

This Instrument Prepared by:

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Return To: Smith, Anderson, Blount, Dorsett,  
Mitchell & Jemigan L.L.P.  
(FCB), P.O. Box 2611,  
Raleigh, NC 27602

### NON-DISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of April, 2005, by and among COLONIAL BANK, having an address of 305 Church Street, Huntsville, Alabama 35801 (hereinafter called the "Lender"), THE PANTRY, INC., a Delaware corporation, having an address of 8930 Western Way, Suite 4, Building 5, Jacksonville, Florida 32256 (hereinafter called the "Tenant"), and LARRY C. MARTIN and JARRETT E. SHADDAY, having an address of 205 East First Avenue, Rome, Georgia 30161 (hereinafter collectively called the "Landlord").

### WITNESSETH

WHEREAS, Landlord has previously entered into and delivered that certain Mortgage from Landlord in favor of Lender dated April 1, 2003, which Mortgage has been recorded in the Office of the Probate Judge of Shelby County, Alabama, in Book 20030423000250240, said Mortgage having been transferred and assigned to Colonial Bank as recorded in Instrument No. 2030423000259249 (hereinafter referred to as "Deed"), conveying the property described therein, which is located in Shelby County, Alabama, and commonly known as 715 Cahaba Valley Road, Pelham, Alabama 35124, to secure the payment of the indebtedness described in the Deed;

WHEREAS, Landlord and Tenant made and entered into that certain Lease, dated the 21<sup>st</sup> day of April, 2005, with respect to certain premises therein described, known as 715 Cahaba Valley Road, Pelham, Alabama 35124 (said Lease being hereinafter called the "Lease"; said premises being hereinafter called the "Leased Premises"); and

WHEREAS, the parties hereto desire to enter into this Non-Disturbance, Attornment and Subordination Agreement;

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Loan # 8041685515



NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, Lender, Tenant and Landlord hereby covenant and agree as follows:

1. *Non-Disturbance.* So long as no default exists, nor any event has occurred which has continued to exist for such period of time (after notice, if any, required by the Lease) as would entitle the lessor under the Lease to terminate the Lease or would cause, without any further action on the part of Landlord, the termination of the Lease or would entitle such lessor to dispossess the lessee thereunder, the Lease shall not be terminated, nor shall such lessee's use, possession or enjoyment of the Leased Premises be interfered with nor shall the leasehold estate granted by the Lease be affected in any other manner, in any exercise of the power of sale contained in the Deed, or by any foreclosure or any action or proceeding instituted under or in connection with the Deed or in case the Lender takes possession of the property described in the Deed pursuant to any provisions thereof, unless the lessor under the Lease would have had such right if the Deed had not been made, except that the person or entity acquiring the interest of the lessor under the Lease as a result of any such action or proceeding, and the successors and assigns thereof (hereinafter called the "Purchaser") shall not be (a) liable for any act or omission of any prior lessor under the Lease; or (b) subject to any offsets or defenses which the lessee under the Lease might have against any prior lessor under the Lease; or (c) bound by any base rent, percentage rent or any other payments which the lessee under the Lease might have paid for more than the current month to any prior lessor under the Lease; or (d) bound by any amendment or modification of the Lease made without Lender's prior written consent; or (e) bound by any consent by any lessor under the Lease to any assignment of the lessee's interest in the Lease made without also obtaining Lender's prior written consent.

2. *Attornment.* If the interests of the lessor under the Lease shall be transferred by reason of the exercise of the power of sale contained in the Deed, or by any foreclosure or other proceeding for enforcement of the Deed, the lessee thereunder shall be bound to the Purchaser under all of the terms, covenants and conditions of the Lease for the balance of the term thereof 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, and Tenant, as lessee under the Lease, does hereby attorn to the Purchaser, including the Lender if it be the Purchaser, as its lessor under the Lease. Said attornment shall be effective and self-operative without the execution of any further instruments upon the succession by Purchaser to the interest of the lessor under the Lease. The respective rights and obligations of Purchaser and of the lessee under the Lease upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth in the Lease except as otherwise expressly provided herein.

3. *Subordination.* Tenant hereby subordinates all of its rights and interests in the Lease to that of the Lender under the Deed, and Tenant further agrees that the Lease now is and shall at all times continue to be subject and subordinate in each and every respect to the Deed and to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Deed.

4. *Notice of Default by Lessor.* Tenant, as lessee under the Lease, hereby covenants and



agrees to give Lender written notice by certified mail return receipt requested properly specifying wherein the lessor under the Lease has failed to perform any of the covenants or obligations of the lessor under the Lease, simultaneously with the giving of any notice of such default to the lessor under the provisions of the Lease. Tenant agrees that Lender shall have the right, but not the obligation, within twenty (20) days after receipt by Lender of such notice (or within such additional time as is reasonably required to correct any such default) to correct or remedy, or cause to be corrected or remedied, each such default before the lessee under the Lease may take any action under the Lease by reason of such default. Such notices to Lender shall be delivered in duplicate to: Colonial Bank, 305 Church Street, Huntsville, Alabama 35801, or to such other address as the Lender shall have designated to Tenant by giving written notice to Tenant at 8930 Western Way, Suite 4, Building 5, Jacksonville, Florida 32256, or to such other address as may be designated by written notice from Tenant to Lender.

5. *No Further Subordination.* Landlord and Tenant covenant and agree with Lender that there shall be no further subordination of the interest of lessee under the Lease to any Lender or to any other party without first obtaining the prior written consent of Lender. Any attempt to effect a further subordination of lessee's interest under the Lease without first obtaining the prior written consent of Lender shall be null and void.


6. *As to Landlord and Tenant.* As between Landlord and Tenant, Landlord and Tenant covenant and agree that nothing herein contained nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Lease.

7. *As to Landlord and Lender.* As between Landlord and Lender, Landlord and Tenant covenant and agree that nothing herein contained nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Deed.

8. *Title of Paragraphs.* The titles of the paragraphs of this agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this agreement.

9. *Governing Law.* This agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

10. *Provisions Binding.* The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Lender, Tenant and Landlord. The reference contained to successors and assigns of Tenant is not intended to constitute and does not constitute a consent by Landlord or Lender to an assignment by Tenant, but has reference only to those instances in which the lessor under the Lease and Lender shall have given written consent to a particular assignment by Tenant thereunder.

  
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Shelby Cnty Judge of Probate, AL  
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IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals as of the day, month and year first above written.

LENDER  
COLONIAL BANK

BY: Jack E Manning  
Title: Sr. V.P.

BY: \_\_\_\_\_  
Title: \_\_\_\_\_

[BANK SEAL]

STATE OF Alabama, Madison COUNTY.

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jack E Manning, whose name(s) as Sr. Vice President of Colonial Bank, a \_\_\_\_\_ is/are signed to the foregoing conveyance, and who is/are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she/they, as such officer(s) and with full authority, executed the same voluntarily for and as the act of said corporation or other entity on the day the same bears date.

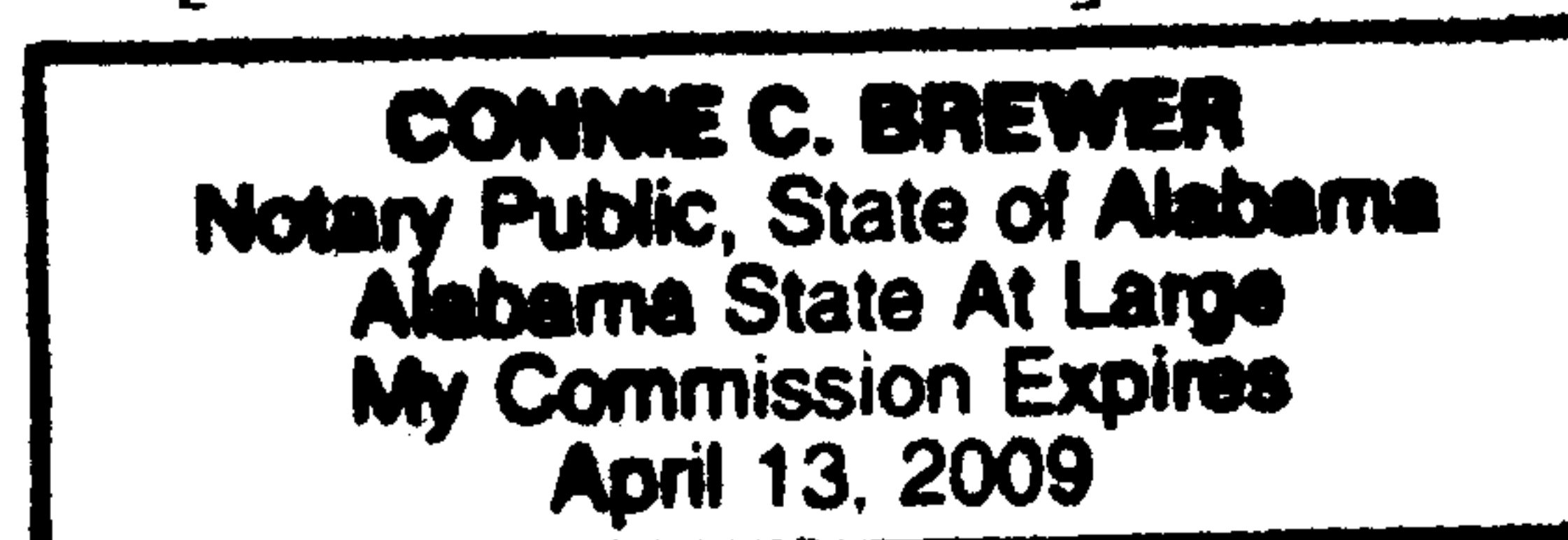
Given under my hand and official seal this 21 day of April, 2005.

Connie Brewer

NOTARY PUBLIC

Alabama COUNTY, Madison  
My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]



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LANDLORD

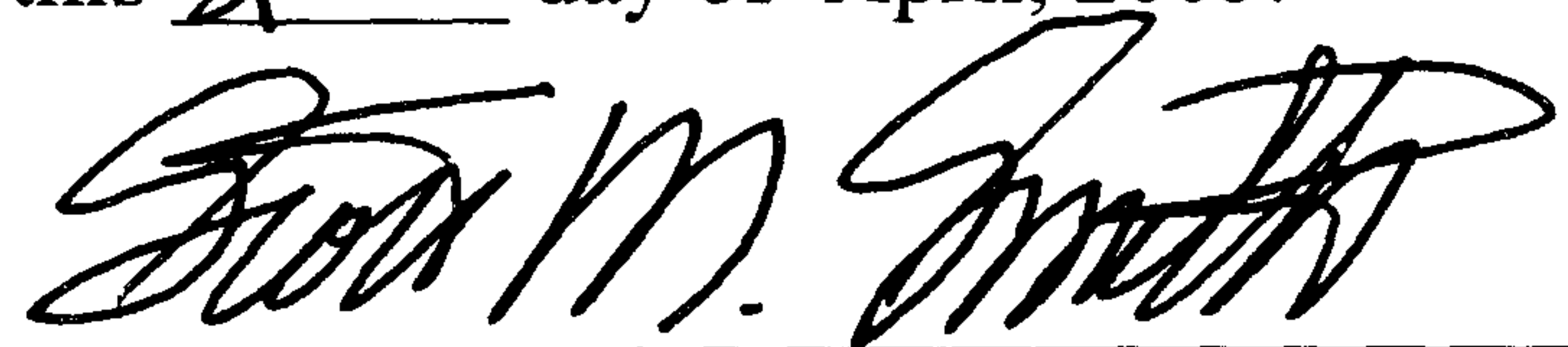
  
JARRETT E. SHADDAY

  
LARRY C. MARTIN


STATE OF GEORGIA, FLOYD COUNTY.

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that JARRETT E. SHADDAY and LARRY C. MARTIN, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 21<sup>st</sup> day of April, 2005.

  
NOTARY PUBLIC  
FLOYD COUNTY, GEORGIA  
*COMM Exp. 6-16-2006*

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TENANT  
THE PANTRY, INC.

BY: \_\_\_\_\_

STEVEN J. FERREIRA,  
Senior Vice President, Administration

[CORPORATE SEAL]

STATE OF NORTH CAROLINA, Orange COUNTY.

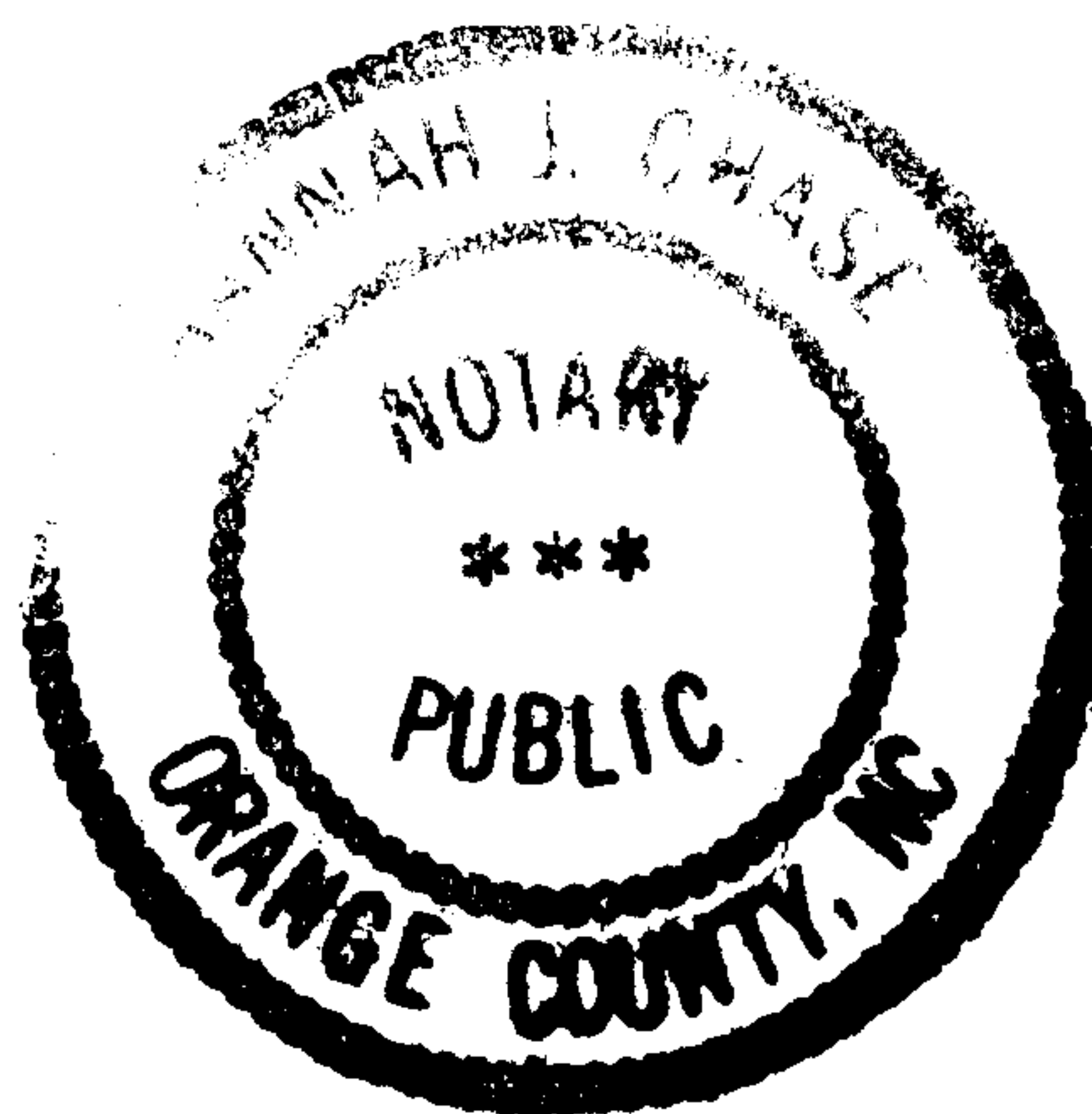
I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Steven J. Ferreira**, who acknowledged the he is the **Senior Vice President, Administration of The Pantry, Inc.**, a Delaware corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.


Given under my hand and official seal this 21<sup>st</sup> day of April, 2005.

Thomas J. Chase  
NOTARY PUBLIC

Orange COUNTY, NORTH CAROLINA

My Commission Expires: 12/25/2007



  
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