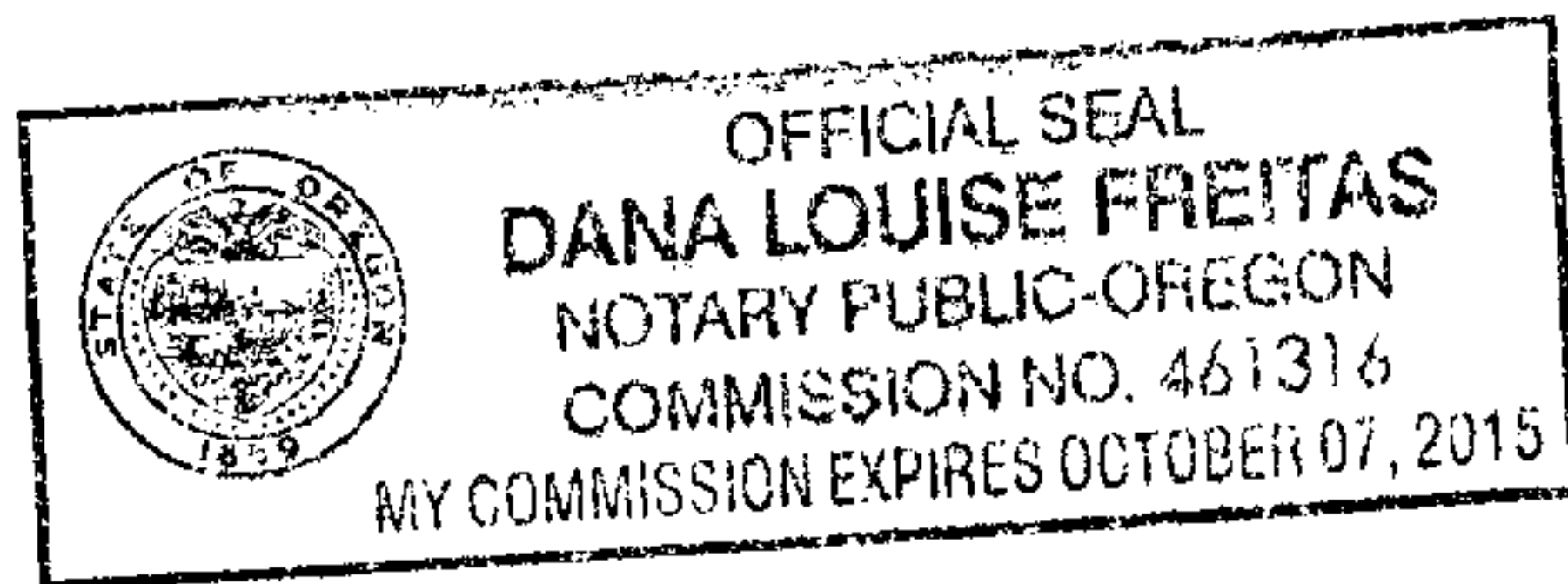
Alabaster Alabama Properties, LLC,
an Oregon limited liability company,

By: Katherine Spooner
Katherine Spooner, Manager

THE STATE OF OR §
COUNTY OF Washington §

The foregoing instrument was acknowledged before me this 30 day of Oct, 2014 by Katherine Spooner, Manager of Alabaster Alabama Properties, LLC, an Oregon limited liability company, on behalf of said company.

[Signature]
Notary Public, State of OR



AFTER RECORDING, PLEASE RETURN TO:
PlainsCapital Bank
150 E. Sonterra Blvd., Suite 150
San Antonio, Texas 78258
Attention: Marco Gonzalez

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 23-A, Whataburger's Addition to Alabaster a subdivision according to a map or plat thereof which is on file of record in the office of the Judge of Probate of Shelby County, AL, in Map Book 37, Page 50.

Together with the right of way and easement for ingress and egress described as follows:

A parcel of land situated In the Northwest quarter Section 1 Township 21, South Range 3 West Shelby County Alabama being more particularly described as follows:

Begin at the Southeast corner of Lot 22-A, Whataburger's Addition to Alabaster as recorded in Map Book 37, Page 50 in the Office of the Judge of Probate Shelby County, Alabama, said point also being on the Northernmost right of way of U.S. Highway #31; thence run Northwest along the South line of said Lot 22-A and along said right of way for a distance of 76.34 feet; thence leaving said South line and right of way deflect 128 degrees 34 minutes 05 seconds to the right and run in a Northeasterly direction for a distance of 38.42 feet; thence deflect 37 degrees 56 minutes 13 seconds to the left and run in a Northerly direction for a distance of 60.53 feet; thence deflect 28 degrees 36 minutes 13 seconds to the left and run in a Northwesterly direction for a distance of 65.94 feet; thence deflect 124 degrees 17 minutes 00 seconds to the right and run in a Southeasterly direction for a distance of 36.00 feet; thence deflect 85 degrees 18 minutes 30 seconds to the right and run in Southwesterly direction for a distance of 19.74 feet; thence deflect 29 degrees 35 minutes 30 seconds to the left and run in a Southerly direction for a distance of 33.60 feet; thence deflect 28 degrees 36 minutes 13 seconds to the right and run in a Southwesterly direction for a distance of 60.45 feet; thence deflect 90 degrees 37 minutes 51 seconds to the left and run in a Southeasterly direction for a distance of 24.47 feet; then deflect 77 degrees 19 minutes 58 seconds to the right and run in a Southerly direction for a distance of 35.87 feet to the POINT OF BEGINNING.

