

THIS INSTRUMENT PREPARED BY:


J. Corbitt Tate

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Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA

COUNTY OF SHELBY

LOAN ASSUMPTION AND MODIFICATION AGREEMENT

THIS AGREEMENT ("Agreement") is effective as of the 21 day of March, 2013, by and among **COMPASS BANK** ("Lender"), an Alabama state banking corporation, **ALABASTER MOON BELL, L.L.C.**, an Alabama limited liability company ("**Original Borrower**"), **AJLOUNY INVESTMENTS, L.L.C.**, an Alabama limited liability company ("**New Borrower**"), and **NASEEM AJLOUNY** and **BASIM AJLOUNY** (each a "**Guarantor**" and collectively, the "**Guarantors**").

WHEREAS, pursuant to that certain Construction Loan Agreement dated June 30, 2005, between Original Borrower and Lender (the "**Loan Agreement**"), Lender agreed to extend financing to Original Borrower in the aggregate principal amount of \$2,100,000.00 (the "**Loan**") for the acquisition of land and construction of a Taco Bell and Full Moon Barbecue restaurants in Shelby County, Alabama; and

WHEREAS, said Loan is evidenced by a Promissory Note in the amount of \$2,100,000.00 from Original Borrower to Lender dated June 30, 2005 (the "**Note**") and secured by (i) that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement between Original Borrower and Lender dated June 30, 2005 and recorded at Instrument Number 20050804000395190 in the Office of the Judge of Probate of Shelby County, Alabama (the "**Mortgage**") (ii) those certain continuing guaranties of each Guarantor (individually, a "**Guaranty**" and collectively, the "**Guaranties**") and (iii) those certain additional documents listed on **Exhibit A** attached hereto and by referenced made a part hereof (the Loan Agreement, Note, the Mortgage, Guaranties, said additional documents and any other related documents, being hereinafter collectively referred to as the "**Loan Documents**"); and

WHEREAS, in connection with this Agreement, Original Borrower shall transfer title to the real property described in the Mortgage (the "**Mortgaged Property**"), subject to the Mortgage and Loan, to the New Borrower; and

WHEREAS, in connection with a request from Original Borrower and New Borrower for a modification to the Loan and the Loan Documents, Original Borrower and New Borrower have requested Lender to consent to the assumption of the Loan by the New Borrower;

WHEREAS, as a condition to its consent and to the requested Loan modifications, Lender requires that New Borrower assume and agree to perform all of Original Borrower's obligations and agreements under the Loan Documents; and

WHEREAS, it is the intent of parties that the assumption of the Loan by New Borrower will result in New Borrower assuming all obligations, liabilities and agreements under the Loan Documents as if New Borrower were the original borrower under the Loan.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Assumption. New Borrower hereby assumes and agrees to be bound by and to perform all of the terms, covenants, conditions and agreements of Original Borrower under the Loan Documents, and acknowledges and agrees that it shall be subject to all remedies reserved to the Lender in the Loan Documents in the event of any Event of Default thereunder. New Borrower hereby acknowledges and agrees that the Mortgaged Property shall remain in all respects subject to the Mortgage, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to affect the encumbrance of, or warranty of title in, or conveyance effected by, the Mortgage, or the priority thereof over other liens, charges, encumbrances or conveyances; nor shall anything herein contained or done in pursuance hereof affect or be construed to affect any other instrument held by Lender as security of the Loan.

2. Lender's Consent. Lender hereby consents to the assumption of the Loan Documents by New Borrower. This consent shall not be deemed to alter or modify any of the terms and conditions of the Loan Documents, or the rights and obligations of the parties thereunder, except as expressly provided herein. Lender acknowledges and agrees that all references to the Original Borrower under the Loan Documents shall be deemed to refer to New Borrower with respect to covenants and agreements to be performed or observed from and after the date hereof.

3. Representations and Warranties of Original Borrower. In connection with and as an inducement to Lender's consent to the assumption of the Loan by Original Borrower hereby represents and certifies to Lender as follows:

(a) Condemnation. To the best knowledge of Original Borrower, there are no pending or threatened actions or proceedings with respect to the condemnation of all or any portion of the Mortgaged Property.

(b) Violation of Law. Original Borrower has not received any notice of inquiry from any governmental authority claiming any alleged violation of any law, rule, regulation or order

of any government authority having jurisdiction over the Mortgaged Property, which violations in any way relate to or affect the Mortgaged Property.

(c) **No Events of Default.** Except for Original Borrower's violation of Section 25(e) of the Loan Agreement as of January 8, 2013, of which Lender is aware and hereby waives, as of the date hereof, no "Event of Default" (as defined in the Loan Agreement) exists under the Loan Documents and Original Borrower has no setoff, counterclaim or defense to the Note or the other Loan Documents.

4. Representations and Warranties of New Borrower. In connection with and as an inducement to the Lender's consent to the conveyance of the Loan by Original Borrower and assumption of the Loan by New Borrower, New Borrower hereby represents and certifies to Lender as follows:

(a) That New Borrower is a limited liability company duly organized, in good standing, and validly existing under the laws of the State of Alabama and has all requisite power and authority to enter into and perform this Agreement and the Loan Documents; that New Borrower is authorized to conduct business and own and operate the Mortgaged Property under all applicable laws; that the execution, delivery and performance of this Agreement and the assumption of the Loan Documents have been duly authorized by all requisite limited liability action of New Borrower and will not violate any provisions of applicable law, the organizational documents, such as the articles of organization or operating agreement of New Borrower, or any agreement, indenture or instrument to which New Borrower is a party or by which New Borrower or any of the properties or assets of New Borrower are bound; and that this Agreement and the Loan Documents are the legal, valid and binding obligations of New Borrower, enforceable against New Borrower in accordance with their respective terms to the same extent as if originally executed by New Borrower, except as enforceability may be limited or affected by (i) bankruptcy, insolvency, reorganization, moratorium or similar debtor relief laws from time to time in effect, (ii) customary principles, judicial decisions, and laws governing, limiting, or affecting the availability of equitable relief generally, and (iii) certain other laws and judicial decisions which may affect certain of the remedial or other provisions contained in the Loan Documents.

(b) Except for Original Borrower's violation of Section 25(e) of the Loan Agreement as of January 8, 2013, of which Lender is aware and hereby waives, as of the date hereof, no "Event of Default" (as defined in the Loan Agreement) exists under the Loan Documents and New Borrower has no setoff, counterclaim or defense to the Note or the other Loan Documents.

5. Amendments to Loan Documents; Consent of Guarantors. In connection with the assumption of the Loan by New Borrower, Original Borrower and New Borrower agree, with the consent of the Guarantors, that the Loan Documents are hereby amended in the following respects:

(a) All references to "Borrower" in the Loan Documents are hereby amended to refer to "Ajlouny Investments, L.L.C.", and any permitted successor in interest to such party hereunder and under the Loan Documents.

(b) By deleting from Section 25(a) of the Loan Agreement the clause “semi-annual fiscal period” and substituting in place thereof the following, “fiscal quarter”.

(c) By deleting Section 25(b) of the Loan Agreement in its entirety and substituting in place thereof the following:

(b) Not later than 120 days after the end of each fiscal year, Borrower’s compiled fiscal year-end financial statements (in form, preparation and substance acceptable to Lender), including a balance sheet as of the close of such period, an income statement, and a statement of cash flows and retained earnings, all compiled by an independent certified public accountant acceptable to Lender and analyzed in accordance with generally accepted accounting principles.

(d) By deleting Section 26 of the Loan Agreement in its entirety and substituting in place thereof the following:

(a) **Fixed Charge Coverage Ratio.** Borrower shall maintain a minimum Fixed Charge Coverage Ratio of 1.25 to 1.00 calculated on a trailing twelve month basis, which may be tested by Lender at any time, but shall be tested at least quarterly. Borrower’s Fixed Charge Coverage Ratio shall be defined as the quotient of (i) the sum of (a) Borrower’s earnings before interest expenses, taxes, depreciation, and amortization plus (b) lease and rent expenses less (c) dividends and distributions; divided by (ii) the sum of Borrower’s (a) Current Maturities of Long Term Debt, (b) interest expenses, and (c) lease and rent expenses. “Current Maturities of Long Term Debt” shall be defined and calculated in accordance with generally accepted accounting principles consistently applied as of the date hereof.

(b) **Total Debt to Tangible Net Worth.** Borrower’s Total Debt to Tangible Net Worth ratio will be equal to or less than 3.00 to 1.00, which may be tested by Lender at any time, but shall be tested at least quarterly. “Total Debt” shall mean all of Borrower’s indebtedness and liabilities owing to Lender or any other person or entity, whether now or hereafter existing, created or arising, direct or indirect, joint or several, including, without limitation, the Liabilities. “Tangible Net Worth” shall mean Borrower’s Net Worth less (i) any and all loans and other advances to and investments in Borrower’s affiliates, subsidiaries, owners, parent, employees, officers, managers, directors or other related entities; (ii) notes, notes receivable, accounts, accounts receivable, intercompany receivables, and other amounts owing from Borrower’s affiliates, subsidiaries, owners, parent, employees, officers, directors, managers or other related entities; and (iii) any and all goodwill and other intangibles. “Net Worth” shall be defined and calculated in accordance with generally accepted accounting principles consistently applied as of the date hereof.

(e) All notice provisions in the Loan Documents are hereby modified to delete the addresses of Original Borrower, and to substitute the following address for New Borrower in the place thereof:

Ajlouny Investments, L.L.C.
Post Office Box 361137
Birmingham, AL 35236

(f) It is the intent of this instrument and Lender, New Borrower, and the Guarantors hereby agree that Original Borrower is released from all liability under the Note, Loan Agreement, Mortgage and other Loan Documents. New Borrower hereby agrees to and does hereby assume all obligations of Borrower under the Note, Loan Agreement, Mortgage and the other Loan Documents.

(g) The Guarantors hereby consent to the assumption of the Loan by New Borrower, the release of liability of Original Borrower, the transfer of the Mortgaged Property to New Borrower and other provisions hereof, and agree that their respective Guaranties shall continue to secure the Loan, as assumed and modified.

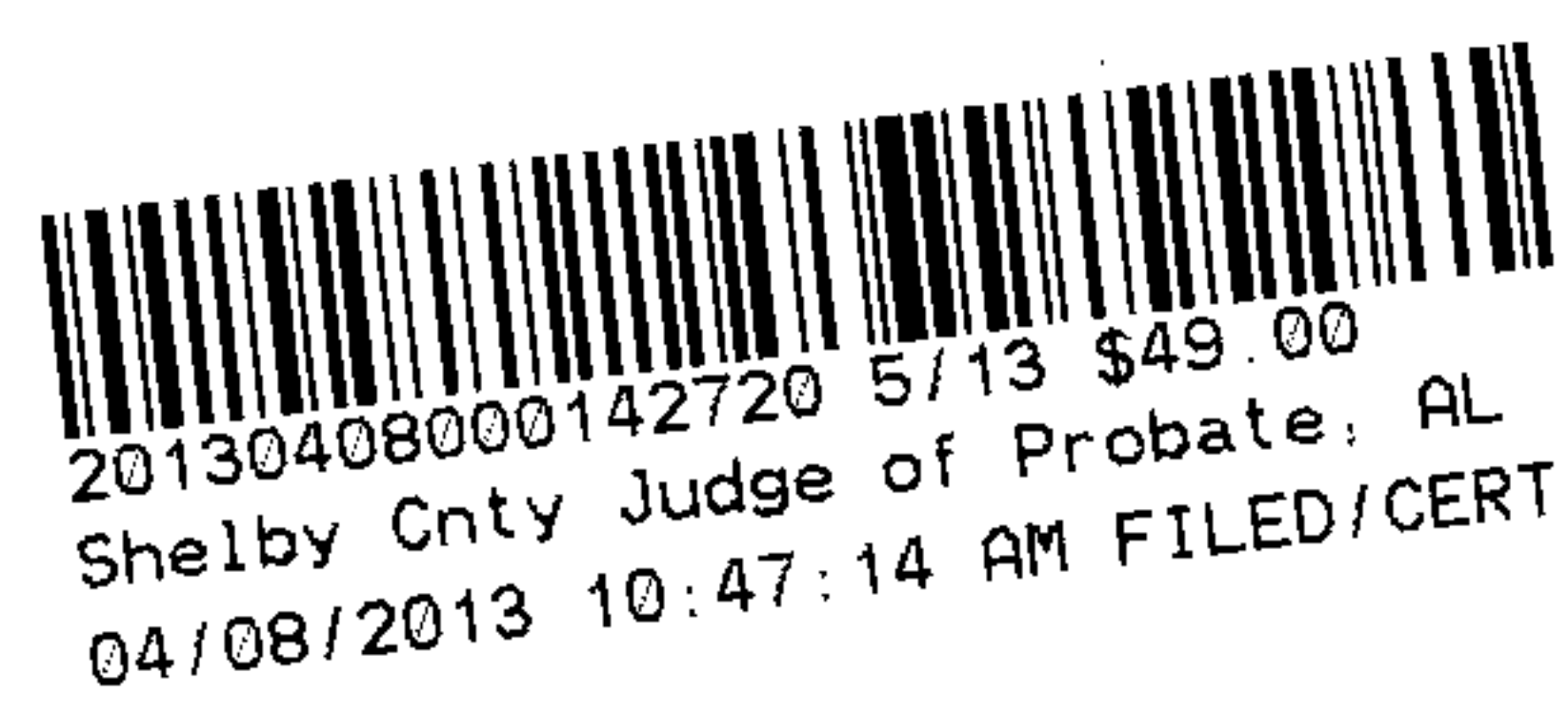
(h) Except as modified herein, all other terms and conditions of the Loan Documents shall remain in full force and effect, and the Loan Documents shall continue to evidence and secure the Loan. Original Borrower, New Borrower and the Guarantors hereby ratify all of the Loan Documents, as previously amended and as amended hereby.

6. Additional Agreements Regarding Loan. In connection with the assumption of the Loan by New Borrower, New Borrower and Lender hereby agree as follows:

(a) New Borrower agrees to pay all costs and expenses of Lender in connection with the execution and delivery of this Agreement, including but not limited to the reasonable fees and expenses of Lender's attorneys and all recording fees, title examination fees, title insurance premiums, and similar charges.

(b) New Borrower agrees that this Agreement shall be recorded at New Borrower's expense in the Office of the Judge of Probate of Shelby County, Alabama. Additionally, New Borrower agrees, at its expense, to provide an endorsement to Lender's Loan Title Policy from Chicago Title Insurance Company Number 72107-70335447, reflecting this Agreement and showing no additional encumbrances on the Mortgaged Property.

7. Release of Lender. By its execution hereinbelow, the Original Borrower, New Borrower and the Guarantors acknowledge and confirm the obligations to Lender for repayment of the Loan. The Original Borrower, New Borrower and the Guarantors further acknowledge and represent that they have no defense, counterclaim, offset, cross-complaint, claim or demand of any kind or nature whatsoever (collectively, the "**Loan Defenses**") that can be asserted to reduce or eliminate all or any part of their liability to repay the Loan to Lender. To the extent that any such Loan Defenses exist, and for and in consideration of Lender's commitments



contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, they are hereby fully, forever and irrevocably released.

Neither the Original Borrower nor New Borrower nor the Guarantors have any claim of any nature whatsoever, at law, in equity or otherwise, against the Lender, nor any of its officers, directors, employees, agents, servants, representatives, attorneys, successors, successors-in-interest, predecessors-in-interest and assigns (hereinafter referred to collectively as the "**Released Parties**"), or any of them, as a result of any acts or omissions of the Released Parties, or any of them, under the Loan Documents or in connection with the Loan prior to and including the date hereof. The Original Borrower, New Borrower and the Guarantors, for themselves and for their respective successors, executors, heirs, administrators, and assigns, each hereby unconditionally waive and release the Released Parties, and forever discharge the Released Parties, of and from any and all manner of action, suits, claims, counterclaims, causes of action, offsets, deductions, breach or breaches, default or defaults, debts, dues, sums of money, accounts, deposits, damages, losses, liabilities, demands, costs, expenses, and compensation of every kind and nature, past, present, and future, known or unknown (herein collectively, "**Claims**"), that the Original Borrower, the New Borrower, and/or the Guarantors and any of their respective successors, executors, heirs, administrators, and assigns, or any of them, can or now have or may have at any time hereafter against the Released Parties, or any of them, by reason of any matter, cause, transaction, occurrence or omission whatsoever, which happened or has happened on or before the date of this Agreement, on account of or arising from or which is connected in any manner whatsoever with, the Loan, the Loan Documents, any related documents, or any and all collateral which has served or is serving as security for the Loan or the Loan Documents, or which is related to any and all transactions and dealings among Lender, the Original Borrower, the New Borrower and/or the Guarantors, or any other matter or thing that has occurred before the signing of this Agreement, known or unknown. Any and all such Claims are hereby declared to be satisfied and settled, and the Original Borrower, the New Borrower, and the Guarantors, for themselves and for their respective successors, executors, heirs, administrators, and assigns, each hereby discharge the Released Parties from any liability with respect to any and all such Claims.

8. Ratification. Original Borrower, New Borrower, the Guarantors and Lender mutually covenant and agree that, except as expressly modified herein, the Loan Agreement and the other Loan Documents shall remain in full force and effect, and all of the remaining terms and provisions of the Loan Documents are hereby ratified and confirmed. Original Borrower, New Borrower and Lender agree that (i) the outstanding and unpaid principal balance of the Loan as of March 6, 2013 is \$608,818.05 and (ii) interest has been paid on the Loan through March 6, 2013.

9. Miscellaneous.

(a) Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Governing Law. This Agreement has been negotiated, and is being executed and delivered in Birmingham, in the State of Alabama, or if executed elsewhere, shall become

effective upon the Lender's receipt and acceptance of the executed original of this Agreement in the State of Alabama; provided, however, that the Lender shall have no obligation to give, nor shall Original Borrower, New Borrower and/or Guarantors be entitled to receive, any notice of such acceptance for this Agreement to become a binding obligation of Original Borrower, New Borrower and the Guarantors. Original Borrower, New Borrower and Guarantors hereby submit to jurisdiction in the State of Alabama for any cause of action or action arising out of or in connection with this Agreement. Original Borrower, New Borrower and Guarantors acknowledge that the negotiation, execution and delivery of this Agreement constitutes the transaction of business within the State of Alabama and that any cause of action arising under this Agreement will be a cause of action arising from such transaction of business. Original Borrower, New Borrower and Guarantors understand and agree that this Agreement has and will have a significant effect on an Alabama bank. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(c) **Headings.** This paragraph and subparagraph headings contained in this Agreement are for reference purposes only and shall not affect its meaning or interpretation in any way.

(d) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank; signature pages to follow]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto under seal as of the day and year first above written.

LENDER:

COMPASS BANK,
an Alabama banking corporation

By: [Signature]
Its: Senior Vice President

STATE OF ALABAMA

COUNTY OF JEFFERSON

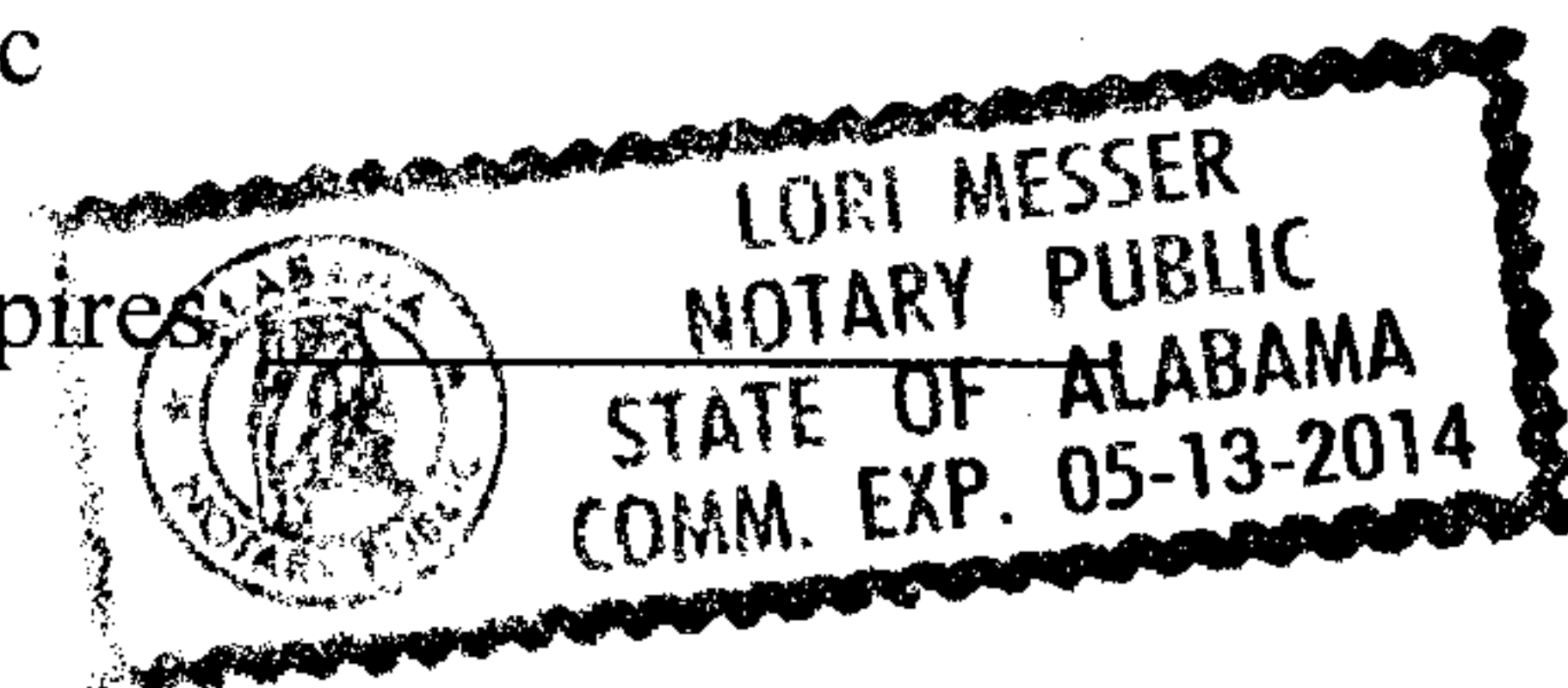
I, Lori Messer, a notary public in and for said county in said state, hereby certify that James Barnett, whose name as SUP of **COMPASS BANK**, an Alabama banking corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, _____, 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 21 day of March, 2013.

[Signature]
Notary Public

[Notarial Seal]

My Commission Expires



ORIGINAL BORROWER:

ALABASTER MOON BELL, L.L.C.,
an Alabama limited liability company

By: *Naseem M. Aylun*
Its: *Member*

STATE OF *Alabama*
COUNTY OF *Jefferson*

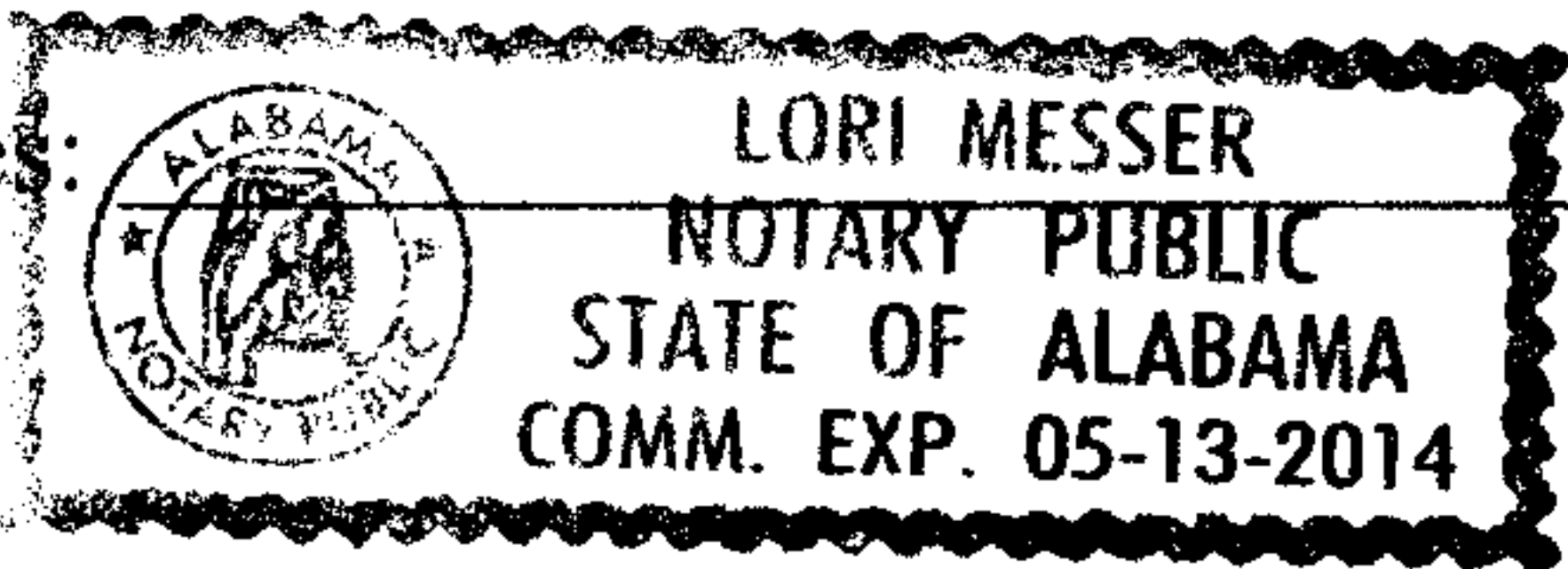
I, *Lori Messer*, a notary public in and for said county in said state,
hereby certify that *Naseem M. Aylun*, whose name as *member* of
ALABASTER MOON BELL, L.L.C., an Alabama limited liability company, is signed to the
foregoing instrument and who is known to me, acknowledged before me on this day that, being
informed of the contents of such instrument, _____, as such officer 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 *21* day of *March*, 2013.

Lori Messer
Notary Public

[Notarial Seal]

My Commission Expires:



NEW BORROWER:

AJLOUNY INVESTMENTS, L.L.C.,
an Alabama limited liability company

By: *Nasim M Ghanay*
Its: *Member*

STATE OF *Alabama*
COUNTY OF *Jefferson*

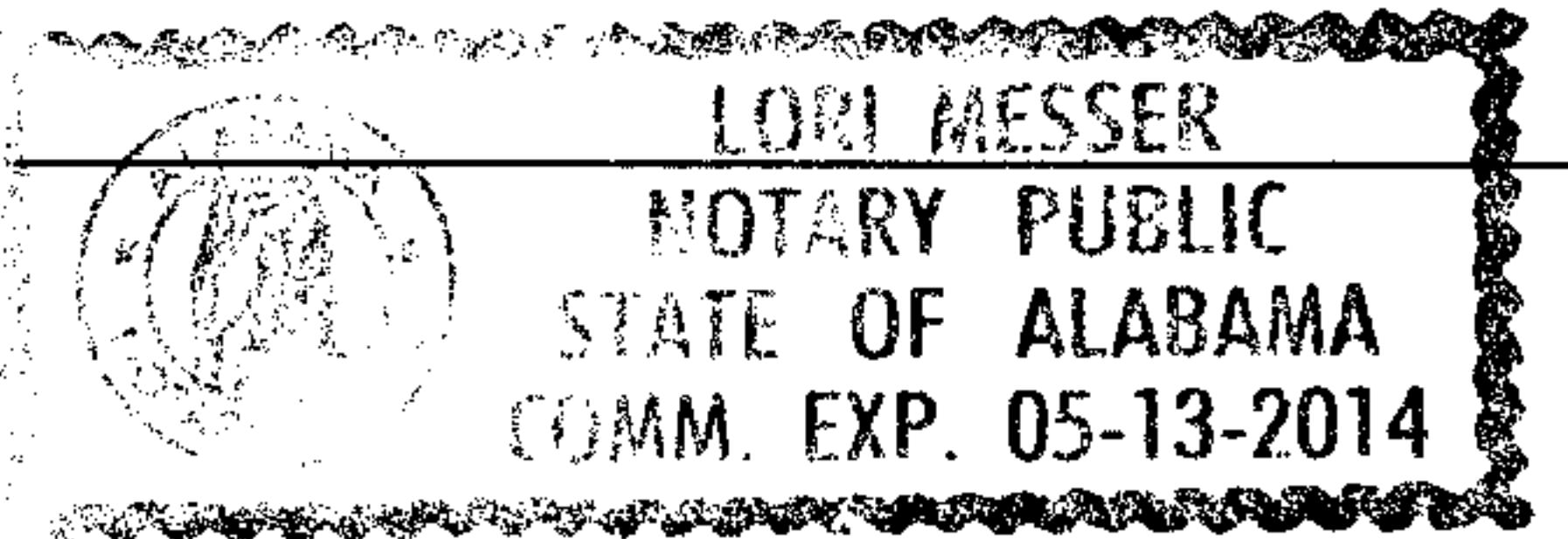
I, *Lori Messer*, a notary public in and for said county in said state,
hereby certify that *Nasim M Ghanay*, whose name as *Member* of
AJLOUNY INVESTMENTS, L.L.C., an Alabama limited liability company, is signed to the
foregoing instrument and who is known to me, acknowledged before me on this day that, being
informed of the contents of such instrument, _____, as such officer 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 *21* day of *March*, 2013.

Lori Messer
Notary Public

[Notarial Seal]

My Commission Expires:



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GUARANTOR:

Naseem M Ajlouny
Naseem Ajlouny

STATE OF Alabama

COUNTY OF Jefferson

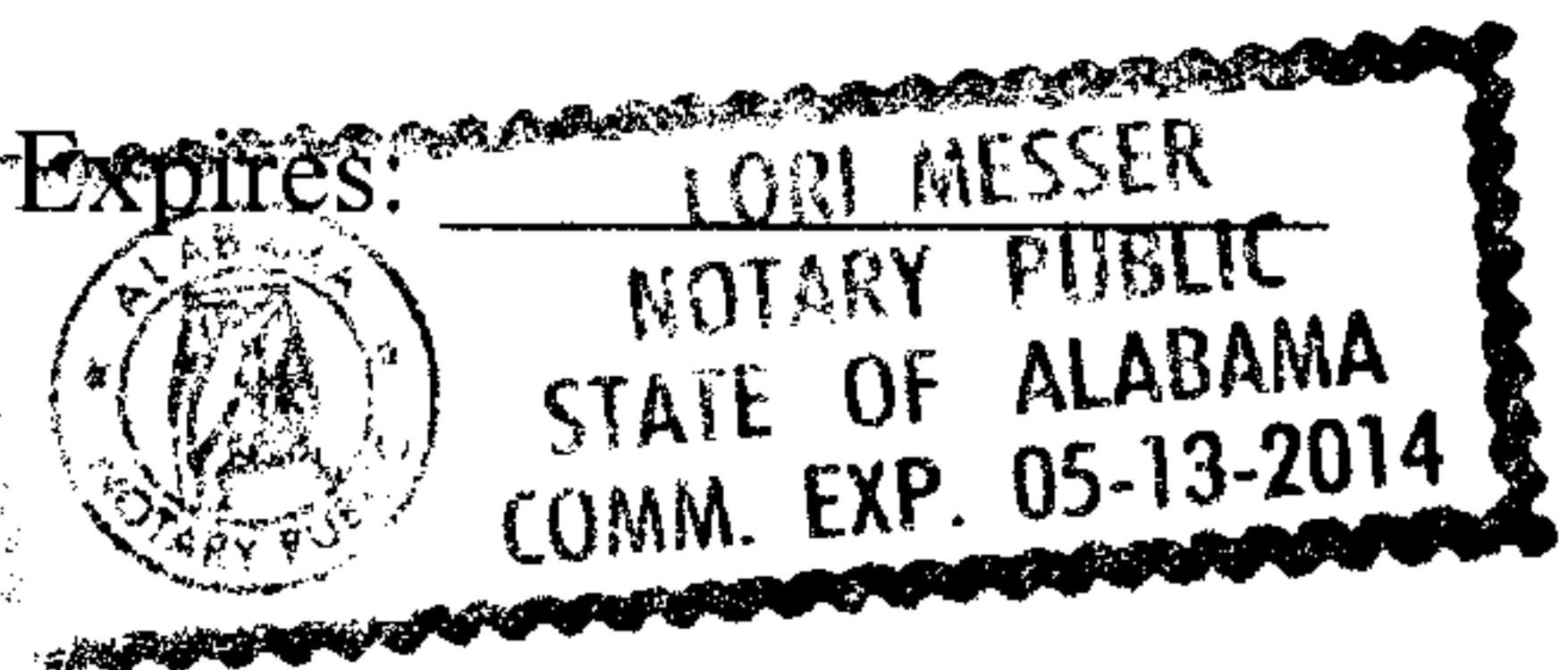
I, Lori Messer, a notary public in and for said county in said state, hereby certify that **Naseem Ajlouny**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 2 day of March, 2013.

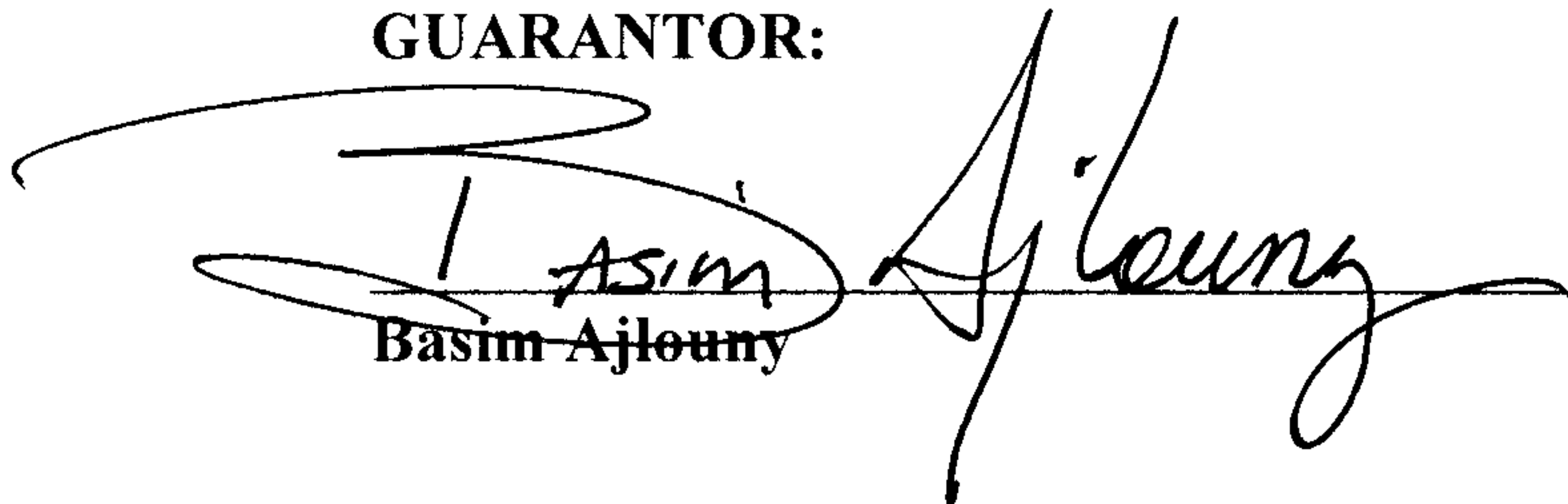
Lori Messer
Notary Public

[Notarial Seal]

My Commission Expires:

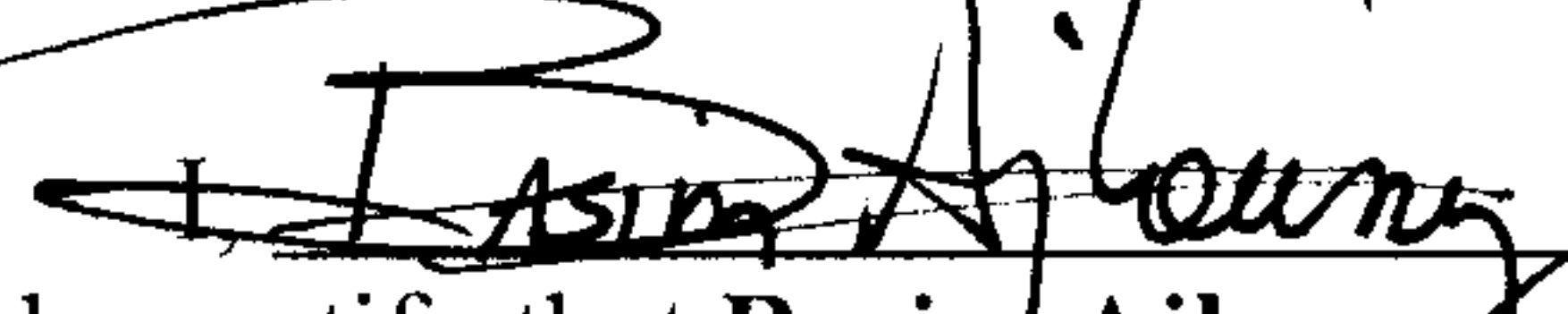


GUARANTOR:

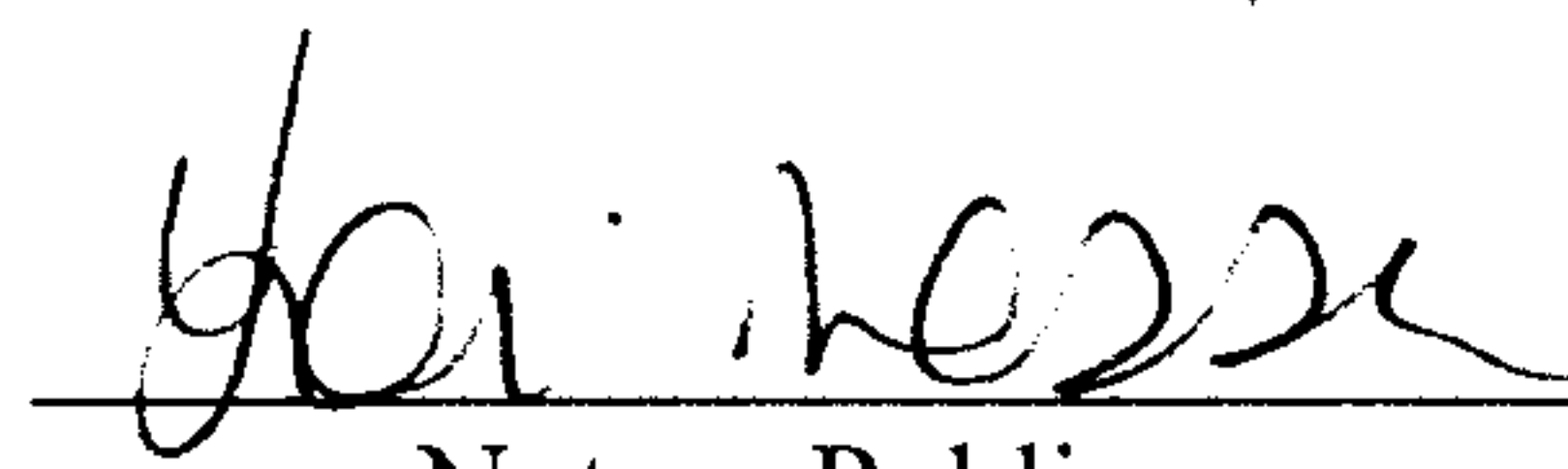

Basim Ajlouny

STATE OF Alabama

COUNTY OF Jefferson Lori Messer

 , a notary public in and for said county in said state, hereby certify that **Basim Ajlouny** whose name 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 such instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 21 day of March, 2013.


Notary Public

[Notarial Seal]

My Commission Expires

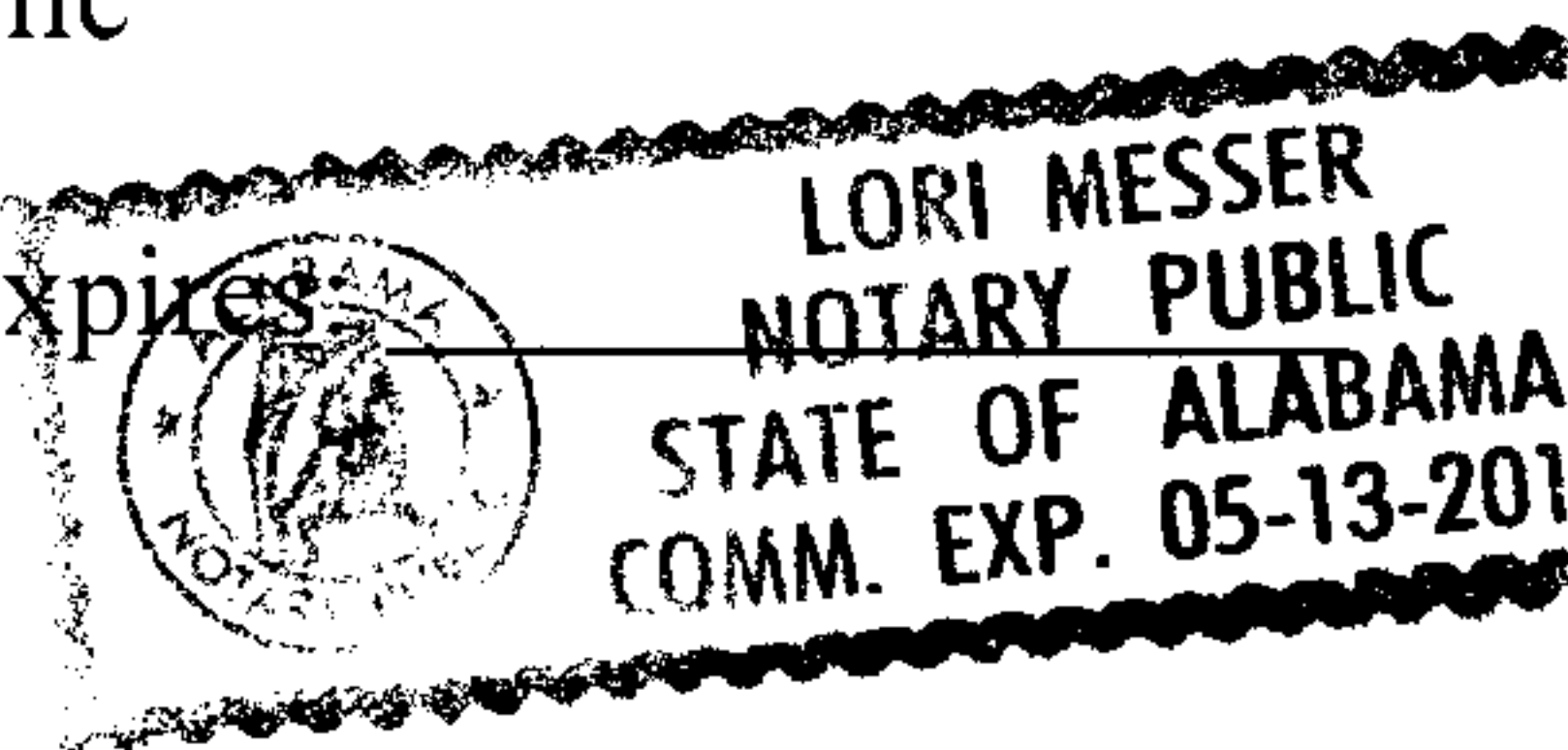


EXHIBIT A

Loan Documents

1. Promissory Note dated June 30, 2005 executed by Original Borrower to the order of Lender
2. Future Advance Accommodation Mortgage, Assignment of Rents and Leases, and Security Agreement from Original Borrower to Lender dated June 30, 2005 and recorded in the Office of the Judge of Probate of Shelby County, Alabama at Instrument Number 20050804000395190
3. Construction Loan Agreement dated June 30, 2005 executed by and between Original Borrower and Lender
4. UCC-1 Financing Statements filed with the Secretary of State of Alabama at Instrument Number 06-0156827 FS and the Judge of Probate of Jefferson County, Alabama at Instrument Number 20060127000044980, from Borrower (as Debtor) to Compass Bank (as Secured Party)
5. Assignment of Contract Documents dated June 30, 2005 executed by Original Borrower in favor of Lender
6. Borrower's Closing Affidavit dated June 30, 2005 executed by Original Borrower in favor of Lender

