

PREPARED BY **Regan Ransom**

WHEN RECORDED RETURN TO:

**STANCORP MORTGAGE INVESTORS, LLC**  
19225 NW TANASBOURNE DRIVE  
HILLSBORO, OR 97124

ATTN: **COMPLIANCE, T3A**

SIC Loan No. **A6100720/Store #256**

**SUBORDINATION, NONDISTURBANCE, AND**  
**ATTORNMENMENT AGREEMENT**

**THIS SUBORDINATION, ATTORNMENMENT, AND NONDISTURBANCE AGREEMENT (this "Agreement") made this October 30, 2006, is by The Pantry Inc., a Delaware corporation ("Lessee").**

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTERESTS IN THE PROPERTY BECOMING SUBJECT TO AND OF A LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT is dated as of **October 30, 2006**.

**Recitals**

A. The Lessor, **Larry C. Martin** and Lessee are parties to a lease dated **April 21, 2005** ("the Lease"), which lease covers part or all of the real property (the "Property") described as follows:

**See Exhibit "A" attached hereto and by this reference made a part hereof for legal description.**

B. **Standard Insurance Company, an Oregon corporation** ("Lender") has agreed to make or purchase a loan to Lessor, evidenced by a promissory note, dated **October 30, 2006**, and secured by a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (the "Mortgage") of even date on the Property and by such other security instruments as Lender may require (the "Security Instruments").

C. As a condition precedent to Lender's disbursement of loan proceeds, Lender has required that Lessee subordinate the Lease and Lessee's interest in the Property in all respects to the lien and -terms of the Mortgage, which will be recorded in the county in which the Property is



located, and to the lien and terms of the Security Instruments, if any, securing Lender's other interests in the Property.

D. Lender is disbursing the loan proceeds in reliance upon the agreements contained in this instrument.

E. In return for the subordination evidenced hereby, Lender **agrees not to disturb** Lessee's possession of the Property under the Lease.

### **Agreement**

NOW, THEREFORE, in order to induce Lender to make or purchase the loan to Lessor, and in consideration of the promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Lessee, it is hereby agreed as follows:

1. Subordination. **Subject to the other terms of the Agreement**, the Lease and all terms thereof shall be and are completely and unconditionally subject and subordinate to the lien and terms of the Mortgage and to the lien and terms of the Security Instruments, if any, and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof.

2. Tenant Not To Be Disturbed. So long as Lessee is not in default (beyond any **grace period or** period given Lessee to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms, covenants or conditions of the Lease on Lessee's part to be performed, Lessee's possession of the Property under the Lease and Lessee's rights and privileges under the Lease, including but no limited to any rights of first refusal and/or purchase options contained therein, or any extensions or renewals thereof which may be affected in accordance with any renewal rights therefor in the Lease, shall not be diminished or interfered with by Lender, and Lessee's occupancy of the Property shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof. So long as Lessee is not in default (beyond any grace period or period given Lessee to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms, covenants or conditions of the Lease on Lessee's part to be performed, Lender acknowledges that Lessee does not need Lender's consent to exercise its right of first refusal under the terms of the Lease.

3. Lessee Not To Be Joined In Foreclosure. So long as Lessee is not in default (beyond any **grace period or any** period given Lessee to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Lessee's part to be performed, Lender will not join Lessee as a defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.

4. Lessee To Attorn To Lender. If the interests of Lessor shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by Lender in lieu of or



pursuant to a foreclosure, or by any other manner, and Lender succeeds to the interest of the Lessor under the Lease, Lessee shall be bound to Lender 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 Lender were the Lessor under the Lease, and Lessee does hereby attorn to Lender as its Lessor, said attornment to be effective upon Lender succeeding to the interest of the Lessor under the Lease without the execution of any further instrument. The respective rights and obligations of Lessee and Lender 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 therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth herein. **Lessor agrees that Lessee shall have no liability to Lessor for payments of rent and other amounts owed by Lessee to Lessor under the Lease paid to Lender pursuant to this paragraph.** Upon Lender's written request and without regard to contrary instructions from Lessor, Lessee agrees that it will make the payments to be made by Lessee under the lease directly to Lender. Prior to the time that Lender or any other successor landlord succeeds to the interest of Lessor in the Property, receipt of such payments by Lender shall not relieve Lessor of its obligations under the Lease nor operate to make Lender responsible for the performance thereof, and Lessee shall continue to look solely to Lessor for performance of such obligations, Lessor consents to the provisions of this Section 5.

5. Exercise of Rights Under Loan Documents Not Lease Default. The undersigned represents to Lender that the exercise by Lender of its rights and remedies under the Mortgage, under the Security Instruments or under the note secured thereby, including without limitation its rights of foreclosure, shall not constitute an event of default under the Lease.

6. Lender Not Bound By Certain Acts of Lessor. If Lender shall succeeds to the interests of Lessor under the Lease, Lender will not be (a) liable for any act or omission of any prior lessor (including Lessor), (b) subject to any offsets or defenses which Lessee might have against any prior lessor (including Lessor), (c) bound by any rent or additional rent which Lessee might have paid for more than the then current installment, or (d) bound by any Lease termination or cancellation or any material amendment or modification of the Lease made without its consent **pertaining to the rent, term, insurance, environmental, or assignment and subletting provisions of the Lease**, or (e) liable for any security or other deposits which were paid by Lessee, or any predecessor in interest to Lessee, to any Lessor, and which were not received by Lender. For purposes of this paragraph, the term "material" refers to changes that would increase Lessor's obligations under the Lease or decrease Lessee's obligation under the Lease, whether financial or otherwise.

7. Waiver. Without limiting the generality of the foregoing, Lessee waives presentment, demand, protest, and notice **with respect to the following** and agrees that Lender, without notice to or consent of Lessee, upon such terms as Lender may deem advisable, without releasing or discharging Lessee from this Subordination Agreement or affecting the lien or priority of the Mortgage, may:



(a) extend, in whole or in part, by renewal or otherwise, the time of payment or performance of any obligation secured by the Mortgage;

(b) release, surrender, exchange, or modify any obligation secured by the Mortgage, or any security for such obligation; and/or

(c) settle or compromise any claim with respect to any obligation secured by the Mortgage or any claim against any person who has given security for any such obligation.

8. Successors and Assigns. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their heirs, executors, administrators, representatives, successors and assigns, including without limitation each and every lessee and lessor under the Lease or any other person having an interest therein and shall inure to the benefit of Lender and its successors and assigns.

9. Choice of Law. The law of the state in which the Property is located shall govern the validity, interpretation, construction, and performance of this Agreement.

10. Captions and Headings. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

11. Notices. All notices required or permitted under this Agreement shall be in writing and shall be delivered by hand, or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

**If to Lender:**

**Standard Insurance Company**  
Attn: Mortgage Loan Servicing T3A  
19225 NW Tanasbourne Drive  
Hillsboro, OR 97124

**If to Lessee:**

**The Pantry, Inc.**  
Attn: Director of Real Estate  
1801 Douglas Drive (Zip 27330)  
Post Office Box 1410  
Raleigh, NC 27331-1410

Changes in the respective addresses to which such notices shall be directed may be made from time to time by either party by notice to the other party given at least ten (10) days before such change of address is to become effective. Notices given by mail in accordance with this provision shall be deemed to have been given three (3) business days after the date of deposit in the U.S. mail ; notices given by any other means shall be deemed to have been given when received.

12. Severability. 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 not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE UNDERSIGNED CONSULT WITH ITS ATTORNEYS WITH RESPECT THERETO.

LESSEE

The Pantry Inc.,  
a Delaware corporation

By: 

Its: Sr. Vice President

By: \_\_\_\_\_

Its: \_\_\_\_\_

LENDER

Standard Insurance Company,  
an Oregon corporation

By: 

Assistant Vice President

Attest By: 

Assistant Secretary

**ACKNOWLEDGMENTS MUST BE ATTACHED IN SIZE AND FORM  
AS REQUIRED BY LAW.**



12. Severability. 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 not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE UNDERSIGNED CONSULT WITH ITS ATTORNEYS WITH RESPECT THERETO.

LESSEE

The Pantry Inc.,  
a Delaware corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

LENDER

Standard Insurance Company,  
an Oregon corporation

By:  \_\_\_\_\_  
Assistant Vice President

Attest By:  \_\_\_\_\_  
Assistant Secretary

**ACKNOWLEDGMENTS MUST BE ATTACHED IN SIZE AND FORM  
AS REQUIRED BY LAW.**

Lee County, State of North Carolina

I certify that the following person(s) personally appeared before me this day, and

✓ I have personal knowledge of the identity of the principal(s)  
I have seen satisfactory evidence of the principal's identity, by a current state or  
federal identification with the principal's photograph in the form of a \_\_\_\_\_

\_\_\_\_\_ A credible witness has sworn to the identity of the principal(s);

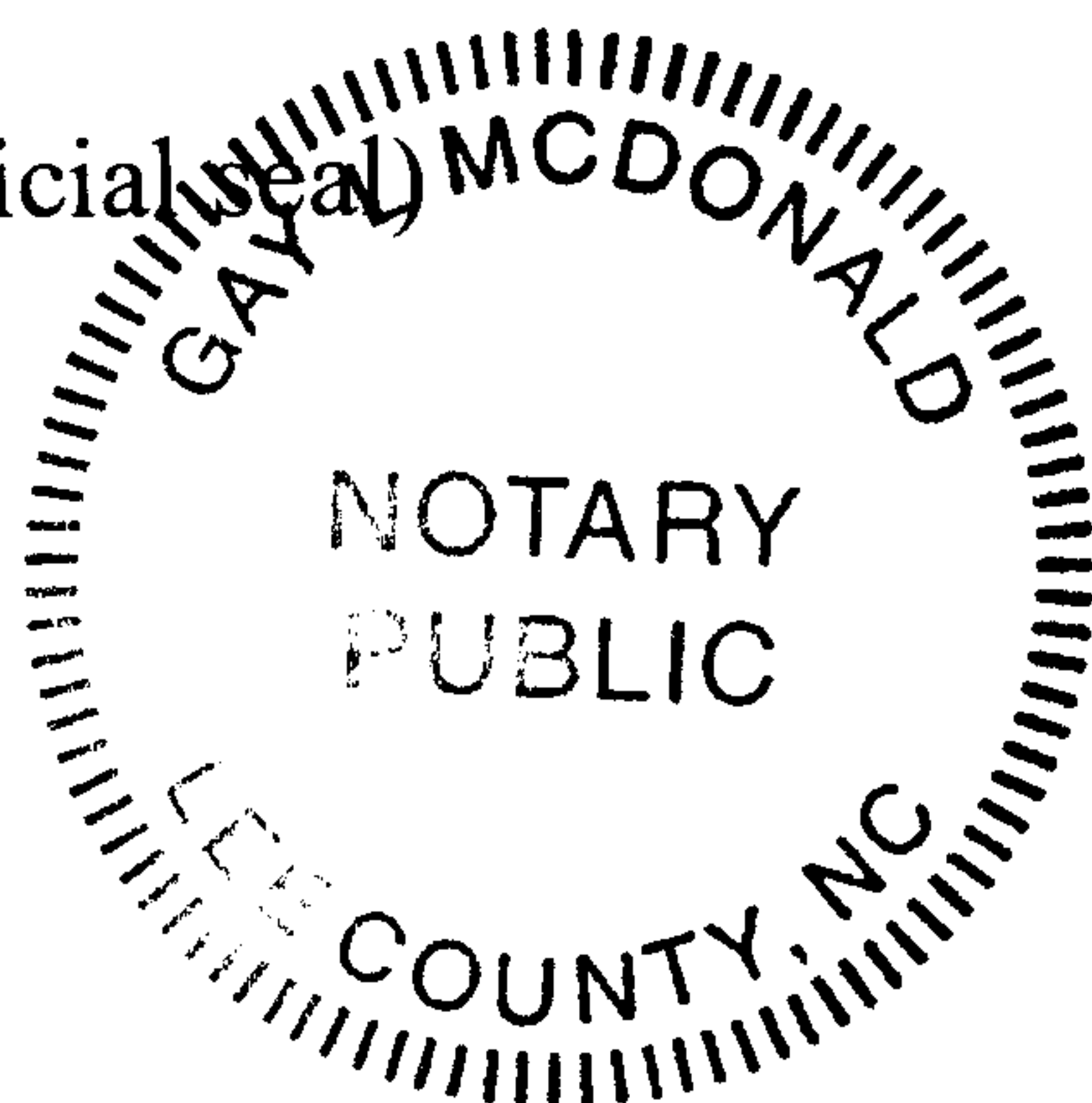
each acknowledging to me that he or she voluntarily signed the foregoing document for the  
purpose stated therein and in the capacity indicated:

<u>Name</u>	<u>Capacity</u>
Steven J. Ferreira	Senior Vice President

Date: November 17, 2006

Gay L McDonald  
Gay L McDonald, Notary Public  
(print name)

(official seal)



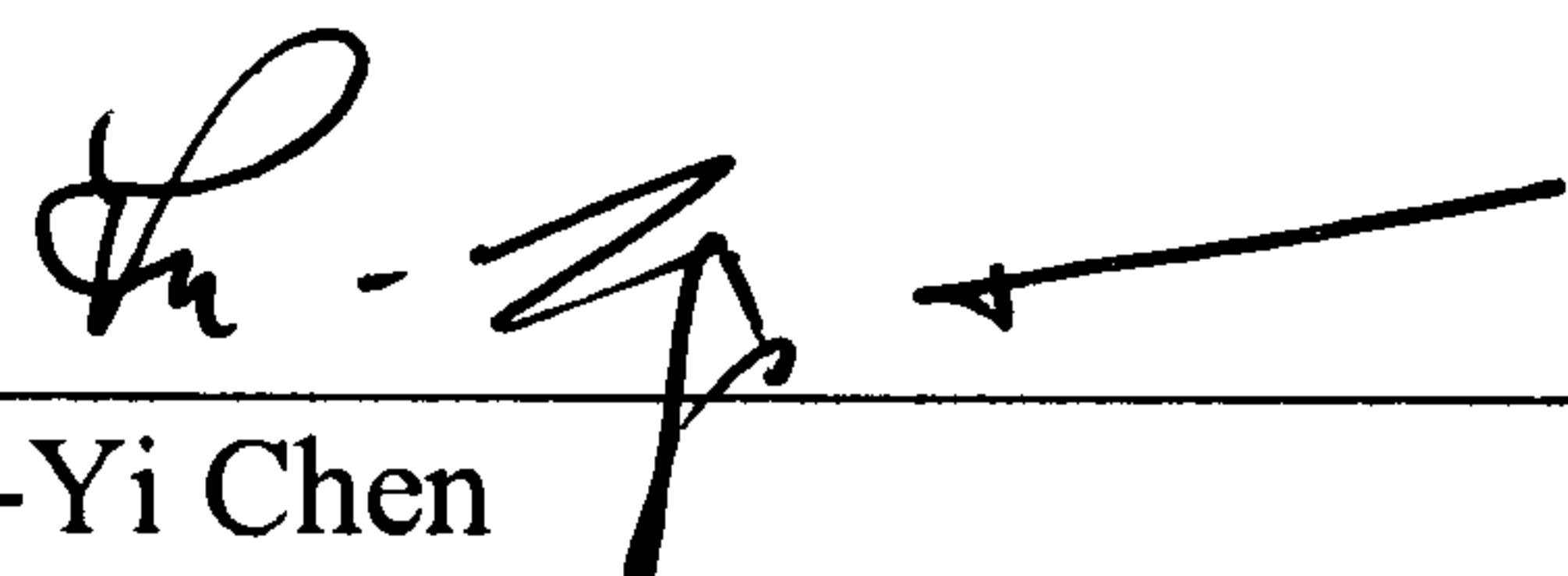
My commission expires: 6/5/09

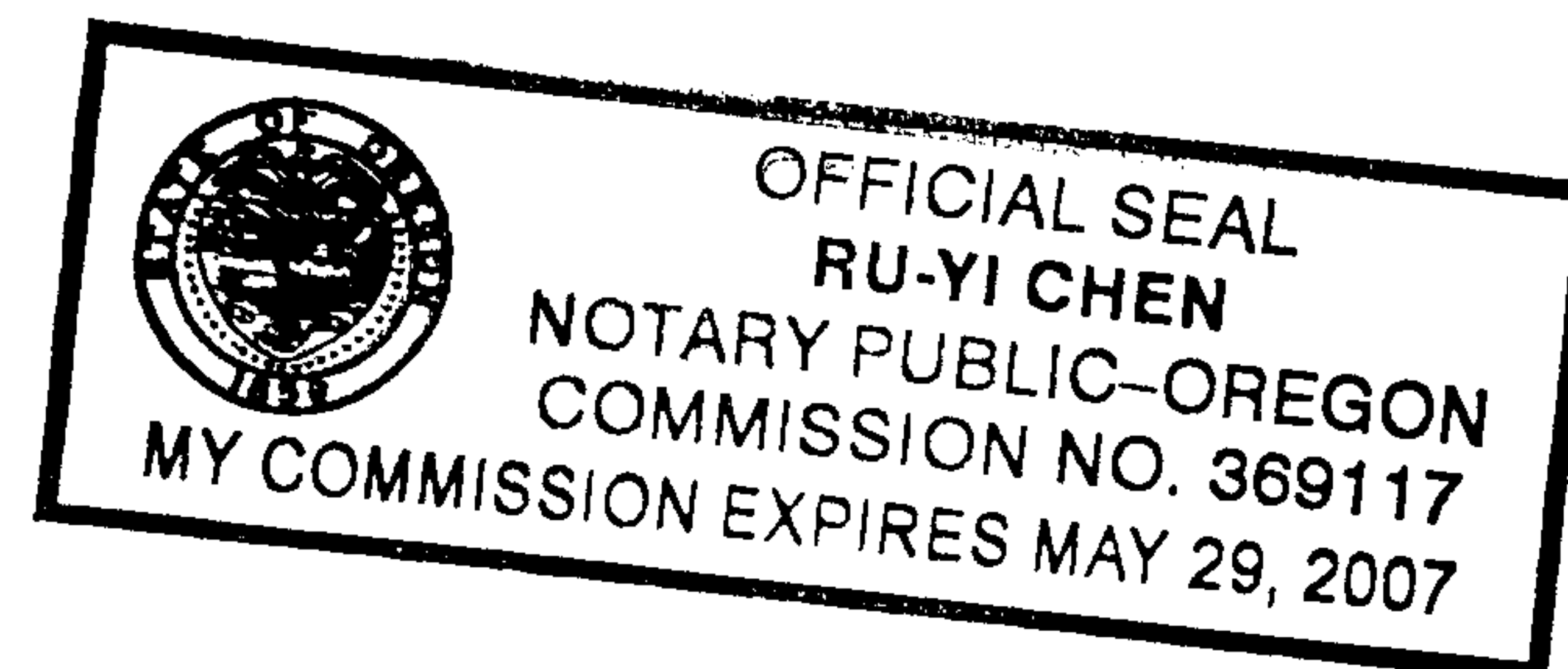
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Shelby Cnty Judge of Probate, AL  
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STATE OF OREGON                    )  
  ) ss:  
COUNTY OF WASHINGTON        )

On this 17th day of November, 2006, before me appeared AMY FRAZEY and GREGG HARROD, both to me personally known, who being duly sworn did say that she, the said AMY FRAZEY is the Assistant Vice President, and he, the said GREGG HARROD is the Assistant Secretary of STANDARD INSURANCE COMPANY, the within named corporation, and that the seal affixed to said document is the corporate seal of said corporation, and that the said document was signed and sealed in behalf of said corporation by authority of its Board of Directors, and AMY FRAZEY and GREGG HARROD acknowledged said document to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

  
\_\_\_\_\_  
Ru-Yi Chen  
Notary Public for Oregon  
My Commission Expires: May 29, 2007







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Shelby Cnty Judge of Probate, AL  
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**EXHIBIT "A"**  
**DATED: October 30, 2006**

**LEGAL DESCRIPTION TO FOLLOW AT A LATER DATE**

**EXHIBIT "A"**  
**LOAN NO. A6100720**  
**DATED: October 30, 2006**

**A tract of land situated within the Northeast ¼ of the Southeast ¼ of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:**

**Commence at the Southwest corner of the Northeast ¼ of the Southeast ¼ of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama; thence run North 00 degree(s) 04 minute(s) 56 second(s) East along the West line of the Northeast ¼ of the Southeast ¼ for a distance of 541.25 feet to a point; thence run North 55 degree(s) 42 minute(s) 20 second(s) East for a distance of 600.66 feet to a point on the Northwestern right-of-way margin of Alabama Highway # 119 said point being the true point of beginning; thence run North 44 degree(s) 27 minute(s) 33 second(s) West for a distance of 349.80 feet to a point on the South right-of-way margin of Cahaba Valley Parkway; thence run North 66 degree(s) 06 minute(s) 04 second(s) East along said right-of-way margin for a distance of 424.84 feet to a point on the West right-of-way margin of Interstate Highway 65 Service Road; thence run South 05 degree(s) 49 minute(s) 19 second(s) West along said right-of-way margin for a distance of 350.00 feet to a point on the Northwestern right-of-way margin of Alabama Highway # 119; thence run South 55 degree(s) 42 minute(s) 20 second(s) West for a distance of 130.65 feet to a point and back to the true point of beginning.**