

LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT (the "**Termination**") is executed by **KATHERINE SPOONER**, an individual ("**Lessor**"), and **B & F BIRMINGHAM, LLC**, an Alabama limited liability company ("**Lessee**"), to be effective as of September 29, 2014 ("**Effective Date**").

RECITALS

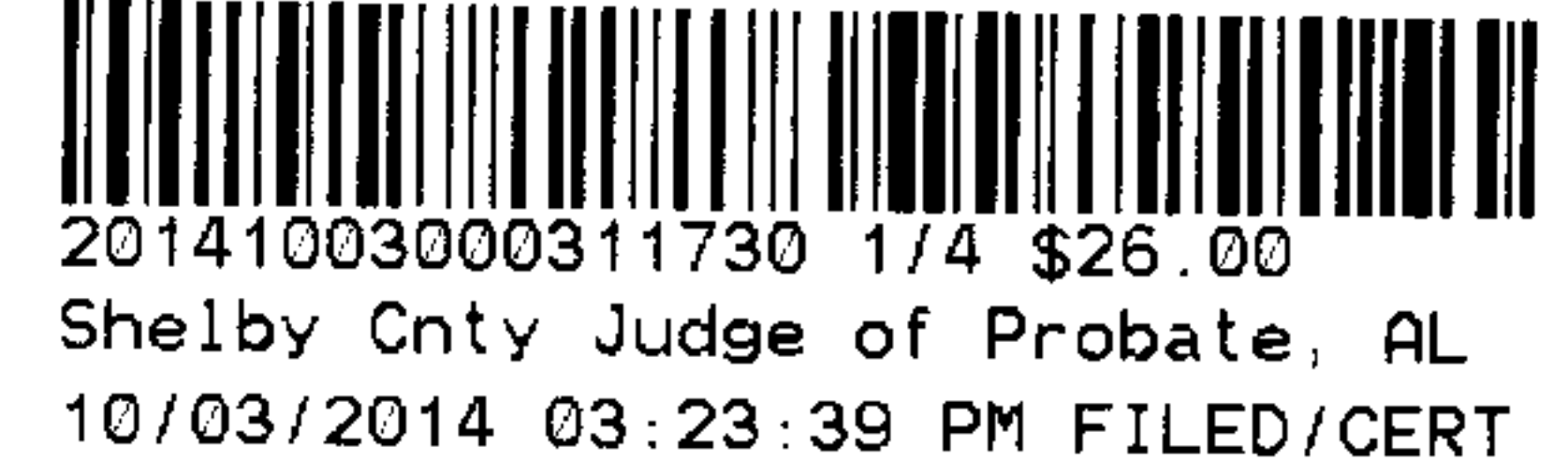
WHEREAS, Lessor and Lessee are the current parties to a certain Lease Agreement dated August 6, 2006, concerning the Premises as defined therein, which include that certain parcel of land located at 1101 1st Street South, City of Alabaster, County of Shelby, Alabama, on which there is currently operated a Whataburger restaurant known as Unit # 927; which Lease Agreement has been subsequently amended and assigned pursuant to the following documents (as so amended and assigned, the "**Lease**"):

1. Memorandum of Lease dated August 24, 2007 and recorded September 6, 2007 as Instrument 2007090600041940, re-recorded as Instrument 20090810000306180 in the Probate Office of Shelby County, Alabama; and
2. Assignment of Lease dated August 30, 2007 from B&F Realty #1, LLC, an Alabama limited liability company, to Katherine Spooner, an individual, recorded on September 6, 2007 as Instrument 20070906000419160 in the Probate Office of Shelby County, Alabama; and
3. Lease Subordination, Non-Disturbance and Attornment Agreement dated July 31, 2007 by and among Katherine Spooner, an individual, B & F Birmingham, LLC, an Alabama limited liability company, and California Credit Union, a California state chartered credit union, recorded September 6, 2007 as Instrument 20070906000419190 in the Probate Office of Shelby County, Alabama.

WHEREAS, Lessee has requested that it be released from the Lease after selling its interest in the business conducted at the Premises to Buyers. Pursuant to the terms of a certain Asset Purchase Agreement dated September 24, 2014, by and between Lessee and affiliated parties, as **Sellers**, and Whataburger Real Estate LLC, a Texas limited liability company ("**Whataburger**"), and affiliated parties, as **Buyers** (as amended, the "**Purchase Agreement**"), Sellers are transferring certain assets of the restaurant to Buyers, and Lessee is obligated to terminate the Lease to allow Whataburger and Lessor (or an entity formed by Lessor) to enter into a new lease agreement concerning the Premises. Lessor hereby agrees to terminate the Lease upon the terms and conditions set forth below.

TERMINATION

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:



1. Termination. Subject to the Contingencies set forth in paragraph 3 below, effective as of the Effective Date, Lessor and Lessee hereby terminate the Lease and all rights and obligations thereunder; provided however, that Lessee shall continue to be responsible to Lessor for all obligations of Lessee under the Lease that survive such a termination.

2. Lessor Acknowledgement. Lessor acknowledges receipt from Lessee of all amounts due under the Lease through September 30, 2014, whether for rent or otherwise. Lessor further acknowledges that there are no uncured or outstanding events of default by Lessee under the Lease, or events which, with the passage of time or the giving of notice by Lessor or both, would constitute an event of default by Lessee under the Lease. There are no current, unresolved disputes between Lessor and Lessee with respect to any provision of the Lease.

3. Contingencies. The parties acknowledge and agree that this Termination is expressly contingent upon (i) the full execution of a new lease by and between Lessor (or an entity formed by Lessor) and Whataburger, effective as of the Effective Date, and (ii) the execution of a Continuing Guaranty of Lease by Whataburger Restaurants LLC, effective as of the Effective Date (collectively, the “**Contingencies**”).

4. Counterparts. This Termination may be executed in one or more counterparts, each of which shall be deemed to be an original Termination, but all of which shall constitute but one and the same Termination. Any signature page of this Termination may be detached from any counterpart of this Termination and reattached to any other counterpart of this Termination identical in form hereto but having attached to it one or more additional signature pages.

IN WITNESS WHEREOF, the parties hereto have duly executed the foregoing instrument to be effective as of the Effective Date.

[Signatures and Acknowledgements appear on the following pages]


20141003000311730 2/4 \$26.00
Shelby Cnty Judge of Probate, AL
10/03/2014 03:23:39 PM FILED/CERT

[Lessor's Signature and Acknowledgement Page for Lease Termination Agreement]

LESSOR:

Katherine Spooner
KATHERINE SPOONER
in her individual capacity

State of Oregon
County of Washington

This record was acknowledged before me on September 24, 2014 by Katherine Spooner.

Sarah Snelling
Notary Public - State of Oregon



[Signatures and Acknowledgements continue on following page]

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[Lessee's Signature and Acknowledgement Page for Lease Termination Agreement]

LESSEE:

B & F Birmingham, LLC
an Alabama limited liability company

By: *Jerrell M. Baird*
Name: *Jerrell M. Baird*
Title: *President & Manager*

State of Alabama

County of *Jefferson*

This instrument was acknowledged before me on September *26th*, 2014, by *Jerrell M. Baird*, the *President & Manager* of B & F Birmingham, LLC, an Alabama limited liability company, on behalf of such company.

S E A L

Gail Lucas

Signature of notarial officer

My commission expires: *April 18, 2017*



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