

This instrument prepared by  
and after recording return to:

Ann Cargile  
Bradley Arant Boult Cummings LLP  
1600 Durbin Street, Ste. 700  
Nashville, TN. 37203



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**SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMENT AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**, made this 3rd day of September, 2015, by and among Five Guys Operations, LLC, a Delaware limited liability company ("Tenant"); Metropolitan Life Insurance Company, a New York corporation, and its affiliates, ("Mortgagee"); and PERA Lee Branch, Inc., a Colorado corporation ("Landlord").

**WITNESSETH:**

**WHEREAS**, Tenant's predecessor in interest entered into a certain Retail Lease Agreement dated April 15, 2011, with Landlord, which Lease has not been amended (hereinafter referred to as the "Lease") covering premises (the "Premises") in the shopping center known as the Village at Lee Branch - Phase I located in or near the City of Hoover, Shelby County, Alabama, as described on Exhibit A (the "Shopping Center");

**WHEREAS**, Mortgagee has agreed to make a loan to Landlord, which loan will be evidenced by a promissory note (the "Mortgage Note") and secured by a real estate mortgage security agreement and other security documents or agreements which shall cover Landlord's interest in the Shopping Center (collectively, the "Mortgage"); and

**WHEREAS**, Mortgagee has been requested by Tenant and by Landlord to enter into a Non-Disturbance Agreement with Tenant.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto mutually covenant and agree, as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of Tenant in and to said Premises are and shall be subject and subordinate to the Mortgage and to all of the terms and conditions contained therein, and to any renewals, modifications, replacements, consolidations and extensions thereof.
2. Mortgagee consents to the Lease and, in the event of foreclosure of said Mortgage, or in the event Mortgagee comes into possession or acquires title to the Premises as a result of the enforcement of foreclosure of the Mortgage or Mortgage Note, or as a result of any other means, Mortgagee agrees that Tenant shall not be disturbed in its possession of the Premises for any reason other than one which would entitle Landlord to terminate the



Lease, under its terms, or would cause, without any further action by such Landlord, the termination of the Lease, or would entitle such Landlord to dispossess Tenant from the Premises; provided, however, that at the time Mortgagee comes into possession of the Premises, Tenant is not in default under the Lease (beyond notice and cure periods required by the Lease, if any) which would entitle Landlord to terminate the Lease under its terms or would cause, without any further action of such Landlord, the termination of the Lease, or would entitle such Landlord to dispossess Tenant from the Premises.

3. Tenant agrees with Mortgagee that, if the interests of Landlord in the Premises shall be transferred to and owned by Mortgagee by reason of foreclosure or other proceedings brought by it, or by any other manner, Tenant shall be bound to Mortgagee under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be affected in accordance with any option therefor in the Lease, with the same force and effect as if Mortgagee were Landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Mortgagee succeeding to the interest of Landlord in the Premises. Tenant agrees, however, upon the election of and written demand by Mortgagee, within sixty (60) days after Mortgagee receives title to the Premises, to execute an instrument in confirmation of the foregoing provisions, satisfactory to Mortgagee, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.
4. In the event of a foreclosure sale of the Premises under any present or future lien against Landlord's estate in the Premises, or in the event that Landlord conveys its estate in the Premises, or in the event that Landlord's estate in the Premises passes to any other person, firm or corporation by operation of law or any other means, then in any of said events, Tenant shall promptly attorn to the purchaser at such foreclosure sale, or to the grantee of the Premises from Landlord or to such other successor to Landlord's estate, under all of the terms, covenants and conditions of the Lease; and, the purchaser or other successor entitled to the Premises shall not disturb Tenant in its possession of the Premises; provided, however, that at the time such purchaser or other successor to Landlord comes into possession of the premises, Tenant is not in default under the Lease beyond notice and cure periods required by the Lease, if any, which would entitle Landlord to terminate the Lease under its terms or would be, without any further action of such Landlord, the termination of the Lease, or would entitle such Landlord to dispossess Tenant from the Premises. Said attornment is to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon the successor to Landlord's estate succeeding to the interest of Landlord in the premises. Tenant agrees, however, upon the election of and written demand by any such successor to Landlord's estate within sixty (60) days after said successor to Landlord's estate receives title to the Premises, to execute an instrument in confirmation of the foregoing provisions, satisfactory to any such successor to Landlord's estate, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.
5. Tenant agrees with Mortgagee that if Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall not be:



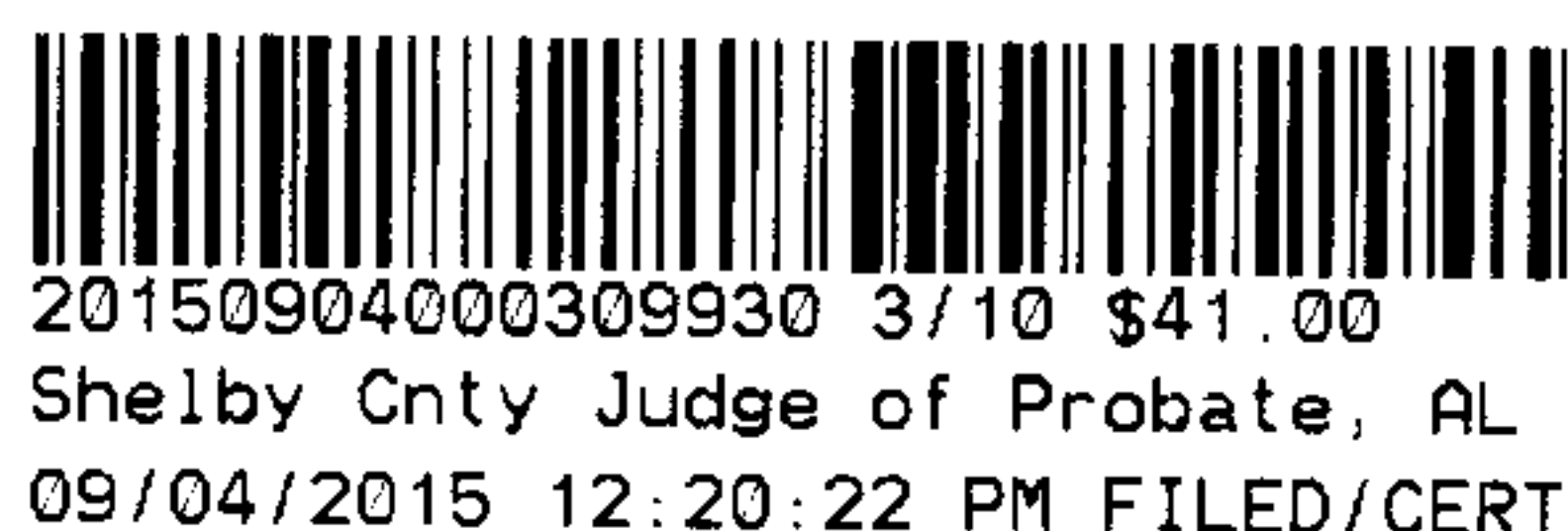
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- (a) liable for any action or omission of any prior Landlord under the Lease;
- (b) subject to any offsets or defenses which Tenant might have against any prior Landlord except to the extent related to any express Rent abatement provision of the Lease, it being understood that, to the extent Tenant's defense is that Tenant has already paid to the prior Landlord an amount Lender claims is owed and Tenant provides evidence reasonably acceptable to Lender substantiating such payment, then, except for advance payment of rent prohibited under subsection (c), Lender will not pursue Tenant for the amount paid to the prior Landlord;
- (c) bound by any rent or additional rent which Tenant might have paid more than thirty (30) days in advance to any prior Landlord;
- (d) bound by any security deposit which Tenant may have paid to any prior Landlord, unless such deposit is in an escrow fund available to Mortgagee; or
- (e) bound by any amendment or modification of the Lease made without Mortgagee's written consent.

Tenant further agrees with Mortgagee that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance other than the Mortgage and the collateral Assignment to Tenant's Franchisor without Mortgagee's written consent. The foregoing shall not be deemed to prohibit Tenant from executing a subordination agreement in advance of a proposed refinance of the loan evidenced by the Mortgage Note where the Mortgage would be released upon the closing of such refinance.

6. In the event that Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Mortgagee and Mortgagee shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including, without limitation, any action in order to terminate, rescind or avoid the Lease or to withhold any rental thereunder (except as specifically set forth in the Lease regarding the Allowance) for a period of thirty (30) days after giving of such written notice thereof to Mortgagee with respect to any such default (provided that, in the case of any default which cannot with diligence be cured within such thirty-day period, if Mortgagee shall proceed promptly to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity not to exceed one hundred eighty (180) days.
7. Landlord agrees with Mortgagee that Landlord's estate in the Premises shall not be conveyed, nor shall Landlord further assign Landlord's interest in the Lease, unless the grantee or assignee shall acknowledge in writing to Mortgagee that the conveyance or assignment is accepted subject to the Lease. Landlord further agrees that in the event said






estate in the Premises or said interest in the Lease passes to any other person, firm or corporation, by operation of law or by any other means, such passage of title shall be subject to the Lease.

8. Landlord acknowledges and agrees that in the event of a default under the Mortgage, at the election of Mortgagee, Tenant shall and is directed to pay all rent and all other sums due under the Lease to Mortgagee. Tenant shall have no obligation to confirm that an event of default has occurred in the event it is notified by Mortgagee that it should make payments directly to Mortgagee.
9. Notwithstanding any provisions of the Lease to the contrary, from and after the date that Mortgagee succeeds to the interest of Landlord under the Lease, (i) Mortgagee will not be obligated to expend any monies to restore casualty damage in excess of available insurance proceeds, provided that in the event the Premises is not fully restored due to the foregoing, Tenant shall have the right to terminate the Lease; (ii) in no event will Mortgagee be obligated to indemnify Tenant, except where Mortgagee is in breach of its obligations under the Lease or where Mortgagee has been grossly negligent or involved in willful misconduct; (iii) Tenant's recourse against Mortgagee shall be limited to the interest of Mortgagee in the Shopping Center (including any sales, rental, insurance and condemnation proceeds therefrom); and (iv) if Mortgagee assigns or transfers its interest in the Mortgage Note and Mortgage or the Shopping Center, Mortgagee shall have no liability for any obligations or liabilities thereafter arising under this Agreement or the Lease.
10. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing, and shall be delivered personally, or sent by overnight courier service by a company regularly engaged in the business of delivering business packages, or sent by registered or certified mail, return receipt requested if to Landlord, Tenant, or Mortgagee, to the respective addresses set forth herein below, or at such other address as may be specified in writing from time to time by either party to the other. The date of personal delivery or, if sent by mail or overnight courier, then the date of delivery or first refusal thereof as evidenced by the carrier's or courier's receipt, shall be the effective date of such notice, election or demand.

Mortgagee's Address for notice: Metropolitan Life Insurance Company  
10 Park Avenue  
Morristown, New Jersey 07962  
Attn: Managing Director  
Real Estate Investments

  
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with a copy to:


Metropolitan Life Insurance Company  
Real Estate Investments  
3500 Lenox Road, Suite 1800  
Atlanta, Georgia 30326

Tenant's Address for notice: Five Guys Operations, LLC  
10718 Richmond Highway  
Lorton, VA 22079  
Attn: Dale E. Thompson, General Counsel

Landlord's Address for notice: PERA Lee Branch, Inc.  
c/o L&B Realty Advisors, LLP  
8750 N. Central Expressway, Suite 800  
Dallas, TX 75231

11. Tenant and Mortgagee hereby represent, warrant and covenant to each other, either that (i) it is regulated by the SEC, FINRA or the Federal Reserve (a "**Regulated Entity**"), or is a wholly-owned subsidiary or wholly-owned affiliate of a Regulated Entity or (ii) neither it nor any person or entity that directly or indirectly (a) controls it or (b) has an ownership interest in it of twenty-five percent (25%) or more, appears on the list of Specially Designated Nationals and Blocked Persons ("**OFAC List**") published by the Office of Foreign Assets Control ("**OFAC**") of the U.S. Department of the Treasury.
12. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns. As used herein, the term "Tenant" shall include Tenant, its successors and assigns; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure; and the word "Mortgagee" shall include the Mortgagee herein specifically named and any of its successors and assigns, including anyone who shall have succeeded to Landlord's interest in the Premises, by, through or under foreclosure of the Mortgage.
13. This Agreement shall not be modified or amended except in writing signed by all parties hereto.
14. The use of the neuter gender in the Agreement shall be deemed to include any other gender, and words to the singular number shall be held to include the plural, when the sense requires.

*[remainder of page intentionally left blank]*

  
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IN WITNESS WHEREOF, the parties hereto have placed their hands and seals the day and year first above written.

TENANT:

FIVE GUYS OPERATIONS, LLC, a Delaware limited liability company

By: [Signature]

Printed Name: Jane K. Murrell

Its: Secretary / Treasurer

Commonwealth of Virginia

County of Fairfax

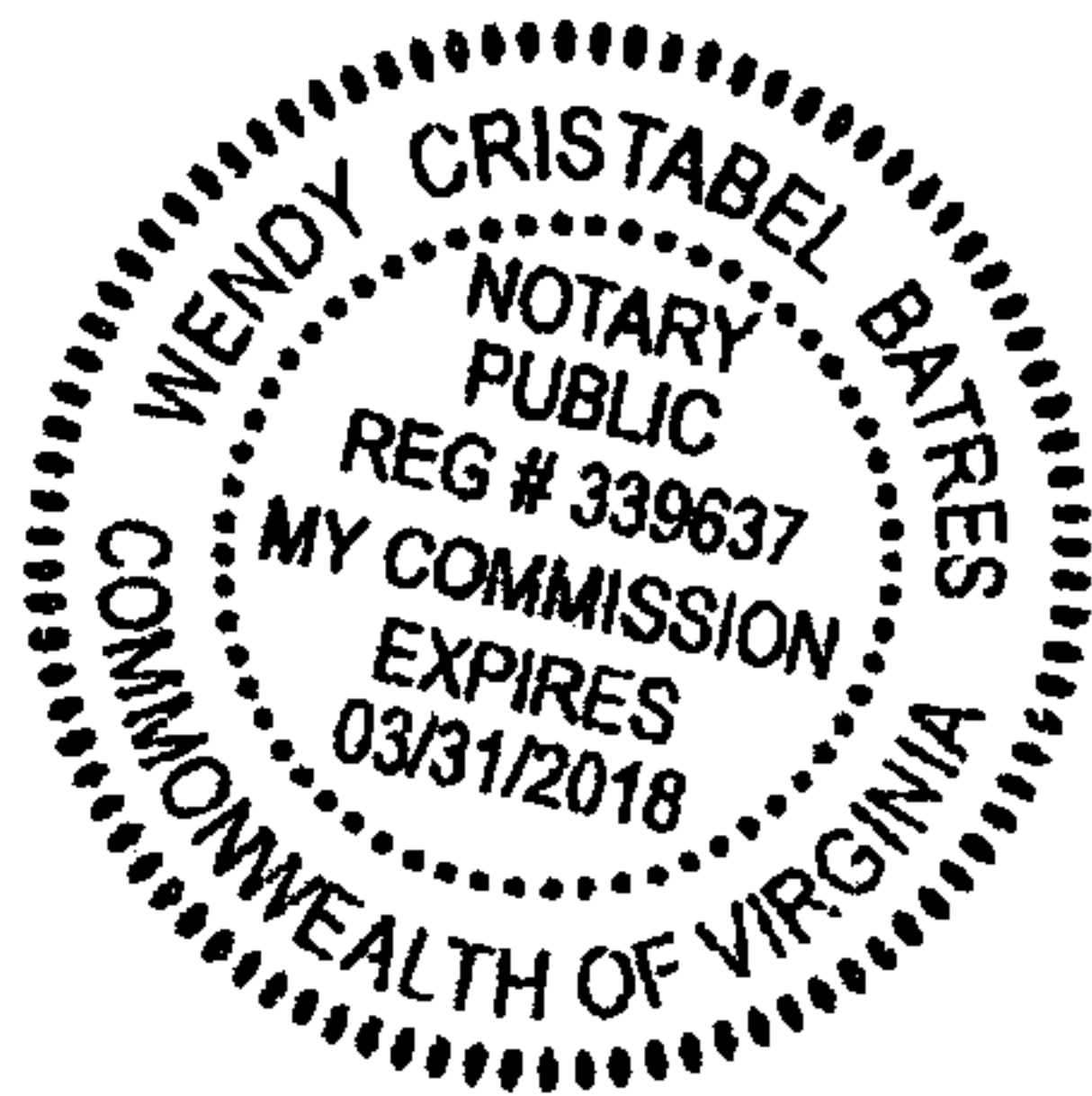
I, the undersigned, a notary public in and for said county in said state, hereby certify that Jane K. Murrell, whose name as Secretary / Treasurer of FIVE GUYS OPERATIONS, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 1<sup>st</sup> day of September, 2015.

[Signature]  
Notary Public

[NOTARIAL SEAL]

My commission expires: March 31, 2018



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**MORTGAGEE:**

METROPOLITAN LIFE INSURANCE COMPANY,  
a New York corporation

By: Thomas Ryan

Printed Name: Thomas Ryan

Its: Director

State of Georgia

County of Fulton

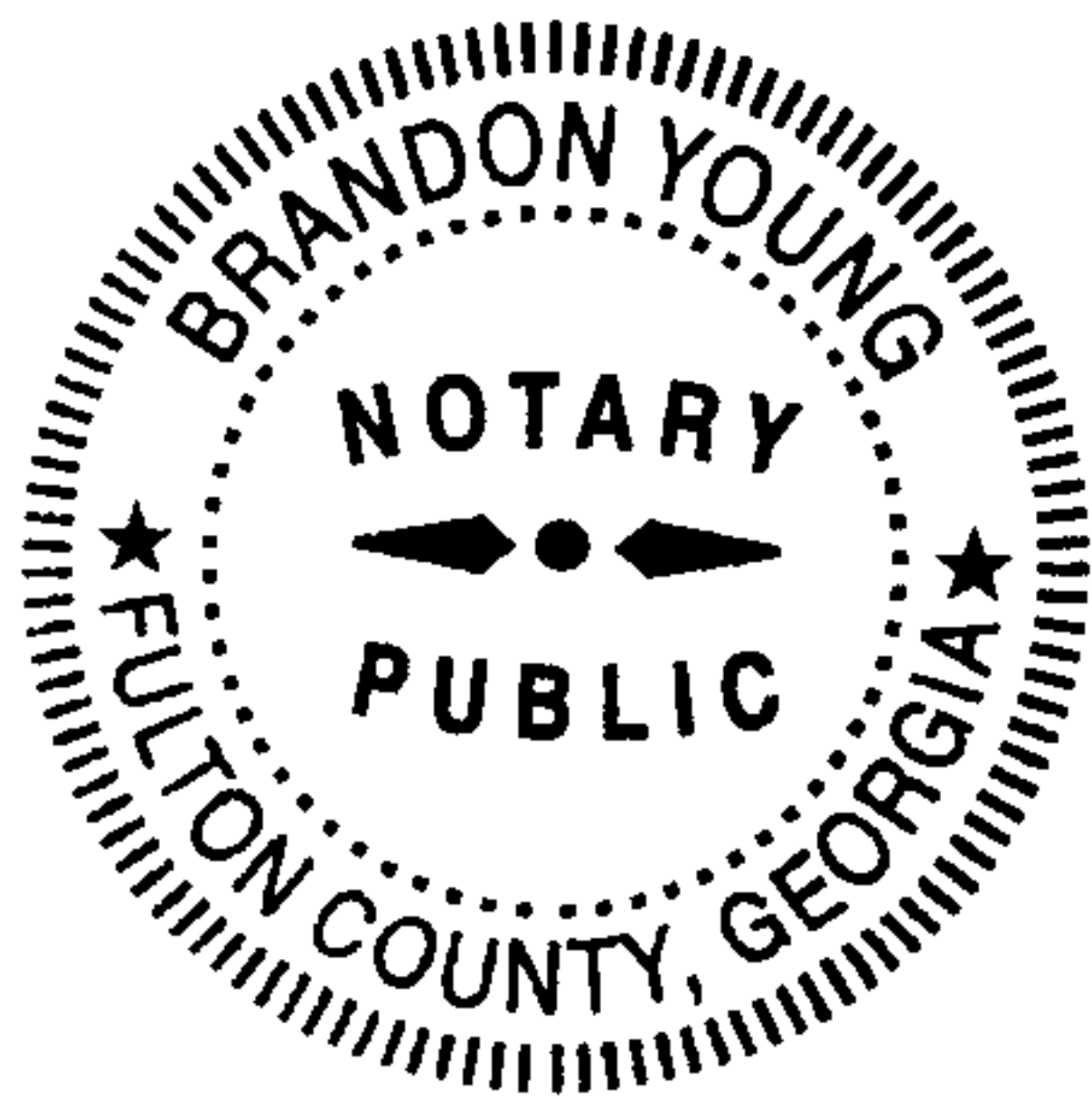
I, the undersigned, a notary public in and for said county in said state, hereby certify that Thomas Ryan, whose name as Director of METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 1 day of September, 2015.

Brandon Young  
Notary Public

[NOTARIAL SEAL]

My commission expires: August 22, 2017



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LANDLORD:

PERA Lee Branch, Inc., a Colorado corporation

By: Terry A. Wilson

Printed Name: Terry A. Wilson

Its: Vice President

State of TEXAS

County of DALLAS

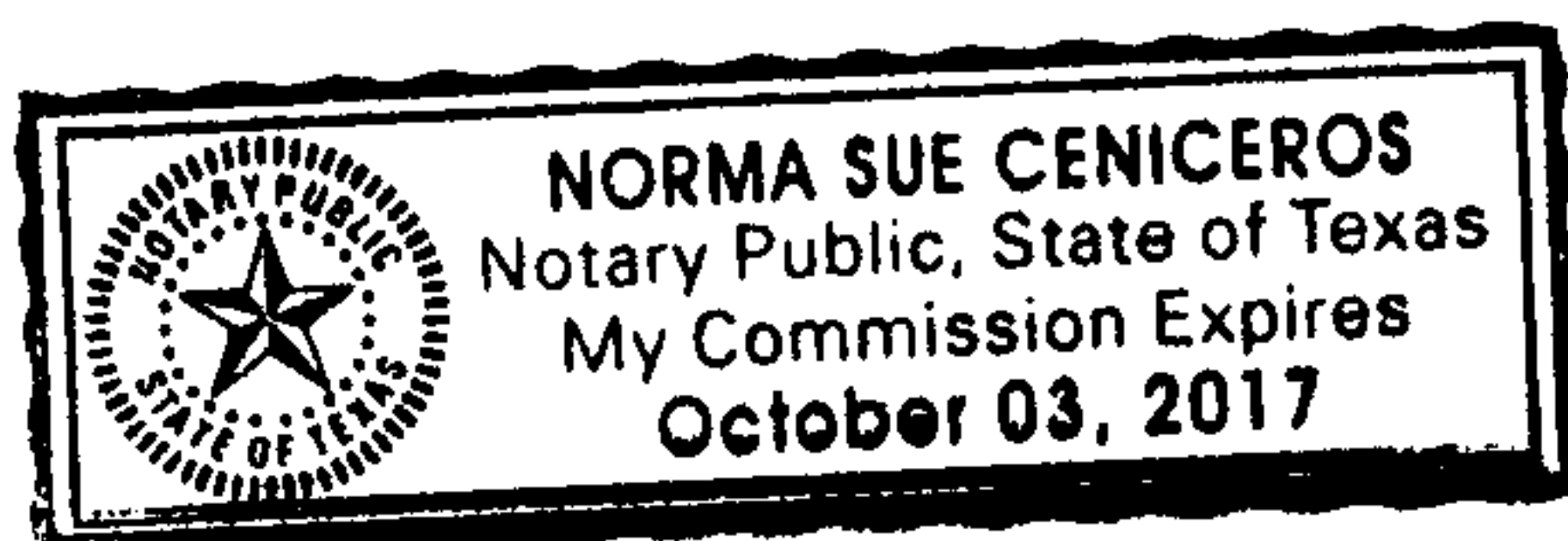
I, the undersigned, a notary public in and for said county in said state, hereby certify that TERRY A. WILSON, whose name as VICE PRESIDENT of PERA Lee Branch, Inc., a Colorado corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 1st day of September, 2015.

Norma Ceniceros  
Notary Public

[NOTARIAL SEAL]


My commission expires: 10/3/17



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**EXHIBIT A**  
**LEGAL DESCRIPTION**

  
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**PARCEL I:**

Lot 1C - 2, according to the resurvey of Lot 1C of a resubdivision of The Village at Lee Branch, as recorded in Map Book 39, Pages 85 A & B, in the Probate Office of Shelby County, Alabama.

Together with all rights and beneficial interests as set forth in that certain Temporary Construction and Slope Easement as recorded in Instrument 200211080005571 10, in the Probate Office of Shelby County, Alabama.

Together with all rights and beneficial interests as set forth in that certain Reciprocal Easement Agreement as recorded in Instrument 20030701000412990 and amended in Instrument 20030827000569970, in the Probate Office of Shelby County, Alabama.

Together with all rights and beneficial interests that constitute an interest in real property as set out in that certain Settlement Decree in Case CV-02-687 as recorded in Instrument 20030210000079290 and consented to in Instrument 20030904000589000, in the Probate Office of Shelby County, Alabama.

Together with all rights and beneficial interests as set forth in that certain Declaration of Covenants, Conditions and Restrictions and Declaration of Easements as recorded in Instrument 20061025000527560, in the Probate Office of Shelby County, Alabama.

Together with all rights and beneficial interests that constitute an interest in real property as set out in that certain Declaration of Limited Use Restrictions as recorded in Instrument 20070702000309430, in the Probate Office of Shelby County, Alabama.

**PARCEL II:**

Lot 1C - 1, according to the resurvey of Lot 1C of a resubdivision of The Village at Lee Branch, as recorded in Map Book 39, Pages 85A & B in the Probate Office of Shelby County, Alabama.

Together with all rights and beneficial interests as set forth in that certain Temporary Construction and Slope Easement as recorded in Instrument 200211080005571 10, in the Probate Office of Shelby County, Alabama.

Together with all rights and beneficial interests as set forth in that certain Reciprocal Easement Agreement as recorded in Instrument 20030701000412990 and amended in Instrument 20030827000569970, in the Probate Office of Shelby County, Alabama.

ALSO:

Together with all rights and beneficial interests that constitute an interest in real property as set out in that certain Settlement Decree in Case CV-02-687 as recorded in Instrument 20030210000079290 and consented to in Instrument 20030904000589000, in the Probate Office of Shelby County, Alabama.

ALSO:

Together with all rights and beneficial interests as set forth in that certain Declaration of Covenants, Conditions and Restrictions and Declaration of Easements as recorded in Instrument 20061025000527560, in the Probate Office of Shelby County, Alabama.

ALSO:

Together with all rights and beneficial interests that constitute an interest in real property as set out in that certain Declaration of Limited Use Restrictions as recorded in Instrument 20070702000309430, in the Probate Office of Shelby County, Alabama.



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