

Prepared by:

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
Wachovia Tower, Suite 1600
420 Twentieth Street North
Birmingham, Alabama 35203
Attention: J. Murphy McMillan III, Esquire


20080522000208520 1/6 \$783.00
Shelby Cnty Judge of Probate, AL
05/22/2008 10:27:12AM FILED/CERT

After recording return to:

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
1800 Republic Centre
633 Chestnut Street
Chattanooga, Tennessee 37450
Attention: Louann P. Smith, Esq.

STATE OF TN
COUNTY OF DAVISON

MEMORANDUM OF LEASE AGREEMENT

This MEMORANDUM OF LEASE AGREEMENT (the "Memorandum") is made as of May 13, 2008 (the "Effective Date"), by and between **CALERA PARTNERS, LLC**, an Alabama limited liability company ("Lessor"), and **SOUTHEAST WAFFLES, LLC**, a Tennessee limited liability company ("Lessee").

WITNESSETH:

That in consideration of the rents, covenants, and conditions more particularly set forth in that certain Lease Agreement dated as of the Effective Date between Lessor and Lessee (the "Lease"), Lessor and Lessee do hereby covenant, promise, and agree as follows:

1. Leased Premises. Lessor has leased to Lessee the real property described in Exhibit A attached hereto and made a part hereof (the "Demised Premises").

2. Term. The initial term of the Lease commenced on the Effective Date and will end fifteen (15) years after the date that the Leased Premises are first opened as a Waffle House restaurant; provided, however, that the Lease is subject to renewal by the Lessee for three (3) consecutive periods of fifteen (15) years each from the expiration of the initial term in accordance with the terms of the Lease.

3. Lessor's Restrictive Covenant. Lessor has warranted and covenanted that Lessor will not buy, sell, lease, or otherwise make available any land either now controlled by Lessor or acquired subsequent to the date of the Lease within one city block, or 1,000 lineal feet, whichever is greater, of the Demised Premises for use for restaurant or foodservice purposes for the term of the Lease. This covenant is binding upon Lessor and Lessor's successors, assigns or beneficiaries. Lessor has further agreed that Lessor will not convey any parcel of land within such restricted area except by lease or deed containing restrictive covenants equivalent to the above, which fully protect Lessee's interest. Any purchaser of the Demised Premises shall be bound by these provisions, and Lessor has agreed that the foregoing covenant is attached to and running with the land.

4. Right of First Refusal. Lessor has granted to Lessee a right of first refusal with respect to the Demised Premises. If Lessor receives a bona fide offer from a third party to purchase the Demised Premises and Lessor desires to accept the same, it shall give notice to Lessee of the offer, the offeror and the terms of the offer, and Lessee shall elect in writing within fifteen (15) days whether it desires to purchase the Demised Premises upon the same terms as the offer. Lessee must close the purchase within

sixty (60) days of giving its notice of election to purchase. If it elects to purchase on the terms of the offer, and the terms involve any credit to be extended by Lessor, Lessee shall provide what is in Lessor's reasonable opinion at least equal creditworthiness assurances as that of the third party offeror. If Lessee does not timely elect to purchase, Lessor may proceed to close the sale upon the offer.

5. Effect of Memorandum. The sole purpose of this instrument is to give notice of the Lease and its terms, covenants and conditions to the same extent as if the Lease were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or determine the intent of the parties under the Lease.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the day and year first written above.

LESSOR:

CALERA PARTNERS, LLC, an Alabama limited liability company

By: *Julianna M. Shaub*
Name: Julianna M. Shaub
Title: Manager

LESSEE:

SOUTHEAST WAFFLES, LLC, a Tennessee limited liability company

By: *James L. Shaub, II*
Name: James L. Shaub, II
Title: Chief Manager

STATE OF Tennessee
COUNTY OF Davidson

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Julianna M. Shaub, Manager of **CALERA PARTNERS, LLC**, an Alabama limited liability company, whose name is signed to the foregoing Memorandum, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Memorandum, she, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 13th day of May, 2008.

Melissa Scott
Notary Public OF
My Commission Expires: July 5, 2011
PUBLIC
NOTARY
AFFIX NOTARIAL SEAL
DAVIDSON COUNTY

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STATE OF Tennessee
COUNTY OF Davidson

I, the undersigned Notary Public in and for said County in said State, hereby certify that JAMES L. SHAUB, II as Chief Manager of **SOUTHEAST WAFFLES, LLC**, a Tennessee limited liability company, whose name is signed to the foregoing Memorandum, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Memorandum, he, as such Chief Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 13th day of May, 2008.

MELISSA SCOTT
STATE OF
NOTARY PUBLIC
MY COMMISSION EXPIRES: July 5, 2011
AFFIX SEAL

EXHIBIT A
TO
MEMORANDUM OF LEASE

Legal Description of Demised Premises

Lot 1A according to the Map and Survey of Wadsworth Subdivision, a commercial subdivision, as recorded in Map Book 28, page 2 in the Office of the Judge of Probate of Shelby County, Alabama and also described by metes and bounds as follows:

A parcel of land situated in the Northeast Quarter of Section 4, Township 22 South, Range 2 West, Shelby County, Alabama, as more particularly described as follows: COMMENCE at the Southeast corner of the Southeast Quarter of the Northeast Quarter of Section 4, Township 22 South, Range 2 West, Shelby County, Alabama, and run North along the East line of said quarter-quarter line for 113.74 feet; thence left 88°25'30" and run Westerly for 619.11 feet; thence left 1°02'30" and continue Westerly for 30.01 feet; thence right 91°23'20" and run North for 30.01 feet; thence left 91°36'25" and run Westerly for 567.45 feet to a point, said point being on the North right of way line of an unnamed street; thence right 1°21'08" and continue Westerly along the said North right of way line for 310.74 feet; thence right 51°17'03" and continue along the said North right of way line of 3.09 feet to a point on the East right of way line of U.S. Highway 31; thence right 21°45'27" and run Northwesterly along said East right of way line of 234.25 feet to the point of parcel herein described; thence continue along said right of way line for 113.87 feet; thence right 105°00'00" and leaving said right of way line and run Easterly for 252.00 feet; thence right 90°00'00" and run Southerly for 110.00 feet; thence right 90°00'00" and run Westerly for 222.53 feet back to the point of beginning.

SUBJECT TO THE FOLLOWING:

- (a) 35-foot building restriction line from U.S. Highway 31 and 15-foot building restriction lines on the northern, southern, and eastern lot lines as shown on map recorded in Map Book 28, page 2 in the Office of the Probate Judge of Shelby County, Alabama.
- (b) Title to that portion of the property within the bounds of any roads or highways.
- (c) Title to all minerals within and underlying the property, together with all mining rights and other rights, privileges, and immunities relating thereto.
- (d) Terms and conditions set out in Statutory Warranty Deed dated June 28, 2001, recorded as Instrument No. 2001-27284 in said Probate Judge's Office.
- (e) All matters set forth in Easement and Agreement for Construction, Installation and Shared Maintenance of a Grinder Lift Station by and between Waffle House, Inc. and James D. Wadsworth recorded as Instrument No. 2001-30696 in said Probate Judge's Office.
- (f) All matters set forth in Agreement of Cross-Easement by and between James D. Wadsworth and Waffle House, Inc., recorded as Instrument No. 2001-30697 in said Probate Judge's Office.
- (g) All matters set forth in the Option to Purchase Land and Improvements between Calera Partners, LLC and Waffle House, Inc. as evidenced by that certain Memorandum of Option, recorded as Instrument No. _____ in said Probate Judge's Office.

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BEING THE SAME PROPERTY conveyed to Lessor herein by Statutory Warranty Deed dated as of May 13, 2008, recorded as Instrument No. 20080522000208520 in the Office of the Probate Judge of Shelby County, Alabama.

Shelby County, AL 05/22/2008
State of Alabama

Deed Tax: \$757.00