

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

**THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") is entered into as of October \_\_, 2014 by and among **ALABASTER ALABAMA PROPERTIES, LLC**, an Oregon limited liability company ("Lessor"), **PLAINSCAPITAL BANK** ("Lender") and **WHATABURGER REAL ESTATE LLC**, a Texas limited liability company ("Lessee").

**RECITALS:**

**WHEREAS**, Lessor and Lessee have entered into that certain Lease Agreement dated effective as of September 29, 2014 (the "Lease"), covering certain property located at 1101 1<sup>st</sup> Street South, in the City of Alabaster, County of Shelby, Alabama, as more particularly described on Exhibit "A" attached hereto (the "Property");

**WHEREAS**, Lessor is indebted to Lender, and as security for such debt, Lender is beneficiary under a mortgage (together with any increased, future or consolidated mortgages or deeds of trust held by Lender, the "Mortgage") executed by Lessor and covering the Property; and

**WHEREAS**, Lender, Lessor and Lessee consider this Agreement to be in their mutual best interests in connection with the Lease.

**NOW, THEREFORE**, in consideration of the foregoing, the covenants, conditions, provisions and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent, acknowledge, covenant and agree as follows:

1. Subordination. Lessee covenants and agrees with Lender that all of Lessee's right, title and interest in and to the Property and any lease hereafter executed by Lessee covering any part of the Property, is and shall be subject, subordinate and inferior to the Mortgage and loan secured thereby which covers or affects the Property, and all renewals, extensions, substitutions, replacements, consolidations and increases in amount of the indebtedness secured by the Mortgage or any related loan papers, and to all right, title and interest of the Lender in the Property created by the Mortgage or any other security instrument held by the Lender, in the same manner and to the same extent as if the Lease had been executed subsequent to the execution, delivery and recordation of such Mortgage and the related loan papers.

2. Non-Disturbance. Provided Lessee is not in default (beyond any period(s) given under the Lease to Lessee to cure such default) under the Lease, Lessee's possession of the Property under the Lease and Lessee's rights and privileges thereunder shall not be disturbed or affected by Lender in the exercise of its rights under the Mortgage or otherwise shall be made subject to Lessee's right of possession under the Lease.

3. Recognition and Attornment. If Lender succeeds to the interest of Lessor in and to the Property or under the Lease, the Lease and all terms therein, and the rights of Lessee



thereunder, shall continue in full force and effect and shall not be altered, terminated or disturbed, and Lessee shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the Lease term thereof with the same force and effect as if Lender were the Lessor under the Lease. In such event, Lessee shall attorn to Lender as its Lessor, such attornment to be effective and self-operative without the execution of any other instruments on the part of Lender or Lessee, immediately upon Lender succeeding to the interest of Lessor under the Lease. Provided, however, Lessee shall be under no obligation to pay any monetary obligation set forth in the Lease to Lender until Lessee receives written notice from Lender that either Lender has succeeded to the interest of the Lessor in and to the Property or under the Lease, or Lender has posted the Property for foreclosure, with such notice being sent to Lessee postage prepaid, certified mail, return receipt requested at Lessee's address as shown in the Lease. Upon receipt by Lessee of such notice from Lender, Lessee shall make all payments of monetary obligations due by Lessee under the Lease to Lender or as Lender may in writing direct. The respective rights and obligations of Lessee and Lender upon such attornment, to the extent of the then remaining balance of the lease term of the Lease, shall be and are the same as are then in existence between Lessee and Lessor as set forth in the Lease.

4. Rights Under the Lease. If Lender shall (i) succeed to the interests of Lessor in and to the Property or under the Lease; or (ii) enter into possession of the Property, Lender shall be bound to the Lessee under all of the terms, covenants and conditions of the Lease, and Lessee shall, from and after Lender's succession to the interest of Lessor in and to the Property or under the Lease or entry into possession of the Property, as the case may be, have the same remedies against Lender as Lessor for the breach of any provision contained in the Lease that Lessee might have had under the Lease against Lessor if Lender had not succeeded to the interests of Lessor in and to the Property or under the Lease or entered into possession of the Property, as the case may be.

Additionally, in the event of Lender's (i) succession to Lessor's interests in and to the Property or under the Lease; or (ii) entry into possession of the Property, Lessee shall be bound to Lender under all of the terms, covenants and conditions of the Lease, and Lender shall, from and after Lender's succession to the interests of Lessor in and to the Property or under the Lease or entry into possession of the Property, as the case may be, have the same remedies against Lessee, as Lessor for the breach of any provision contained in the Lease that Lessor might have had under the Lease against Lessee if Lender had not succeeded to the interests of Lessor in and to the Property or under the Lease or entered into possession of the Property, as the case may be.

5. Persons Other Than Lender. The recognition, nondisturbance and other covenants herein made by Lender for the benefit of Lessee shall be binding upon any person other than Lender who may acquire the interest of Lessor in the Property and/or the Lease as of a result of foreclosure of the Mortgage or any other proceeding(s) to enforce the rights of Lender or any sale, assignment or transfer of the Property and/or the Lease after Lender has acquired the interest of Lessor in the Property and/or the Lease.

6. Entire Agreement. This Agreement contains the sole and entire agreement and understanding between the parties with respect to the subject matter hereof and shall supersede



any and all oral or prior written agreements between the parties with respect to the subject matter hereof.

7. Counterparts. This Agreement may be executed in one or more counterparts, and each counterpart when so executed and delivered constitutes an original of this Agreement, but all such separate counterparts constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

**LESSEE:**

WHATABURGER REAL ESTATE LLC,  
a Texas limited liability company

By: \_\_\_\_\_

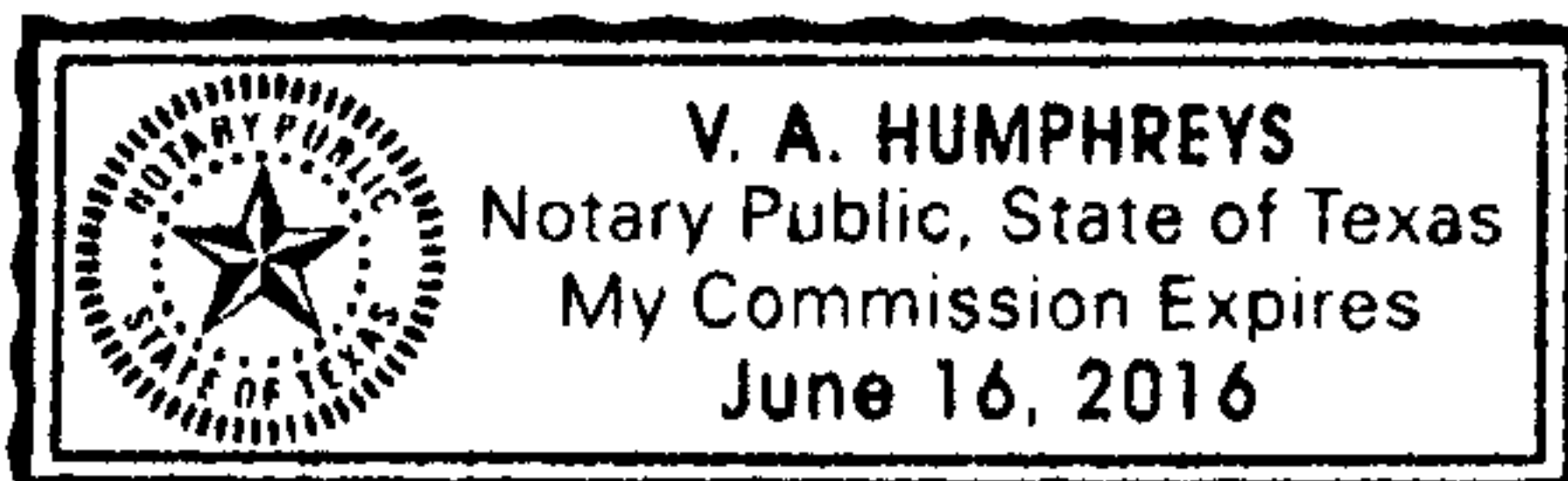
*James G. Turcotte* Manager  
Senior Vice President

THE STATE OF TEXAS

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§  
§

THE COUNTY OF BEXAR

This instrument was acknowledged before me on October 30, 2014 by James G. Turcotte, Senior Vice President, Manager of WHATABURGER REAL ESTATE, LLC, a Texas limited liability company, on behalf of said limited liability company.



*V. A. Humphreys*  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**ADDRESS FOR LESSEE:**

WHATABURGER REAL ESTATE LLC  
Attn: Real Estate Department  
300 Concord Plaza Drive  
San Antonio, Texas 78216  
Telephone (210) 476-6000

RECEIVED  
OCT 31 2014

BY: \_\_\_\_\_

**WITH COPIES TO:**

WHATABURGER REAL ESTATE LLC  
Attn: Office of the General Counsel  
300 Concord Plaza Drive  
San Antonio, Texas 78216  
Telephone (210) 476-6327

20141112000355170 3/6 \$29.00  
Shelby Cnty Judge of Probate, AL  
11/12/2014 09:21:34 AM FILED/CERT

**LENDER:**

PLAINSCAPITAL BANK

a

By:

Name:

Title:

[Signature]

Marco Gonzalez

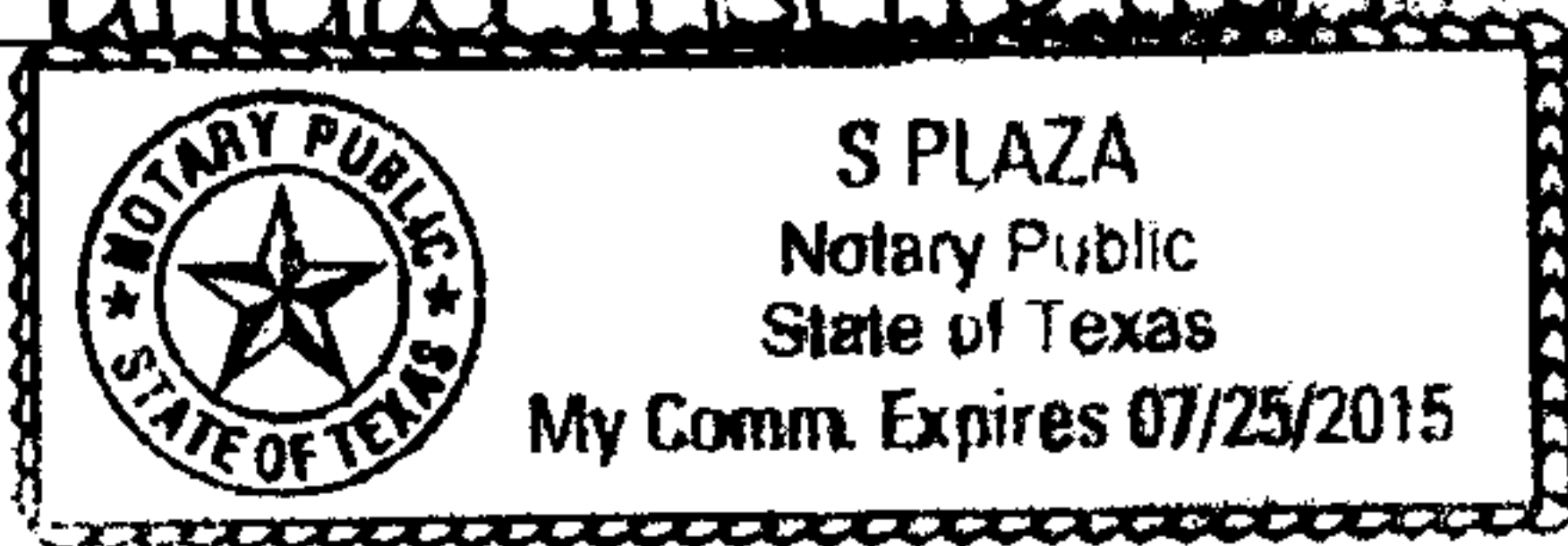
Senior Vice President

THE STATE OF TEXAS

THE COUNTY OF BEXAR

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This instrument was acknowledged before me on Oct. 29<sup>th</sup>, 2014 by Marco Gonzalez, Senior Vice President of PLAINSCAPITAL BANK, a Texas financial institution on behalf of said financial institution.



[Signature]  
Notary Public, the State of Texas

ADDRESS FOR LENDER:

PlainsCapital Bank  
150 E Sonterra Blvd Ste 150  
San Antonio TX 78258

LCET  
OCT 31 2014  
BY:.....

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Shelby Cnty Judge of Probate, AL  
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**LESSOR:**

**ALABAMA ALABASTER PROPERTIES, LLC**

By: Katherine Spooner  
Katherine Spooner, Manager

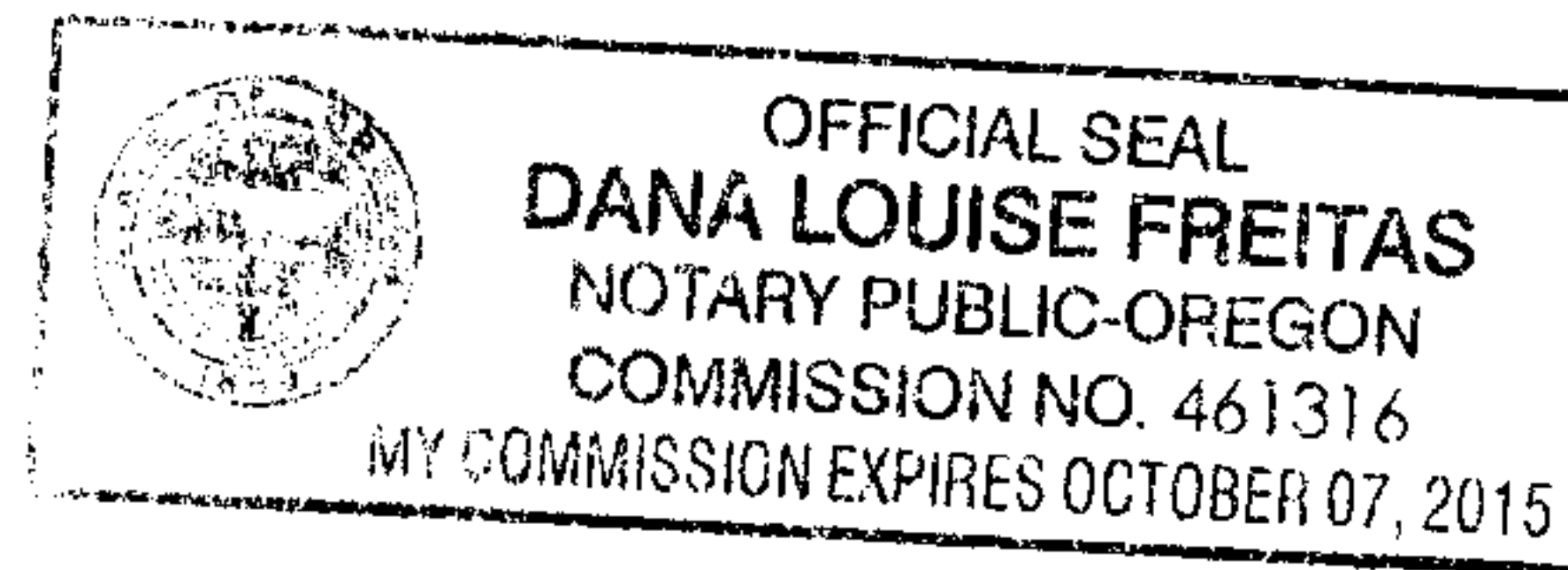
State of OREGON - )  
County of Washington )ss.

On this 30 day of Oct, 2014, personally appeared before me Katherine Spooner, who stated that she is the Manager of Alabama Alabaster Properties, LLC, an Oregon limited liability company, and that the instrument was signed on behalf of the said company by authority of its members and acknowledged said instrument to be its voluntary act and deed. Before me:

[Signature]  
Notary Public for Oregon  
My Commission Expires: 10/7/15

**ADDRESS FOR LESSOR:**

Alabaster Alabama Properties, LLC  
15261 NW Aberdeen Drive  
Portland, Oregon 97229  
Attn: Katherine Spooner



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Shelby Cnty Judge of Probate, AL  
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Exhibit "A"

LEGAL DESCRIPTION

Lot 23-A, according to the Survey of Whataburger's Addition to Alabaster a subdivision, as recorded in Map Book 37, page 50, in the Probate Office of Shelby County, Alabama.

Unit 927 – 1101 1st Street South, Alabaster, Alabama 35007

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