

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

This Subordination, Non-disturbance and Attornment Agreement (this "Agreement") is made and entered into as of the 2nd day of May, 2006, by and among La Jolla Bank, a banking association, whose mailing address is 390 West Valley Parkway, Escondido, California (the "Lender"); Captain D's, LLC, a Delaware limited liability company, whose address is 1717 Elm Hill Pike, Suite A-1, Nashville, Tennessee 37210 (the "Tenant"); and Rob Wolf and Jennifer L. Wolf, Husband and Wife, as Joint Tenants as to an undivided 68.39% interest, and Jerry Ono, as Trustee of the Jerry Ono 2004 Living Trust dated March 3, 2004, as to an undivided 31.61% interest, all as tenants in common, whose address is 850 Montgomery Street, Suite 100, San Francisco, California 94133 (the "Landlord").

WITNESSETH:

Whereas, the Lender is the holder of a mortgage loan (the "Loan") to the Landlord, secured by, inter alia, a mortgage and/or security agreement (the "Mortgage"), encumbering the Landlord's property located at 101 Supercenter Drive, Calera, Shelby County, Alabama (the "Mortgaged Premises"); and

Whereas, the Landlord has leased all or some portion of the Mortgaged Premises (the "Premises") to the Tenant by Lease Agreement dated as of August 15, 2005 (the "Lease"); and

Whereas, the Lender, in connection with the Loan, requires that the subordination of the Lease and all of the rights of the Tenant under the Lease to the Mortgage and all of the rights of the Lender under the Mortgage, subject to the terms of this Agreement; and

Whereas, the Tenant desires to receive certain assurances that regarding its possession of the Premises in that event, and the Lender is willing to grant certain assurances upon the terms and conditions set forth in this Agreement;

Now, therefore, the parties, in consideration of the mutual covenants in this Agreement, hereby agree as follows:

1. Subject to the terms of this Agreement, the Tenant hereby agrees to the subordination the Lease and all of the rights of Tenant under the Lease to the Mortgage and all of the rights of the Lender under the Mortgage. Notwithstanding that subordination, the Lender hereby agrees that, as long as no default by the Tenant exists under the Lease, (a) the Lease and the leasehold estate created by the Lease shall not terminate and the rights of the Tenant under the Lease shall remain undisturbed, unaffected and unimpaired by the foreclosure of the Mortgage, the delivery of a deed in lieu of foreclosure of the Mortgage, or the exercise of other rights and remedies that the Mortgage provides; (b) the Tenant shall not appear as a named or joined party defendant or otherwise in any proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage; (c) all condemnation awards and payments and all proceeds of

Return Recorded Documents To:

LandAmerica National Commercial Services
450 S. Orange Avenue, Suite 170
Orlando, FL 32801
Attention: **Christi Pawlak**

05-2084
PFL

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 with the Mortgage shall subject any of the Tenant's property to the lien of the Mortgage. If the Lender succeeds to the interest of the Landlord under the Lease and/or title to the Premises, the Tenant shall attorn to and recognize the Lender (as mortgagee-in-possession or otherwise), or the purchaser at a foreclosure sale, as the Tenant's landlord for the balance of the term of the Lease, in accordance with the terms and provisions of the Lease, but subject, nevertheless, to the provisions of this Agreement. Accordingly, from and after that event, the Lender and the Tenant shall have the same remedies against one another for the breach of an agreement contained in the Lease as the Tenant and the Landlord had before the Lender (or other purchaser) succeeded to the interest of the Landlord; provided, however, that the Lender shall not have any personal liability under the Lease and the Tenant shall look solely to the Lender's interest in the Premises with regard to the enforcement of any remedies the Tenant may have.

2. As long as the 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 continue undisturbed by the Lender.

3. The Lender or any purchaser at a foreclosure sale shall not become (a) liable for any act or omission of the Landlord under the Lease, provided that the Tenant shall have the right to exercise its remedies under the Lease for any continuing uncured defaults; (b) subject to any offsets or defenses which the Tenant may have at any time against the Landlord, except as otherwise set forth in the Lease; (c) bound by any rent which the Tenant may have paid to the Landlord for more than one month in advance; (d) liable for any security deposit not delivered to the Lender; and (e) bound by any amendment or modification of the Lease made without the Lender's consent.

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

5. The Lender acknowledges that the Landlord has requested this Agreement.

6. No amendments to this Agreement shall become effective or binding on the parties, unless agreed to in writing by all of the parties. This Agreement shall bind and inure to the benefit of the parties and their respective successors, legal representatives, heirs and permitted assigns.

7. Notwithstanding the place where the parties execute this Agreement, the internal laws of Tennessee shall govern the construction of the terms and the application of the provisions of this Agreement.

8. The parties may execute this Agreement in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

Executed and delivered as of the day and year first set forth above.

Lender:

La Jolla Bank

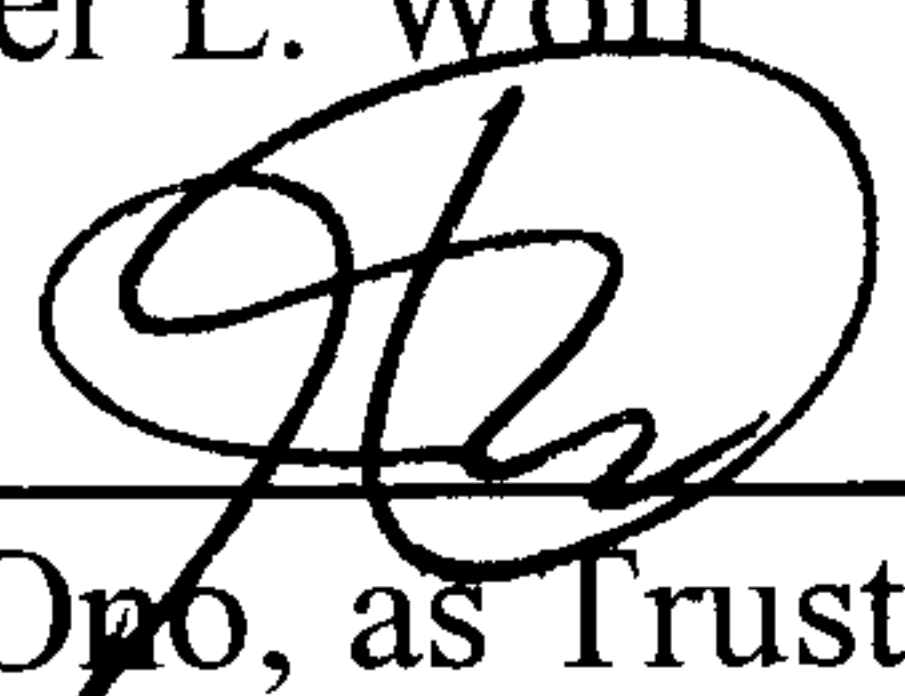
By: 

Its: Asst. Vice President

Landlord:


Rob Wolf


Jennifer L. Wolf


Jerry Ono, as Trustee of the Jerry Ono 2004
Living Trust dated March 3, 2004

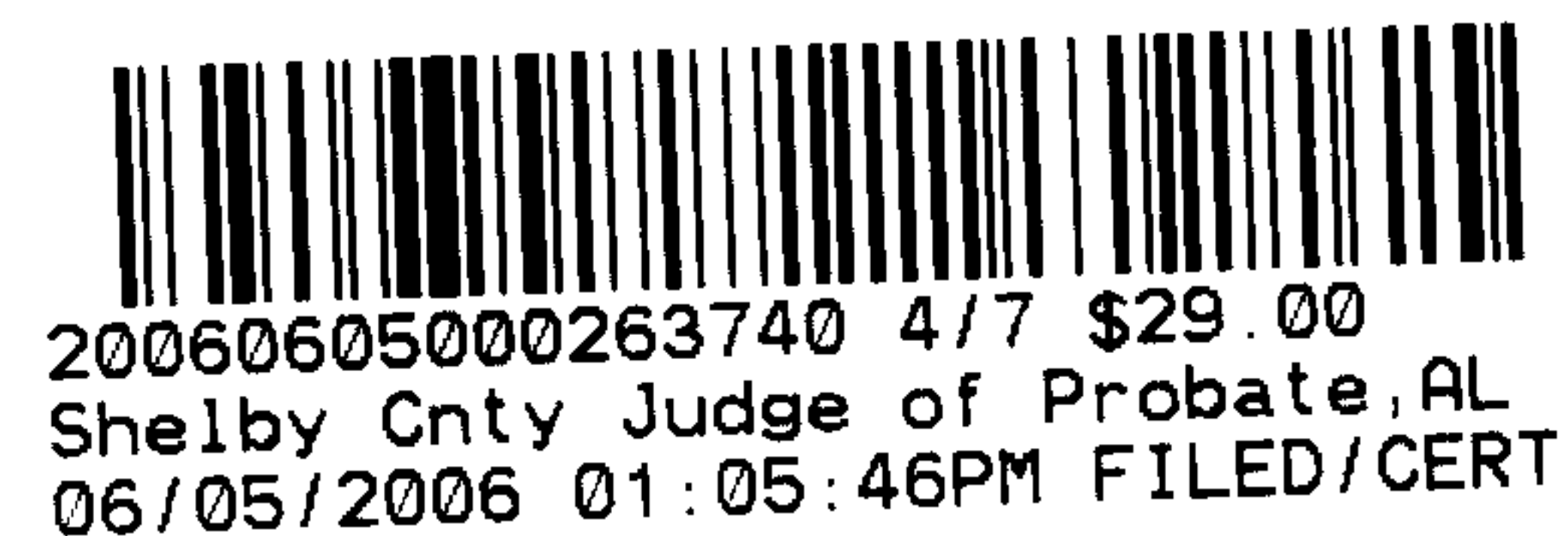
Tenant:

Captain D's, LLC

By: 

Michael T. Folks, Vice President

State of California)
) ss:
County of San Francisco



I, the undersigned, a Notary Public in and for the above-referenced state and county, hereby certify that _____, who has signed his name as _____ of LaJolla Bank on 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 executed the same voluntarily on the day set forth on the instrument.

Given under my hand and seal on this ____ day of _____, 2006.

Notary Public

My Commission Expires:

State of California)
) ss:
County of San Francisco

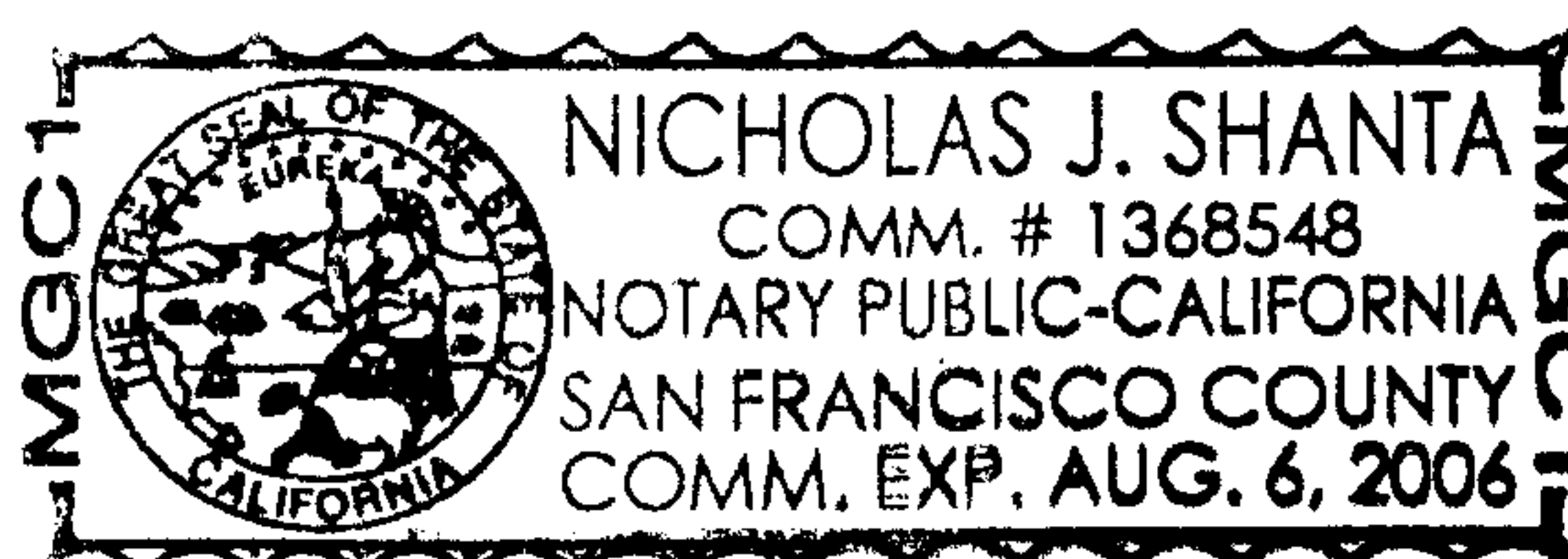
I, the undersigned, a Notary Public in and for the above-referenced state and county, hereby certify that Rob Wolf, who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he executed the same voluntarily on the day set forth on the instrument.

Given under my hand and seal on this 19th day of April, 2006.

Nicholas J. Shanta
Notary Public

My Commission Expires:

8-6-06



State of California)
) ss:
County of San Francisco

20060605000263740 5/7 \$29.00
Shelby Cnty Judge of Probate, AL
06/05/2006 01:05:46PM FILED/CERT

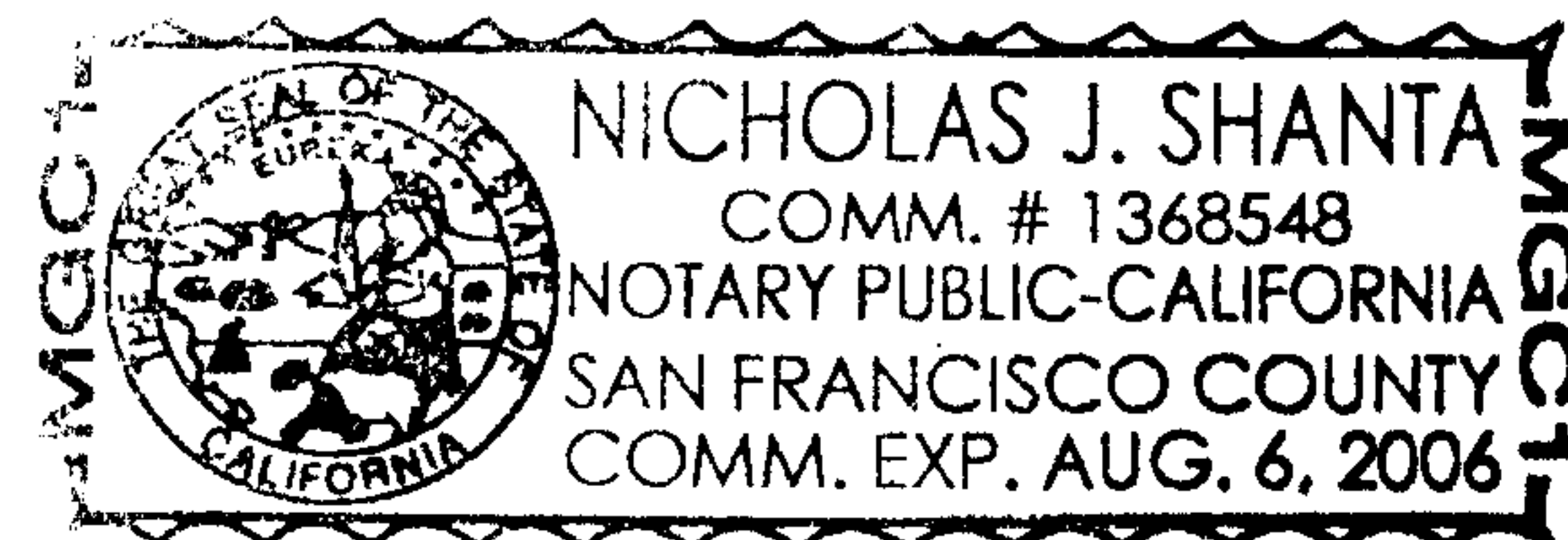
I, the undersigned, a Notary Public in and for the above-referenced state and county, hereby certify that Jennifer L. Wolf, who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, she executed the same voluntarily on the day set forth on the instrument.

Given under my hand and seal on this 19th day of April, 2006.

Nicholas J. Shanta
Notary Public

My Commission Expires:

8-6-06



State of California)
) ss:
County of San Francisco

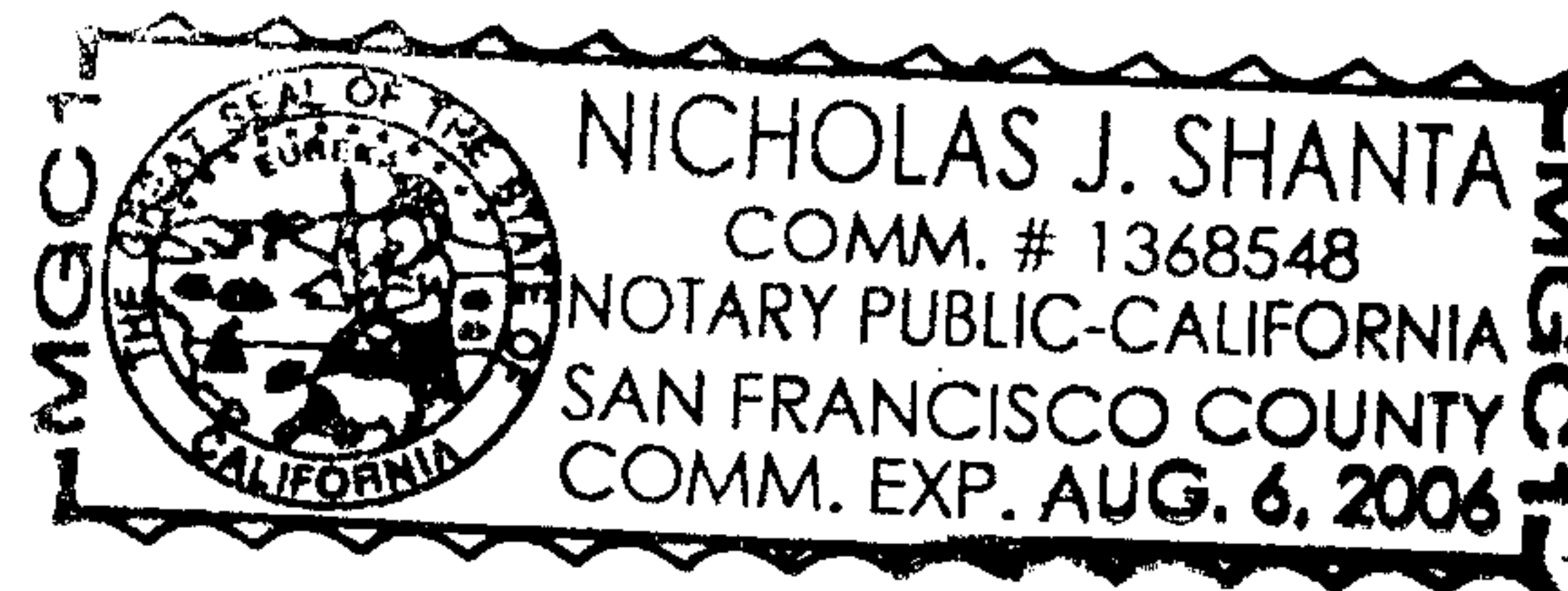
I, the undersigned, a Notary Public in and for the above-referenced state and county, hereby certify that Jerry Ono, as Trustee of the Jerry Ono 2004 Living Trust dated March 3, 2004, who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he executed the same voluntarily on the day set forth on the instrument.

Given under my hand and seal on this 12th day of April, 2006.


Nicholas J. Shanta
Notary Public

My Commission Expires:

8-6-06



State of Tennessee)
) ss:
County of Davidson)


20060605000263740 6/7 \$29.00
Shelby Cnty Judge of Probate, AL
06/05/2006 01:05:46PM FILED/CERT

I, the undersigned, a Notary Public in and for the above-referenced state and county, hereby certify that Michael T. Folks, who has signed his name as Vice President of Captain D's, LLC on 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 executed the same voluntarily on the day set forth on the instrument.

Given under my hand and seal on this 27th day of March, 2006.

Wanda G. Parsons
Notary Public

My Commission Expires:

5/23/09



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

20060605000263740 7/7 \$29.00
Shelby Cnty Judge of Probate, AL
06/05/2006 01:05:46PM FILED/CERT

State of California

County of

San Diego

ss.

On

4/3/06

Date

before me,

Stephanie Roles, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally

appeared

RW Wallace

Name(s) of Signer(s)



☒ personally known to me

☐ 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 he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: SDA

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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OF SIGNER
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