


RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

The Bank of Hemet
3715 Sunnyside Drive
Riverside, CA 92516-0109
ATTN: Commercial Lending Dept.


20130220000072250 1/11 \$42.00
Shelby Cnty Judge of Probate, AL
02/20/2013 02:50:41 PM FILED/CERT

(Space Above For Recorder's Use Only)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (hereinafter referred to as the "Agreement"), made and entered into as of the 1st day of February, 2013, by and between **THE BANK OF HEMET**, a California corporation, having its principal office at 3715 Sunnyside Drive, Riverside, CA 92506 (hereinafter referred to as the "Lender"), **Rob Wolf and Jennifer L. Wolf, Trustees of the Rob Wolf and Jennifer L. Wolf Revocable Trust dated December 11, 2006**, and **Barry Matthew Silver and Beth Ann Rosenstein Silver, Trustees of the Silver Family Revocable Trust dated May 4, 2001**, whose address is 800 Montgomery Street, Suite 100, San Francisco, California 94133 (hereinafter referred to as the "Landlord") and **Captain D's, LLC**, a Delaware limited liability company, whose mailing address is 624 Grassmere Park Drive, Suite 30, Nashville, Tennessee 37211, Attn: Property Management (hereinafter referred to as the "Tenant").

WITNESSETH:

WHEREAS, Lender is the holder of a mortgage loan (hereinafter referred to as the "Loan") to Landlord, which Loan is secured by, inter alia, a (Deed of Trust) executed by Landlord in favor of Lender (hereinafter referred to as the "Mortgage"), encumbering Landlord's property located at 101 Supercenter Drive, Calera, in Shelby County, Alabama 35040 (hereinafter referred to as the "Mortgaged Premises"); and

WHEREAS, Landlord has leased all or some portion of the Mortgaged Premises (hereinafter referred to as the "Premises") to Tenant by Lease Agreement dated as of August 15, 2005, as amended by Amendment to Lease Agreement dated October 8, 2007 (hereinafter collectively referred to as the "Lease"); and

WHEREAS, Lender, in connection with the Loan, requires that the Lease and all of the rights of Tenant thereunder be subordinated to the Mortgage and all of the rights of Lender thereunder, subject to the terms of this Agreement; and

WHEREAS, Tenant desires to receive certain assurances that its possession of the Premises will not



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be disturbed in such event, and Lender is willing to grant certain assurances upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants herein contained and intending to be legally bound, hereby agree as follows:

1. Subject to the terms of this Agreement, the Lease and all of the rights of Tenant thereunder shall be and are hereby declared to be and at all times hereafter shall be and remain subject and subordinate in all respects to the Mortgage and all of the rights of Lender thereunder. Notwithstanding such subordination, Lender hereby agrees that (a) the Lease and the leasehold estate thereby created will not be extinguished or terminated and the rights thereunder of Tenant will not be disturbed, affected, or impaired by the foreclosure of such Mortgage, delivery of a deed in lieu of foreclosure of such Mortgage, or the exercise of other rights and remedies that the Mortgage provides; (b) Tenant shall not be named or joined as a party defendant or otherwise in any proceeding for the foreclosure of such Mortgage or to enforce any rights under the Mortgage; (c) all condemnation awards and payments and all proceeds of insurance paid or payable with respect to the Premises shall be applied and used in the manner set forth in the Lease; and (d) neither the Mortgage nor any other security instrument executed in connection therewith shall be construed as subjecting in any manner to the lien thereof any trade fixtures, business equipment, signs or other personal property at any time supplied or installed by Tenant in or on the Premises, regardless of the manner or mode of attachment thereof to the Premises. In the event that Lender succeeds to the interest of Landlord under the Lease and/or title to the Premises, Tenant agrees to attorn to and to recognize Lender (as mortgagee in possession or otherwise), or the purchaser at such foreclosure sale, as Tenant's landlord for the balance of the term of the Lease, in accordance with the terms and provisions thereof, but subject, nevertheless, to the provisions of this Agreement. Accordingly, from and after such event, Lender and Tenant shall have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Landlord had before Lender (or such other purchaser) succeeded to the interest of Landlord thereunder.

2. Lender hereby agrees with Tenant that, so long as Tenant and/or its permitted successors and assigns comply with all of the terms, provisions, agreements, covenants and obligations set forth in the Lease, Tenant's possession of the Premises under the Lease shall not be disturbed or interfered with by Lender.

3. Tenant hereby agrees that Lender, or any purchaser at a foreclosure sale, shall not be (a) liable for any act or omission of Landlord under the Lease, (b) subject to any offsets or defenses which Tenant may have at any time hereafter against Landlord, (c) bound by any rent which Tenant may have paid to Landlord for more than the current month, and (d) bound by any amendment or modification of the Lease made without Lender's prior written consent.

4. Tenant hereby agrees that, concurrently with Tenant's sending to Landlord any written notice of default by Landlord required under the terms of the Lease, it shall send a copy of such notice to Lender at the address set forth above, by certified mail, return receipt requested. Tenant further agrees that with respect to any default of Landlord which would entitle Tenant to cancel the Lease or offset or abate the rent payable thereunder, any provision of the Lease to the contrary notwithstanding, no such cancellation or offset or abatement of rent shall be effective unless Lender shall have received notice in the form and manner required by the provisions of this Paragraph and shall have failed, within the cure period during which

Landlord may cure such default, if any, as set forth in the Lease, to cure such default or cause such default to be cured.

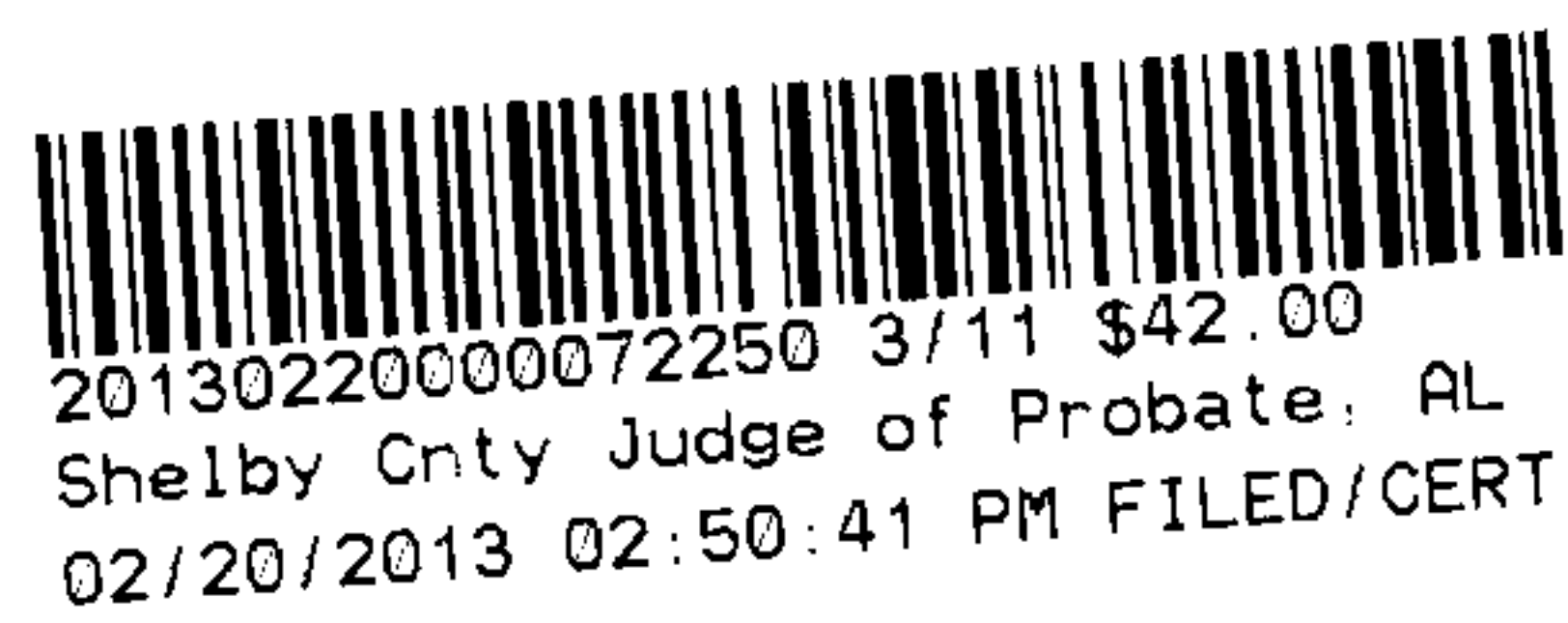
5. Lender acknowledges that this Agreement has been requested by (Landlord in order to satisfy the requirements of CNL Restaurant Capital, LP, a Delaware limited partnership, or one of its affiliates, including without limitation CNL Financial VII, LP, a Delaware limited partnership, CNL Financial VIII, LP, a Delaware limited partnership, CNL Net Lease Funding 2003, LLC, a Delaware limited liability company, and Wells Fargo Bank, N.A., as collateral agent, their affiliates, and their successors and/or assigns) (Tenant in connection with a loan by Tenant's lender to Tenant which is secured, inter alia, by a leasehold mortgage or similar interest on Tenant's interest in the Premises and as Tenant under the Lease, and that Tenant's lender is an intended third party beneficiary of this Agreement.

6. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto, or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their successors and assigns.

7. This Agreement shall be construed in accordance with the laws of the State where the Premises are located.

8. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one Agreement

(Signatures on Next Page)



The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.


"LENDER"

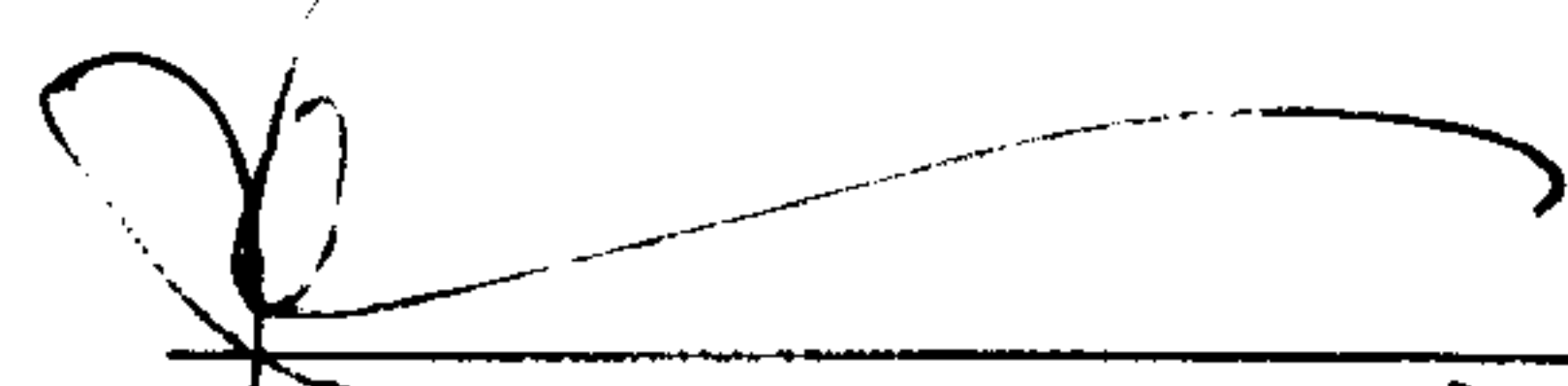
THE BANK OF HEMET, a California corporation

By: 
Name: Frank Lemeta
Title: Vice President

"LANDLORD"

Rob Wolf and Jennifer L. Wolf, Trustees of the Rob Wolf and Jennifer L. Wolf Revocable Trust dtd. December 11, 2006

By: 
Name: Rob Wolf
Title: owner

By: 
Name: Jennifer L. Wolf
Title: owner

Barry Matthew Silver and Beth Ann Rosenstein Silver Trustees of the Silver Family Revocable Trust dtd. May 4, 2001

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____



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All-Purpose Acknowledgment

State of California)

County of San Francisco)

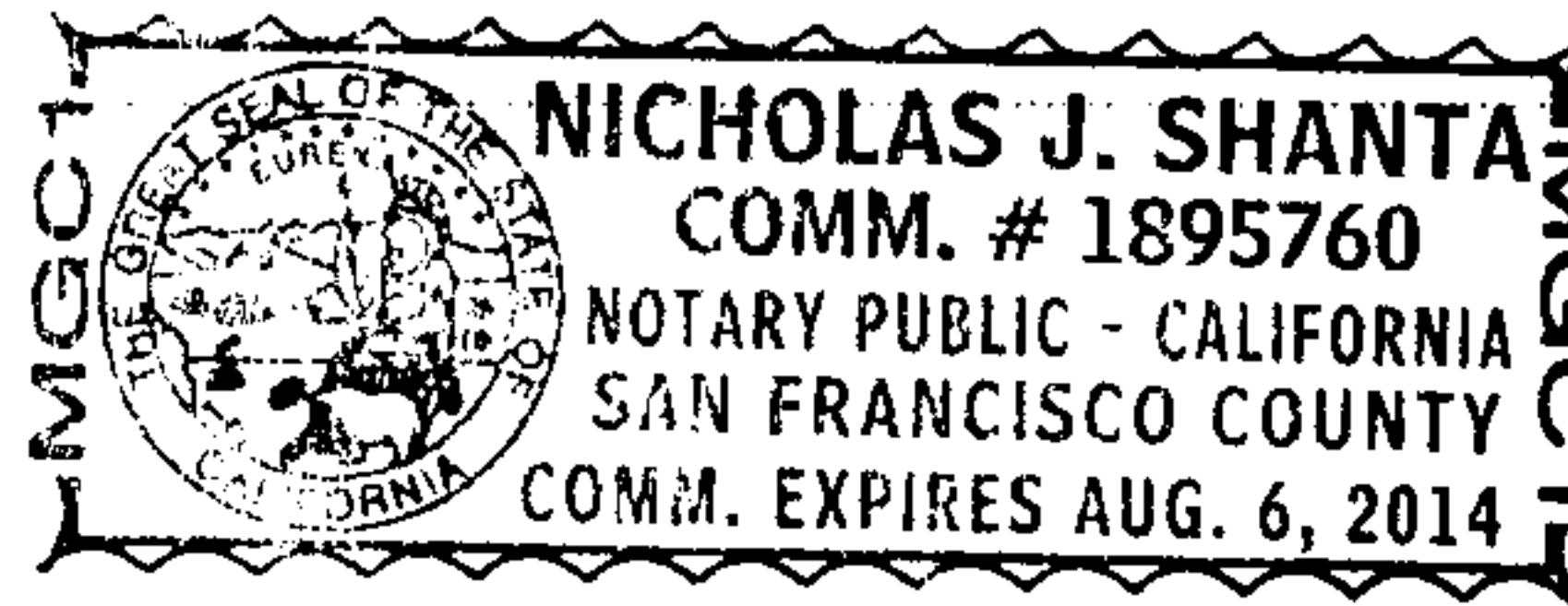
On January 29 2013, before me, Nicholas J. Shanta Notary Public, personally appeared Robert and Pamela L. Wolf who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that she/he/they executed the same in her/his/their authorized capacity, and that by her/his/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature]

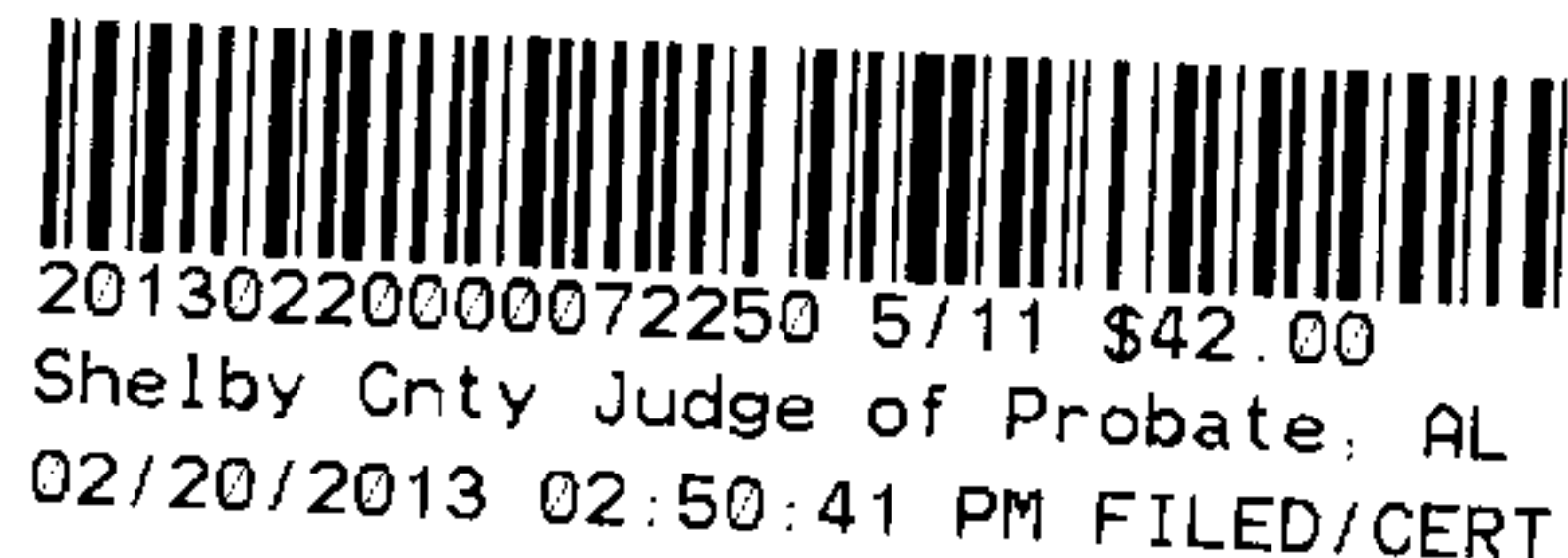
Seal:



All-Purpose Acknowledgment

State of California)

County of Riverside)



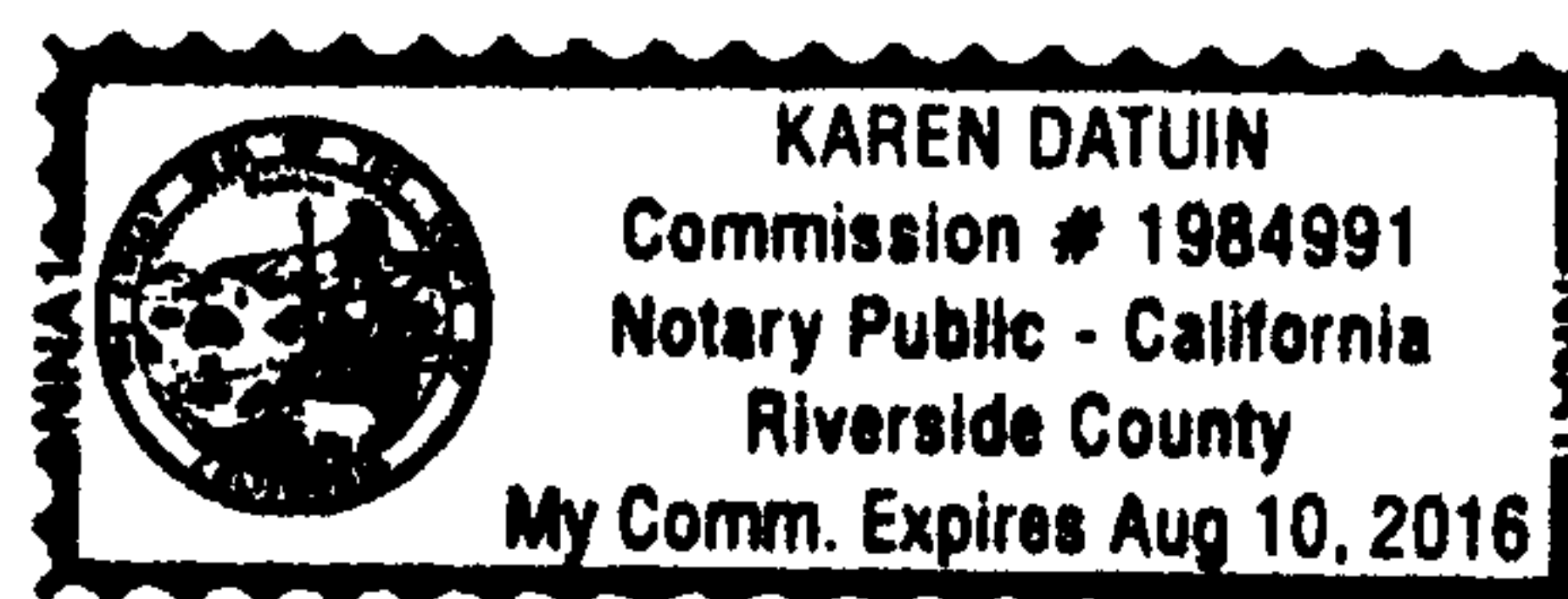
On February 5 2013, before me, Karen Datuin, Notary Public, personally appeared Frank Lawler, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that she/he/they executed the same in her/his/their authorized capacity, and that by her/his/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature]

Seal:



The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

"LENDER"

THE BANK OF HEMET, a California corporation

By: _____
Name: Frank Larreta
Title: Vice President

"LANDLORD"

**Rob Wolf and Jennifer L. Wolf, Trustees of the Rob
Wolf and Jennifer L. Wolf Revocable Trust dtd.
December 11, 2006**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**Barry Matthew Silver and Beth Ann Rosenstein Silver
Trustees of the Silver Family Revocable Trust dtd. May
4, 2001**

By: Matthew
Name: Barry Silver
Title: CO TRUSTEE

By: Beth Ann Rosenstein Silver
Name: Beth Ann Rosenstein Silver
Title: CO-TRUSTEE

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"TENANT"

Captain D's, LLC, a Delaware limited liability company

By: Michael T. Folks
Name: Michael T. Folks
Title: Sa. Vice Pres.

ALL SIGNATURES MUST BE NOTARIZED



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All-Purpose Acknowledgment

State of CALIFORNIA)

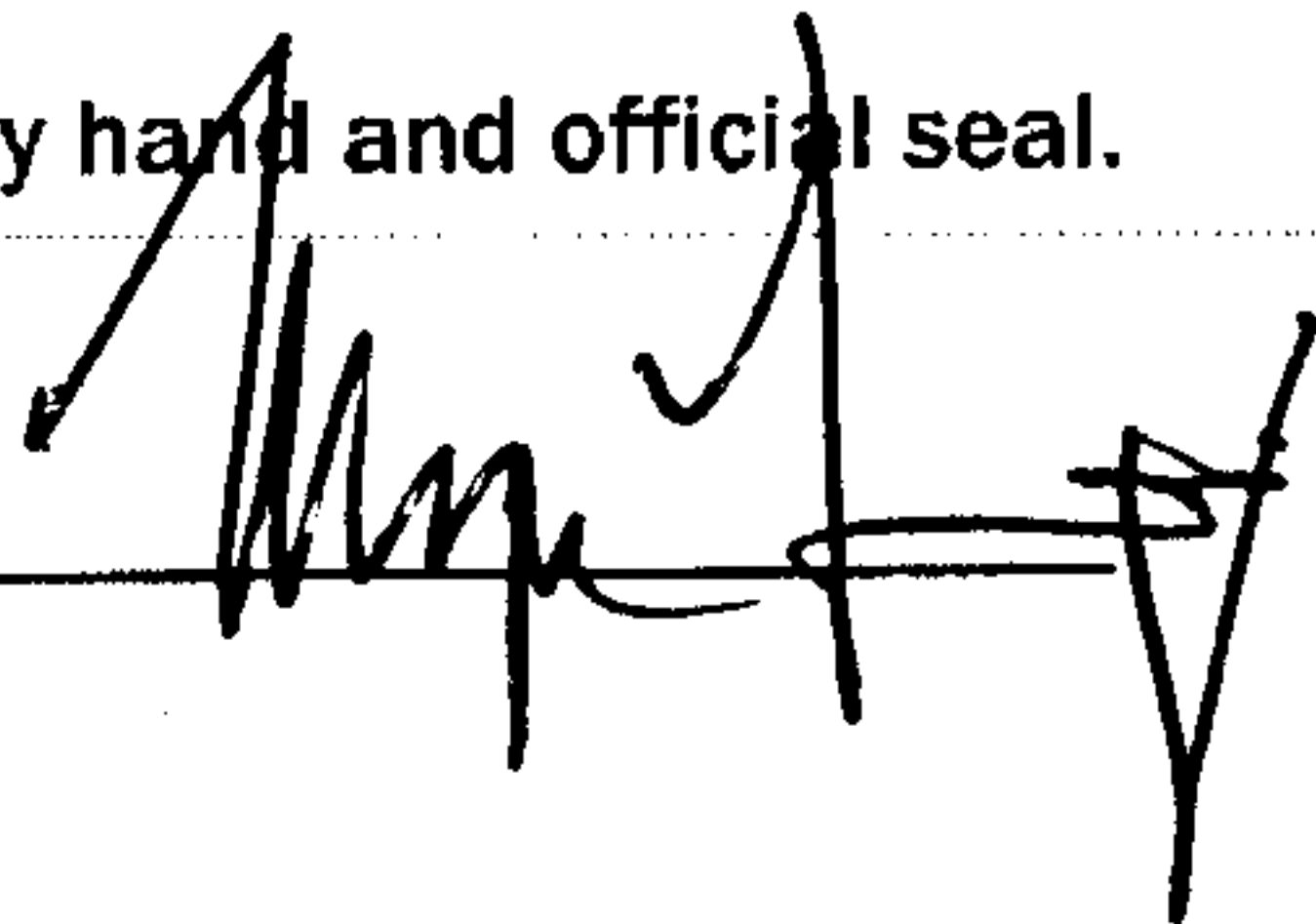
County of MARIN)

On JANUARY 25 2013, before me, WAYNE LANG, Notary Public, personally appeared BARRY MATTHEW SILVER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that she/he/they executed the same in her/his/their authorized capacity, and that by her/his/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

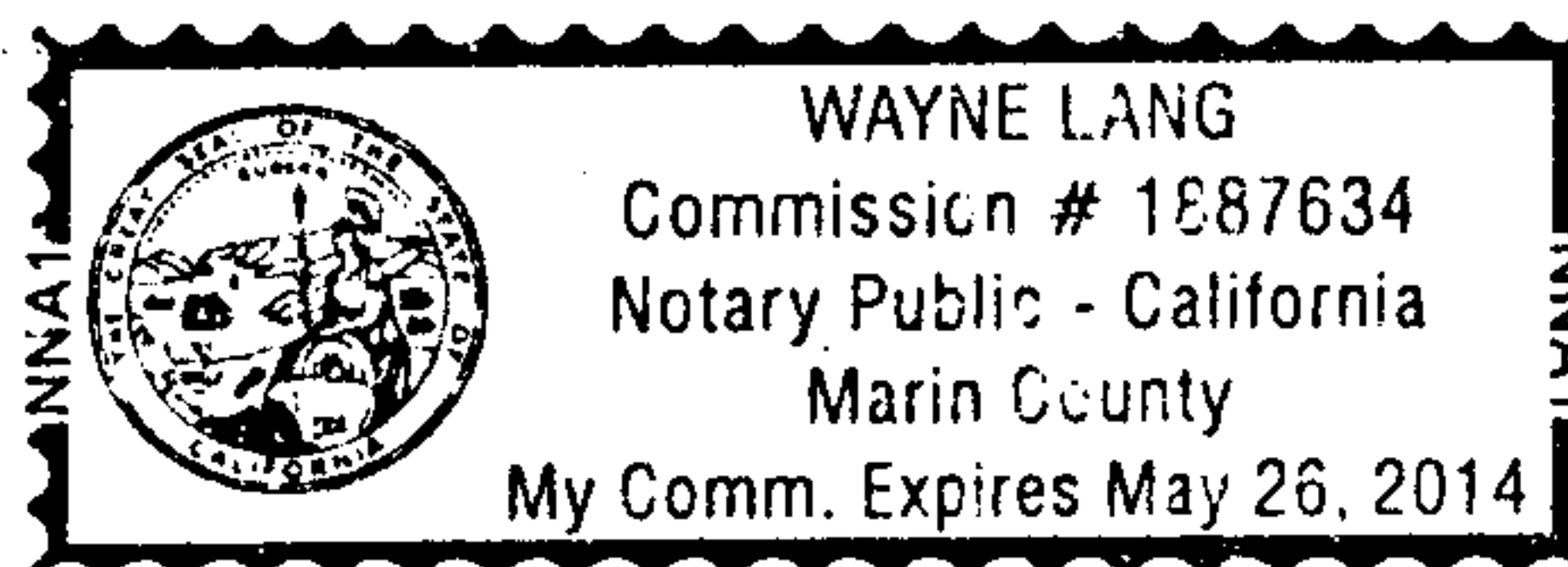
I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____



Seal: _____



All-Purpose Acknowledgment

State of CALIFORNIA)

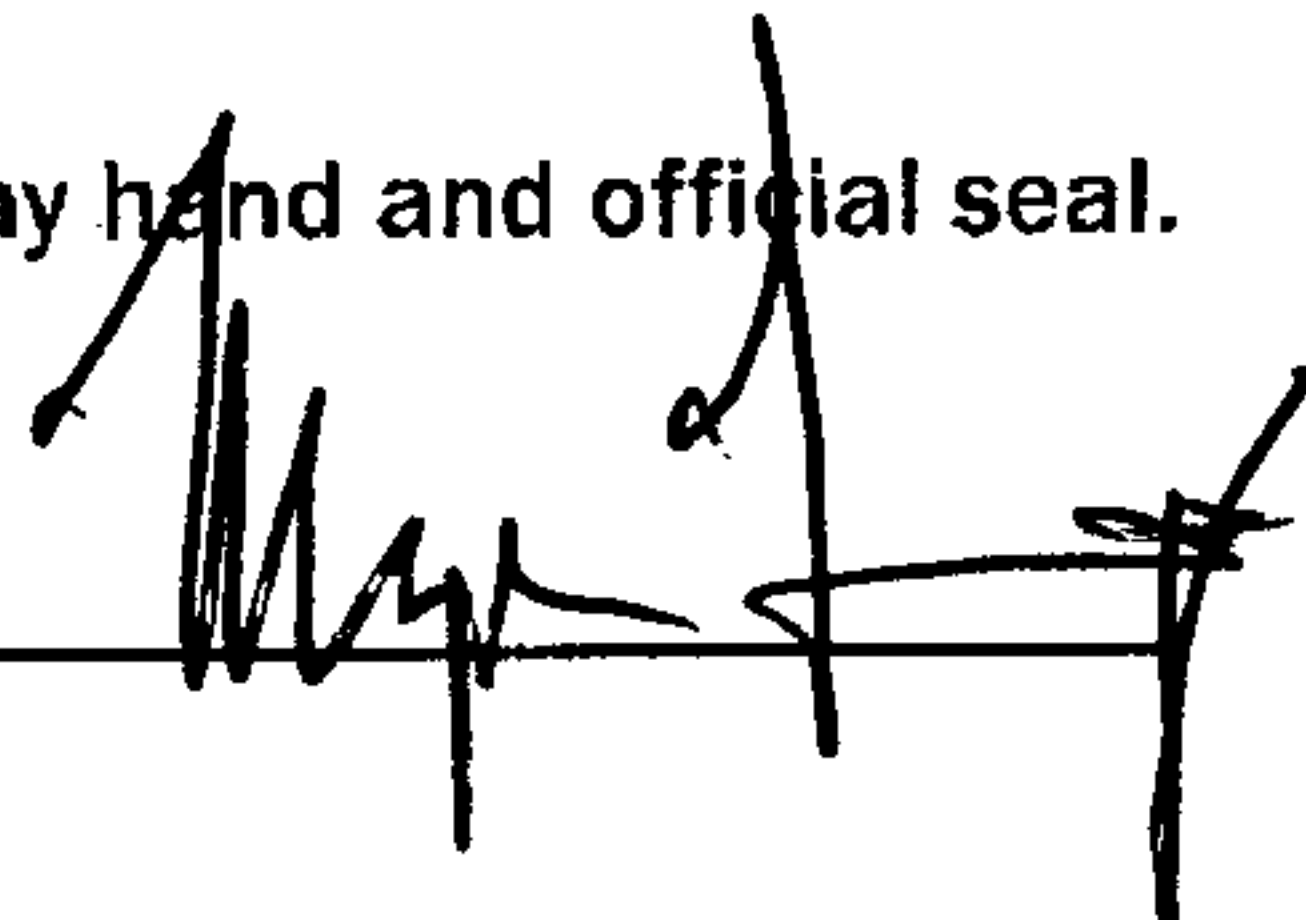
County of MARIN)

On JANUARY 25 2013, before me, WAYNE LANG, Notary Public, personally appeared BETH ANN ROSENSTEIN SILVER who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that she/he/they executed the same in her/his/their authorized capacity, and that by her/his/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

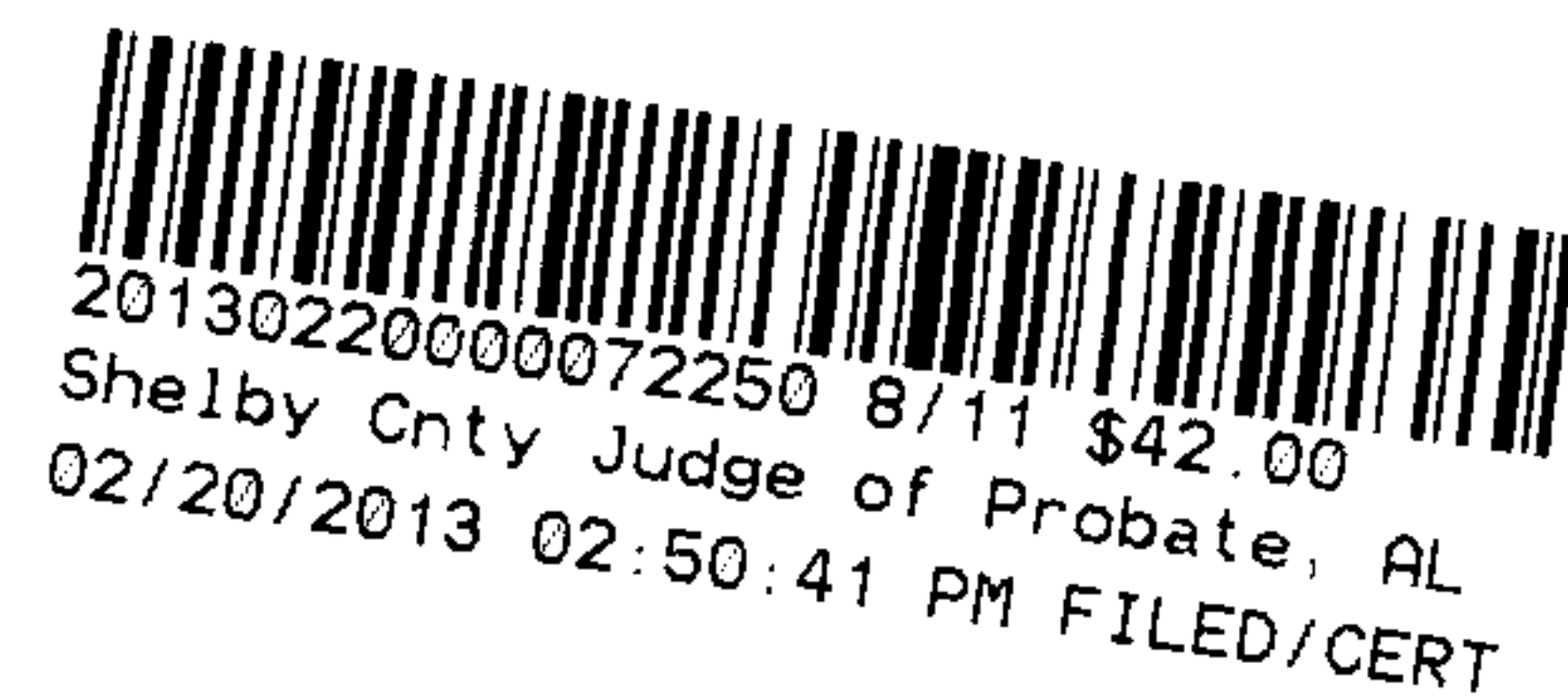
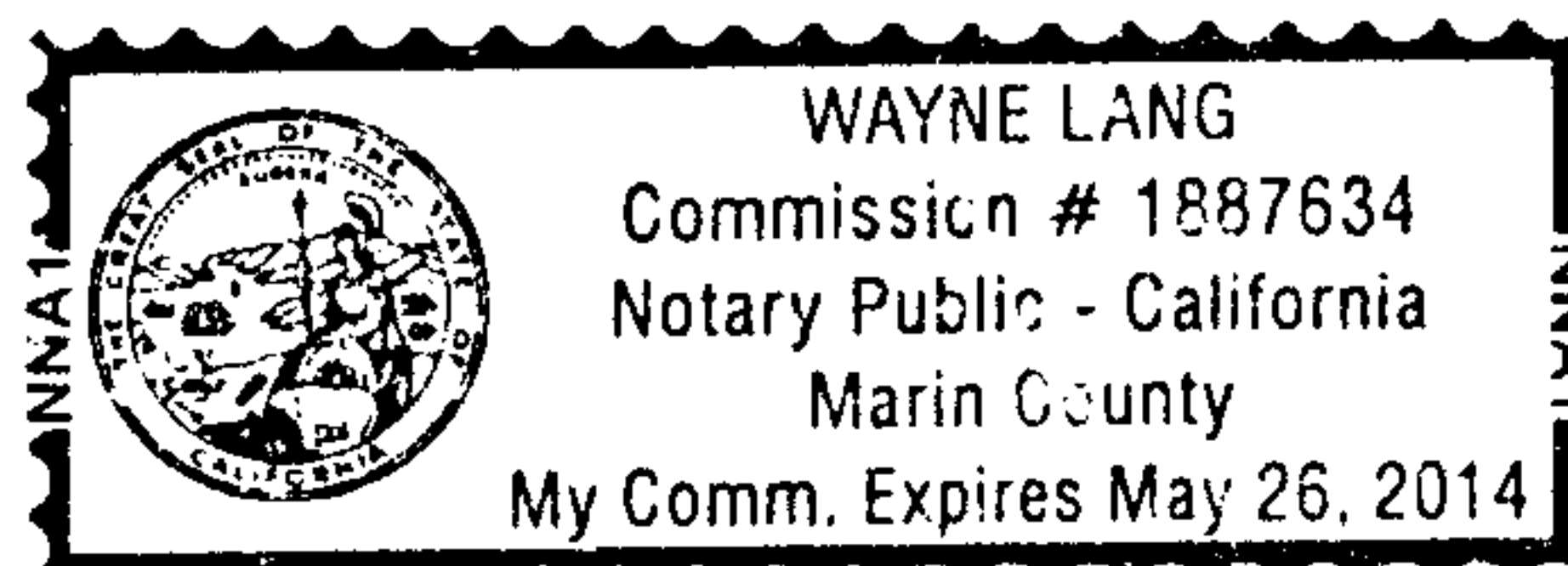
I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____



Seal: _____



All-Purpose Acknowledgment

State of Tennessee)

County of Davidson)

On January 31 2013, before me, Wanda H. Parsons, Notary Public, personally appeared Michael T. Folks, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that she/he/they executed the same in her/his/their authorized capacity, and that by her/his/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Tennessee that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature: Wanda H. Parsons
Expire May 6, 2013

Seal:



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EXHIBIT "A"


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LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

PARCEL 1:

Lot 4A, according to Baker Seafood, Inc. Resurvey being a resurvey of Lots 4 and 5, Wal-Mart Supercenter #3271 Subdivision, as recorded in Map Book 27, page 117 as recorded in Map Book 31, page 92, in the Office of the Judge of Probate of Shelby County, Alabama, also being situated in the Northwest quarter of the Southeast quarter of Section 4, Township 22 North, Range 2 West, St. Stephens Meridian, Shelby County, Alabama and being more particularly described as follows:

Commence at a point at the Southwest corner of the Southwest quarter of the Northeast quarter of Section 4, Township 22 North, Range 2 West, St. Stephens Meridian, Shelby County, Alabama; thence run North 02° 06' 24" West along the West line of said quarter, for a distance of 512.99 feet to a point; thence run South 89° 47' 07" East for a distance of 1036.65 feet to a point on the West right of way margin of Highway 31; thence run South 10° 16' 53" East along said right of way margin for a distance of 386.25 feet to an iron pin, said point being the True Point of Beginning; thence continue South 16° 16' 53" East along said right of way margin for a distance of 80.23 feet to an iron pin; thence run South 79° 34' 19" West along said right of way margin for a distance of 49.72 feet to an iron pin, said point being the point of a curve to the right having a radius of 854.81 feet and an arc distance of 83.80 feet; thence run along said curve to the right and along said right of way margin a chord bearing of South 07° 31' 03" East and a chord distance of 83.76 feet to an iron pin; thence run North 89° 39' 17" West for a distance of 188.73 feet to an iron pin; thence run North 00° 22' 34" East for a distance of 111.08 feet to an iron pin, said point being the point of a curve to the right having a radius of 43.50 feet and an arc distance of 60.24 feet; thence run along said curve to the right a chord bearing of North 40° 02' 50" East and a chord distance of 55.54 feet to an iron pin; thence run North 79° 43' 07" East for a distance of 120.73 feet to an iron pin; thence run South 10° 16' 53" East for a distance of 5.00 feet to an iron pin; thence run North 79° 43' 07" East for a distance of 40.25 feet to an iron pin; thence run South 65° 30' 48" East for a distance of 18.21 feet to a point and back to the True Point of Beginning.

PARCEL II:

Together with an non-exclusive access easement as conveyed to Baker Seafood, Inc., on May 29, 2001 and recorded in Instrument Number 2001-25731, including ingress and egress across the following described property line description of 25 feet ingress and egress easement:

Commence at the Southwest corner of the Southwest quarter of the Northeast quarter of Section 4, Township 22 North, Range 2 West, Shelby County, Alabama; thence North 02° 06' 24" West 512.99 feet; thence South 89° 47' 07" East 1036.65 feet; thence South 10° 16' 53" East 396.25 feet to the Westerly margin of U.S. Highway 31; thence continue along said road South 10° 16' 53" East 80.24 feet; thence continue along said right of way South 79° 34' 19" West 49.72 feet; thence continue along said right of way on a curve said curve concave to the West having a radius of 854.82 feet along a chord bearing and distance of South 02° 26' 38" East for a chord distance of 234.44 feet to the beginning of a 25 feet ingress, egress easement; thence leaving said right of way along a curve said curve concave to the South having a radius of 121.50 feet along a chord bearing North 79° 08' 51" West for a distance of 44.19 feet; thence North 89° 37' 26" West 121.82 feet to the beginning of a curve said curve concave to the Northeast having a radius of 23.50 feet along a chord bearing North 44° 37' 26" West a chord distance of 33.23 feet; thence North 00° 23' 01" East 230.63 feet to the beginning of a curve said curve concave to the Southeast having a radius of 43.50 feet on a chord bearing North 40° 02' 50" East a chord distance of 55.54 feet; thence North 79° 43'



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07" East 120.73 feet; thence South 10° 16' 53" East 5.0 feet; thence North 79° 43' 07" East 40.25 feet; thence South 65° 30' 48" East 18.21 feet to the point of beginning, said easement being 25 feet left of the above described line being a 25 foot ingress and egress easement; being situated in Shelby County, Alabama.

PARCEL III:

Together with a non-exclusive easement for the benefit of Parcel I for the purpose of ingress & egress as created by that certain access easement between Wal-Mart Real Estate Business Trust and P&N Calera, L.L.C., dated January 30, 2001 and recorded February 9, 2001 under Instrument Number 2001-04817, over, under and across the following described property:

A parcel of land for ingress and egress situated in the Southwest quarter of the Northeast quarter of Section 4, Township 22 South, Range 2 West, St. Stephens Meridian, Shelby County, Alabama, and being more particularly described as follows:

Commence at an axle found at the Southwest corner of the Southwest quarter of the Northeast quarter of Section 4, Township 22 South, Range 2 West, St. Stephens Meridian, Shelby County, Alabama; thence North 02° 06' 24" West along the West line of said quarter for a distance of 512.99 feet; thence leaving said quarter line, run South 89° 47' 07" East for a distance of 1036.65 feet to the Westerly right of way of Highway 31 (right of way width 100 feet); said point also being the Northeast corner of Lot 3 according to Wal-Mart Supercenter #3271 Subdivision, as recorded in Map Book 27, page 117, in the Office of the Judge of Probate of Shelby County, Alabama; thence run South 10° 16' 53" East, along the West boundary of said Lot 3, for a distance of 284.08 feet to the Southeast corner of said Lot 3; said point also being the point of beginning; thence leaving said Lot 3, continue South 10° 16' 53" East for a distance of 102.17 feet to the Northeast corner of Lot 4 of said Wal-Mart Supercenter #3271 Subdivision; thence North 65° 30' 48" West along the North line of said Lot 4, for a distance of 18.21 feet; thence run South 79° 43' 07" West along the North line of said Lot 4, for a distance of 40.28 feet; thence run North 10° 16' 53" West along the North line of said Lot 4, for a distance of 5.00 feet; thence run South 79° 43' 07" West along the North line of said Lot 4, for a distance of 120.73 feet to the point of curvature of a curve to the left having a radius of 43.50 feet, a central angle of 79° 20' 33" a chord length of 55.54 feet and a chord bearing of South 40° 02' 05" West; thence continue along the arc of said curve for a distance of 60.24 feet to the point of tangency of said curve; thence run South 00° 22' 34" West along the West boundary line of Lot 4, Lot 5, and Lot 6, for a distance of 576.95 feet to the Southwest corner of Lot 6, said point also being on the North boundary line of Lot 2 of said Wal-Mart Supercenter #3271 Subdivision; thence run North 89° 37' 26" West along the North boundary line of said Lot 2, for a distance of 696.60 feet; thence run South 37° 41' 38" West along the North boundary line of said Lot 2, for a distance of 42.10 feet; thence run North 89° 37' 26" West along the North boundary line of said Lot 2, for a distance of 99.54 feet to the Northerly right of way line of 1-65 (right of way width varies); thence run North 52° 34' 36" West along said right of way, for a distance of 38.56 feet to the Southwest corner of Lot 1 of said Wal-Mart Supercenter #3271 Subdivision; thence run North 02° 06' 24" West along the West boundary line of said Lot 1, for a distance of 41.81 feet; thence leaving said West line, run South 89° 37' 26" East for a distance of 99.94 feet; thence run North 37° 41' 38" East for a distance of 42.10 feet; thence run South 89° 37' 26" East for a distance of 693.78 feet; thence run North 00° 22' 34" East for a distance of 619.79 feet; thence run North 79° 43' 07" East along the South boundary line of said Lot 3, for a distance of 213.93 feet; thence run North 52° 46' 38" East along the South boundary line of said Lot 3, for a distance of 21.59 feet to the point of beginning.

PARCEL IV:

Together with an easement for utilities in the Declaration of Easement dated June 13, 2003 by Baker Seafood, Inc. recorded June 19, 2003 as Instrument Number 20030619000384230.