

Pelham, Alabama

When recorded return to:

SNELL & WILMER L.L.P.
One South Church Avenue
1500 Unisource Energy Tower
Tucson, Arizona 85701-1630
Attention: Stephen J. Young, Esq.
NS 613135AL4


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Shelby Cnty Judge of Probate, AL
07/09/2013 04:01:24 PM FILED/CERT

For Recorder's Use

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

DATE: June 27, 2013

PARTIES: MILO'S RESTAURANT HOLDINGS, LLC, an Alabama limited liability company, whose address is 2000 Morris Avenue, Suite 1300, Birmingham, Alabama 35203 ("**Lessee**"); ALLIANCE BANK OF ARIZONA, a division of Western Alliance Bank, an Arizona banking corporation, whose address is One East Washington Street, Suite 1400, Phoenix, Arizona 85004 ("**Lender**").

RECITALS:

A. Lender has made a loan to SPIRIT SPE PORTFOLIO 2012-5, LLC, a Delaware limited liability company ("**Borrower**"), in the principal amount of up to Forty Million and No/100 Dollars (\$40,000,000.00) (the "**Loan**").

B. As security, in part, for repayment of the Loan and performance of Borrower's obligations to Lender, Borrower has executed and delivered to Lender, among other things, that certain Mortgage and Security Agreement, dated June 27, 2013, which will be recorded substantially contemporaneously with this Agreement (the "**Mortgage**"), wherein Lender is mortgagee, granting to the Lender a lien on the real property described in **Exhibit A** attached hereto and made a part hereof by this reference (the "**Property**").

C. Lessee claims an interest in the Property by virtue of that certain Master Lease Agreement (the "**Lease**") made by and between Lessee and Borrower, as lessor, dated March 29, 2013, covering a portion of the Property and improvements thereon.

D. Lender has agreed to make the Loan to Borrower, but only if, among other things, Lessee subordinates any and all right, title, and interest it now has or hereafter acquires in and to the Property to the lien of the Mortgage.

NOW, THEREFORE, in consideration of Lender's agreement to make the Loan, the parties agree as follows:

AGREEMENTS:

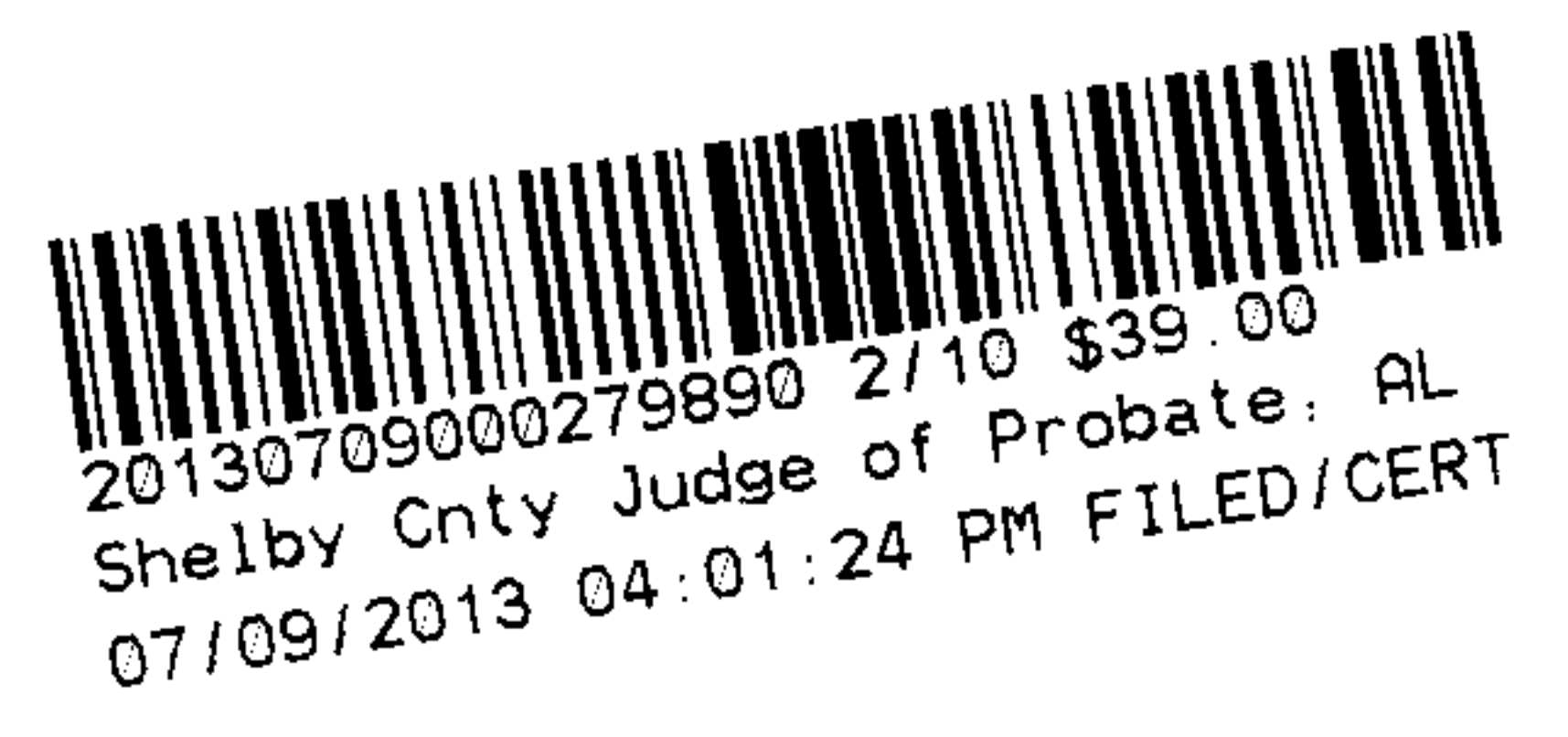
1. **Subordination.** Lessee hereby completely and unconditionally subjects and subordinates any and all right, title, liens, claims, and interests it now has or hereafter acquires in and to the Property whether pursuant to the Lease or otherwise to Lender's liens on and claims against the Property. Lessee agrees that its subordination hereunder shall apply to the full extent of all principal advanced under the Loan, together with all accrued and accruing interest, and together with all other amounts secured by the Mortgage, including without limitation, all attorneys' fees and costs incurred by Lender in connection with the Loan or the Property. Lessee hereby agrees that the Mortgage and any and all right, title, liens, claims, or interests hereafter acquired by Lender in and to the Property are prior and superior to any and all right, title, liens, claims or interests now held or hereafter acquired by Lessee in and to the Property. This subordination shall extend to any and all increases, renewals, extensions, modifications, substitutions, and consolidations of the Mortgage, of the Loan, and of any other documents securing the Loan, and Lender may, without notice or demand, and without affecting the subordination hereunder, (a) renew, compromise, extend, accelerate, or otherwise change the time for payment of or otherwise change the terms of the Loan or any part thereof, including, without limitation, increases or decreases in the principal amount of the Loan and the interest rate thereon, (b) waive or release any part of its lien on the Property, (c) apply proceeds from the sale of the Property and direct the order or manner of sale thereof as Lender, in its discretion, may determine, and (d) assign its rights hereunder or under the Loan, or both, in whole or in part. Lessee further declares, agrees and acknowledges that, in making disbursements of the Loan, Lender has no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom they are disbursed by Lender, and any application or use of such proceeds for purposes other than those provided for in connection with the Loan shall not defeat the subordination made in this Agreement, in whole or in part.

2. **Reliance.** Lessee acknowledges that the Loan and/or advances thereof would not have been made by Lender without the giving of this Agreement by Lessee and further acknowledges that Lender is relying upon this Agreement in making the Loan and/or advances thereof to Borrower.

3. **Transfer of Lease.** Any transfer or encumbrance of the Lease or Lessee's interest therein shall be subject to the terms of this Agreement. Lessee hereby agrees to notify any purchaser, assignee, or encumbrancer of the Lease of the terms of this Agreement.

4. **Representations and Warranties.** Lessee represents and warrants to Lender that:

(a) The Lease is a commercial lease, is in full force and effect, and has not been amended or modified in any way; and there are no documents or written agreements between Lessee and Borrower with respect to the Lease, except those disclosed herein;



(b) Lessee's interests under the Lease have not been assigned or transferred, whether for purposes of security or otherwise, and Lessee has all the requisite power and authority to enter into this Agreement with Lender;

(c) Lessee will faithfully perform all obligations of the lessee under the terms of the Lease;

(d) Lessee has prepaid no rent except as specifically set forth in the Lease; and

(e) To the best of Lessee's knowledge, no uncured event of default or breach on the part of Borrower or Lessee has occurred under the Lease, and no event has occurred which gives Lessee the right to terminate the Lease or otherwise claim defenses, offsets or damages.

5. **Covenants.** Lessee covenants and agrees that:

(a) Lessee will not pay any installment of rent or any part thereof more than one (1) month prior to the due date of such installment;

(b) No extension or modification of the Lease, except for extensions specifically provided for in the Lease, shall be of any force or effect unless Lender has specifically consented thereto in writing;

(c) Lender may enter upon the Property and inspect the same at any reasonable time; and

(d) Lessee will at any time and from time to time execute, deliver, and acknowledge to Lender or to any third party designated by Lender, within ten (10) days following Lender's written request therefor, estoppel certificates executed by Lessee, certifying (if such is the case) that the Lease is in full force and effect, that Borrower is not in default thereunder (or specifying any defaults by Borrower which Lessee alleges), that rent has not been prepaid more than one (1) month in advance, and specifying any further information about the Lease or the Property which Lender or said third party may reasonably request.

6. **Defaults.** Lessee covenants and agrees to give Lender a copy of any notice of default under the Lease served upon the Borrower as landlord. Lessee further covenants and agrees that if Borrower shall have failed to cure such default within the time provided for in the Lease then Lender shall have an additional thirty (30) days to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within such thirty (30) days Lender has commenced and is diligently pursuing the remedies necessary to cure such a default (including, but not limited to, commencement of foreclosure proceeding if necessary to effect such cure), in which event the Lease shall not be terminated while such remedies are being so diligently pursued. Lessee agrees that the correction of any such default by Lender shall have the same effect and be treated as a correction by Borrower.


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7. **Attornment.** If the interests of Borrower shall be transferred by reason of foreclosure or exercise of power of sale or other proceeding for enforcement of the Mortgage, or by reason of a deed in lieu of foreclosure, Lessee shall be bound to the person acquiring the interests of landlord (the "**Purchaser**") 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 effected in accordance with any option therefor in the Lease, with the same force and effect as if the Purchaser were the lessor under the Lease. Lessee does hereby attorn to the Purchaser, including Lender, if it is the Purchaser, as its landlord, said attornment to be effective and self-operative without the execution of any further instruments upon Purchaser succeeding to the interest of the landlord under the Lease.

8. **Non-Disturbance.** Provided Lessee is not in default in payment of rent, taxes, utility charges, or other sums payable by Lessee under the terms of the Lease, nor in default in the performance of any other covenant or provision of the Lease or this Agreement, and provided Lessee is in possession of the portion of the Property subject to the Lease, then the right of possession of Lessee to the portion of the Property subject to the Lease shall not be affected or disturbed by Lender in the exercise of any of its rights or remedies under the Mortgage.

9. **Direct Payment.** Lessee agrees that upon receipt of written request therefor by Lender, rental payments will be made directly to Lender or its order at such place as Lender shall direct. Borrower hereby authorizes Lessee to accept such request from Lender and waives all claims against Lessee for any sums so paid at Lender's request and direction.

10. **Liability of Lender.** Notwithstanding anything to the contrary contained in this Agreement, Lender and its successors and assigns shall not, by virtue of this Agreement, be or become subject to any liability or obligation to Lessee under the Lease or otherwise, unless Lender or its successors and assigns shall obtain title to the Property, by foreclosure or otherwise; and, moreover, Purchaser in acquiring the interest of Borrower as a result of any such action or proceeding, and its successors and assigns, shall not be: (a) liable for any act or omission of any prior landlord under the Lease (including Borrower); or (b) liable for any damages or other relief attributable to any latent or patent defects in construction with respect to any portion of the Property; or (c) subject to any offsets or defenses which Lessee might have against any prior landlord under the Lease (including Borrower); or (d) bound by any amendment or modification of the Lease made without Lender's prior written consent; or (e) bound by, or responsible for, any security deposit paid by Lessee (unless delivered to and held by Lender); or (f) bound by or responsible for or affected by any purchase option contained in the Lease, which provisions shall be of no force and effect upon the Lender or its successors or assigns; (g) obligated to construct any improvements on the Property (provided that if Purchaser fails to construct improvements as required under the Lease, Lessee may terminate the Lease); or (h) bound by, or responsible for, any other term or provision of the Lease which is personal to the Borrower or which may not reasonably be performed by Purchaser or its successors and assigns in the ordinary course of business. Regardless of anything in the Lease or this Agreement to the contrary, in acquiring the interest of Borrower as a result of such action or proceeding, Purchaser shall not have any obligation or liability beyond its interest in the Property. Lessee shall look exclusively to Purchaser's interest in the Property for payment and discharge of any of Purchaser's obligations under this Agreement or under the Lease. Lessee

shall not collect or attempt to collect any judgment based upon such obligations out of any other assets of Purchaser. In addition, upon any sale or transfer of its interest in the Property, Purchaser shall have no further obligation under the Agreement or the Lease with respect to matters occurring after such sale or transfer. By executing this Agreement, Borrower specifically acknowledges and agrees that nothing contained in this Section shall impair, affect, lessen, abrogate or otherwise modify the obligations of Borrower to Lessee under the Lease.

11. **No Assumption.** Notwithstanding any other provisions contained in this Agreement, Lender does not assume any responsibility or liability for any acts or conduct by any other person, including, but not limited to, a purchaser at foreclosure or trustee's sale or grantee under deed in lieu of foreclosure.

12. **Notices.** Whenever and wherever in this Agreement, the Lease, or in any proceeding involving the foreclosure or attempt to foreclose pursuant to the Mortgage it shall be required or permitted that a notice or demand be given, such notice or demand shall be in writing and be deemed to have been given or served upon receipt or refusal of receipt after being mailed, postage prepaid, by certified, registered, or express mail, return receipt requested, or when delivered in person to the appropriate address set forth above or to such other address as may be hereafter designated by any party thirty (30) days in advance by proper notice to the other.

13. **Amendments.** No amendment or modification of this Agreement shall be valid or binding unless in writing, signed by the party or parties to be bound thereby.

14. **No Merger.** Borrower, Lessee and Lender agree that unless Lender shall otherwise consent in writing, Borrower's estate in and to the Property and the leasehold estate created by the Lease shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Borrower or Lessee or any third party by purchase, assignment or otherwise.

15. **Nondisturbance Agreement.** This Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement from Lender.

16. **Severability; Choice of Law.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall, at the option of the Lender, not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. This Agreement shall be governed by and construed according to the internal law of the State of Arizona except as required by the laws of the state in which the Property is located.

17. **Successors.** This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

19. **Miscellaneous Provisions.** Lender may but shall not be obligated to record this Agreement, at Lender's sole discretion.

[Signature Pages Follow]



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IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.

MILO'S RESTAURANT HOLDINGS, LLC, an
Alabama limited liability company

By: Milo's Holdings, LLC, a Delaware limited
liability company, its Sole Member

By: PCI, LLC, an Alabama limited
liability company, its Manager

By: 
Rhett Bennett
Authorized Person

"LESSEE"

STATE OF Alabama)
County of Jefferson) ss.

I, Ramonita Davidson, a notary public in and for said County and said state, hereby certify that Rhett Bennett, whose name as Authorized Person of PCI, LLC, an Alabama limited liability company, the manager of Milo's Holdings, LLC, a Delaware limited liability company, the sole member of Milo's Restaurant Holdings, LLC, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of the limited liability company.


Notary Public

My Commission Expires:

1/18/2016


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ALLIANCE BANK OF ARIZONA, a division of
Western Alliance Bank, an Arizona banking
corporation

By: Ericka LeMaster
Ericka LeMaster
Senior Vice President

"LENDER"

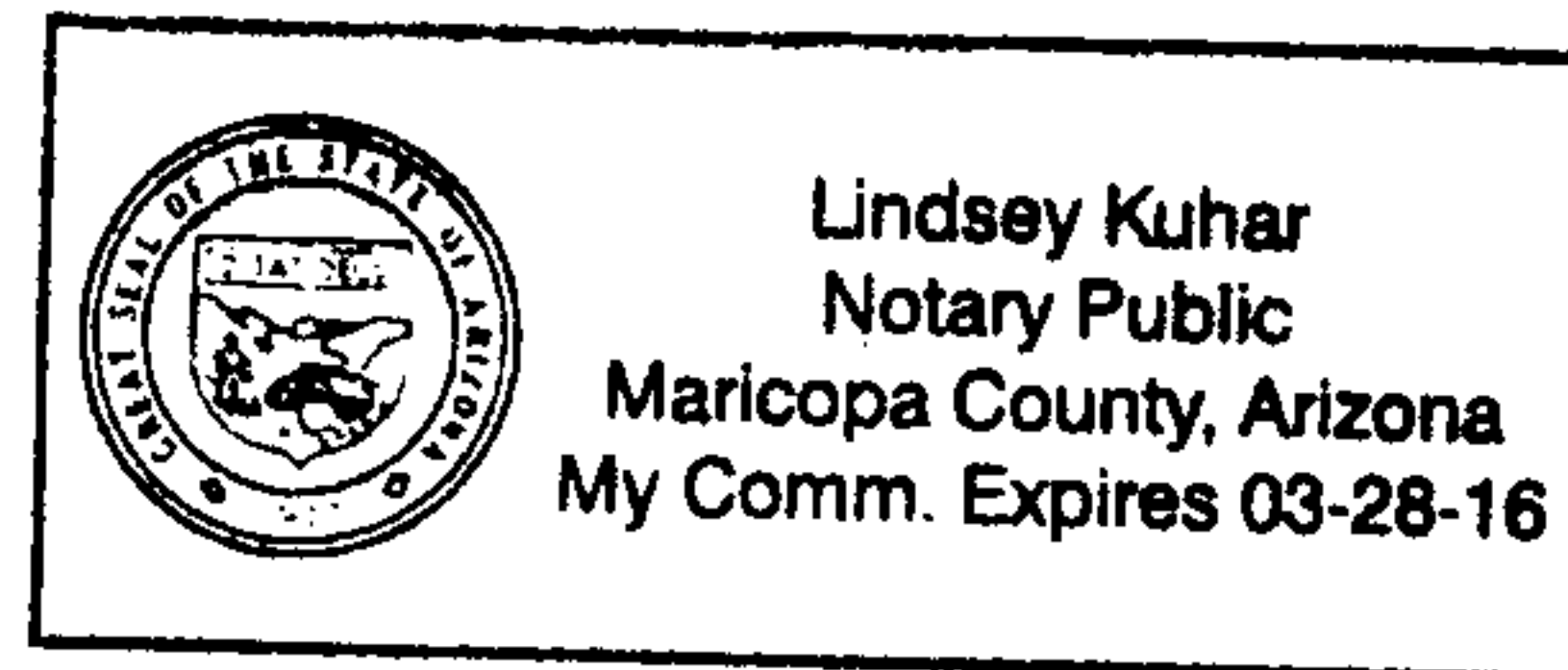
STATE OF ARIZONA

)

) ss:

COUNTY OF MARICOPA

)



I, Lindsey Kuhar, a notary public in and for said County and said state, hereby
certify that Ericka LeMaster, whose name as Senior Vice President of Alliance Bank of Arizona,
a division of Western Alliance Bank, an Arizona 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 the instrument, he, as such officer and with full authority, executed the same
voluntarily for and as the act of the corporation.

Lindsey Kuhar
Notary Public

My Commission Expires:

3/28/16

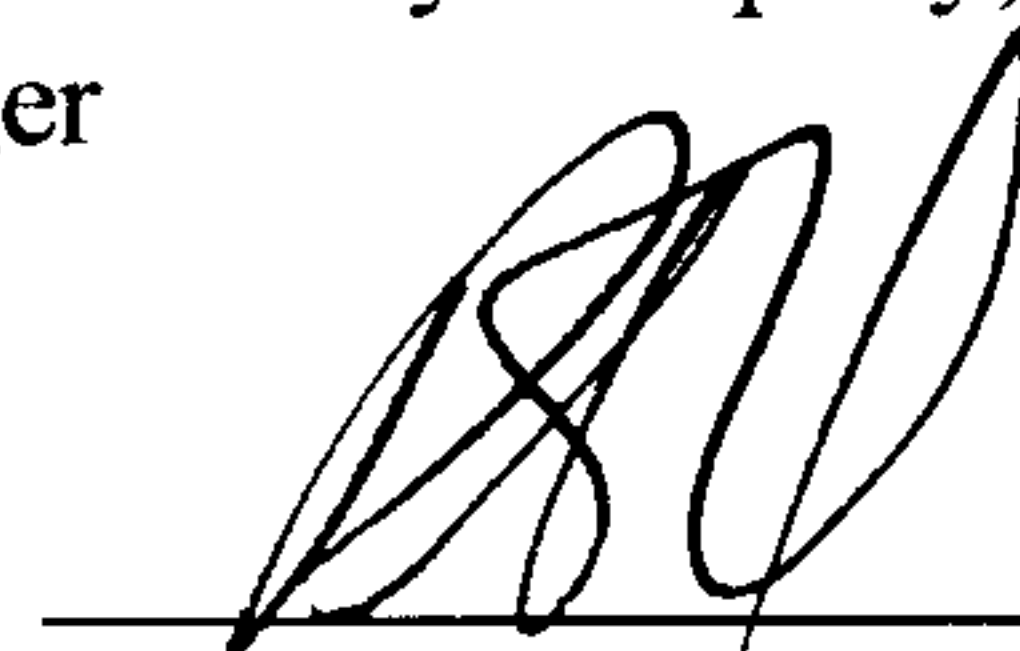
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Acknowledged and agreed to by Borrower, intending to be legally bound, as of the date first written above:

SPIRIT SPE PORTFOLIO 2012-5, LLC, a
Delaware limited liability company

By: SPIRIT SPE MANAGER, LLC, a Delaware
limited liability company, its non-member
manager

By:



Peter M. Mavoides
President, Chief Operating Officer
and Assistant Secretary

"BORROWER"

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

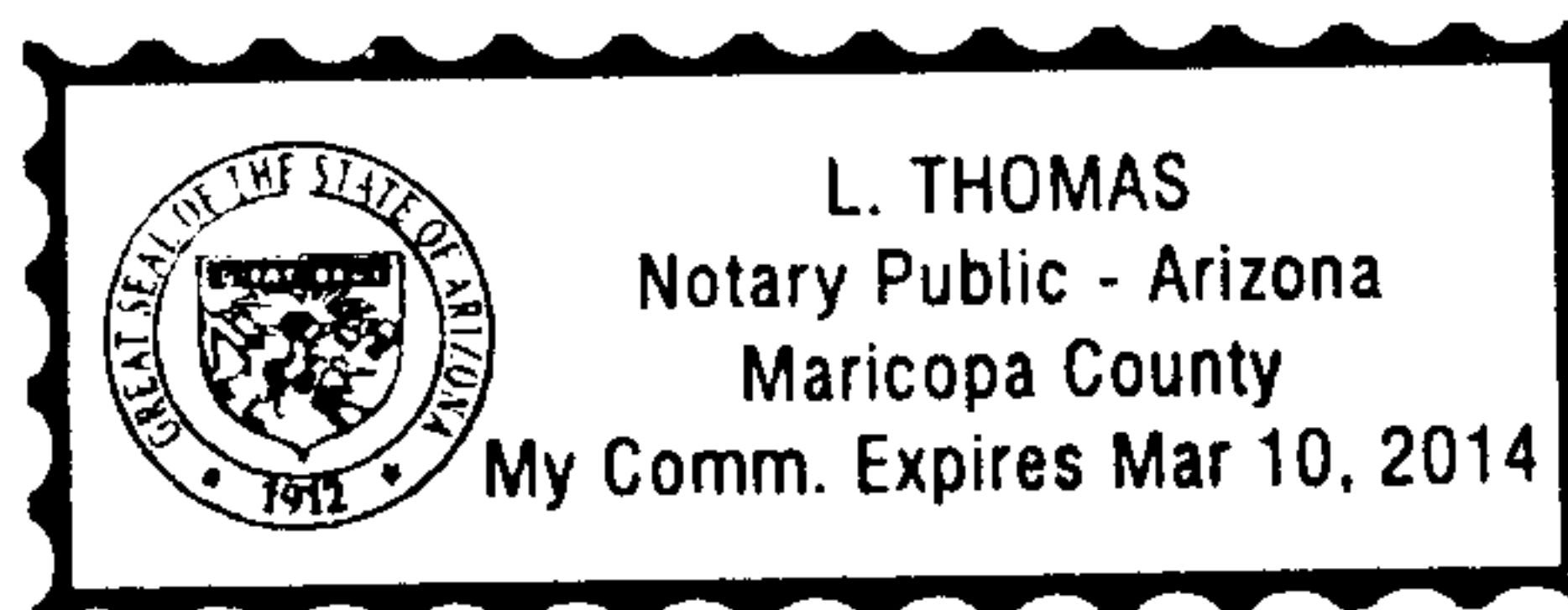
I, L. THOMAS, a notary public in and for said County and said state, hereby certify that Peter M. Mavoides, whose name as President, Chief Operating Officer and Assistant Secretary of Spirit SPE Manager, LLC, a Delaware limited liability company, the non-member manager of Spirit SPE Portfolio 2012-5, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of the limited liability company.



Notary Public

My Commission Expires:

3/10/14



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EXHIBIT A

Legal Description

A parcel of land situated in the Northeast ¼ of Section 36, Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows: Commence at the Northeast corner of said Section 36; thence run South along the East line of said Section 36, a distance of 266.80 feet; thence turn 117 degrees 40 minutes 00 seconds right and run Northwesterly 165.21 feet to a point on the Westerly right of way line of U.S. Highway 31; thence turn 110 degrees 54 minutes 05 seconds left to the tangent of a curve to the left, said curve having a radius of 1752.68 feet and run along the arc of said curve and said road right of way, 86.93 feet to a point; thence turn 90 degrees 00 minutes 00 seconds left from the tangent to said curve at said point and run Easterly along said road right of way 15.00 feet; thence turn 90 degrees 00 minutes 00 seconds right to the tangent of a curve to the left, said curve having a radius of 1737.68 feet and run along the arc of said curve and said road right of way, 189.15 feet to the point of beginning; thence continue along the last described course and along said road right of way, 113.00 feet to a point; thence turn 82 degrees 08 minutes 35 seconds right from the tangent to said curve at said point and run Southwesterly 211.53 feet; thence turn 90 degrees 00 minutes 00 seconds right and run Northwesterly, 177.28 feet; thence turn 105 degrees 57 minutes 15 seconds right and run 239.84 feet to the point of beginning.

Now Known as: Lot 2, according to Dinsmore Resurvey, as recorded in Map Book 26, Page 94, in the Probate Office of Shelby County, Alabama.

Together with rights obtained that constitute an interest in real estate under that certain Declaration of Easements and Restrictions and Joint Maintenance Agreement by J. Wilson Dinsmore, dated May 21, 1998, recorded in Instrument # 1998-20066.

Together with rights obtained that constitute an interest in real estate, under those Declaration of Easements for Joint Access, Drainage Pipe, Sewer Pipe and Construction/Maintenance/Repair of Retaining Wall by J. Wilson Dinsmore, R-K-M Bama, Inc., and North Pelham, LLC, recorded in Instrument # 1997-27813 and Instrument # 1997-29355.

Parcel ID: 11-7-36-1-001-015.004

Property Address: 2020 Pelham Pkwy, Pelham, AL


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