

THIS MORTGAGE IS FILED AS, AND SHALL CONSTITUTE, A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502 OF THE CODE OF ALABAMA AND SHOULD BE CROSS-INDEXED IN THE INDEX OF FIXTURE FILINGS.

WHEREAS, THE MAXIMUM PRINCIPAL AMOUNT OF THE OBLIGATIONS SECURED BY THIS SECURITY INSTRUMENT AT EXECUTION OR WHICH MAY BE SECURED AT ANY TIME IN THE FUTURE UNDER ANY CONTINGENCY IS \$775,000.00, provided, that the foregoing limitation shall apply only to the lien upon the Property created by this Security Instrument, and it shall not in any manner limit, affect or impair any grant of a security interest or other right in favor of the Lender under the provisions of the Loan Agreement or under any other security agreement at any time executed by Borrower, and further provided, that the limitation shall not limit the security of this Security Instrument with respect to interest on such Obligations at the rates set forth in the Loan Agreement, sums to pay real estate taxes and insurance premiums, and attorneys' fees and costs with respect to the Property (as such terms are defined herein).

**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,
as Mortgagor
(Borrower)**

to

**CNL RESTAURANT CAPITAL, LP,
as Mortgagee
(Lender)**

**COMMERCIAL MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FIXTURE FILING**

Dated: As of December 30th, 2005
Location: As referenced on annexed Exhibit "A"

UPON RECORDATION RETURN TO:
LANDAMERICA COMMERCIAL SERVICES
450 S. Orange Avenue, Suite 170
Orlando, Florida 32801 *05-2084*
Attn: ~~Kerri Vorhies~~ *Christi Paulak*

THIS INSTRUMENT WAS PREPARED BY:
DALE A. BURKET, ESQUIRE
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Drive
Orlando, Florida 32801
(407) 843-4600

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Shelby Cnty Judge of Probate, AL
01/10/2006 02:07:36PM FILED/CERT

UPON RECORDATION RETURN TO:
LANDAMERICA NATIONAL COMMERCIAL SERVICES
450 S. Orange Avenue, Suite 170
Orlando, Florida 32802
Attn: Kerri Vorhies

THIS INSTRUMENT WAS PREPARED BY:
DALE A. BURKET, ESQUIRE
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Drive
Orlando, Florida, 32801
(407) 843-4600

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**COMMERCIAL MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FIXTURE FILING**

This Commercial Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "Security Instrument") is made as of December ____, 2005, by **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, #100, San Francisco, California 94133, as mortgagor/grantor ("Borrower") to CNL Restaurant Capital, LP ("Lender") whose address is 450 South Orange Avenue, Orlando, Florida 32802.

RECITALS:

Borrower pursuant to the terms of that certain Promissory Note of even date herewith executed in favor of CNL Restaurant Capital, LP, a Delaware limited partnership, (together with all extensions, renewals or modifications thereof hereinafter referred to as the "Note") is indebted thereto in the principal sum of **SEVEN HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$775,000.00)** (the "Loan") in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note and with the balance due and payable, if not sooner paid, on January 31, 2006, unless on or prior to that date Borrower extends the Note maturity date until April 1, 2006 in accordance with the requirements set forth therein.

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of its obligations under the Note and the Other Obligations (as defined in Article 2).

ARTICLE 1 - GRANTS OF SECURITY

SECTION 1.1 PROPERTY CONVEYED. In consideration of Ten and No/100 Dollars (\$10.00) in hand paid, and other good and valuable consideration, Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, hypothecate, encumber and convey to Lender, and grant a security interest to Lender in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property"):

(a) Fee Parcel. The Borrower's fee simple interest, if any, in the real property described in Exhibit "A" attached hereto and made a part hereof (the "Fee Parcel" and, hereinafter sometimes referred to as the "Land"); or

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates

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Commercial Mortgage - Captain D's, Calera, Shelby County, Alabama

therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and/or the Improvements, including, but not limited to all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code"), and all proceeds and products of the above; it is acknowledged and agreed that Borrower does not own (prior to a Default as defined below) personal property of the Tenant (as defined below);

(f) Leases and Rents. The lease agreement (the "Lease") dated August 15, 2005 between CNL Net Lease Funding 2003, LLC, as landlord, and Captain D's, LLC, as tenant ("Tenant"), and all other leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into by or with Borrower and all extensions, amendments and modifications thereto, whether before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including without limitation, any guaranties of the Tenant or other lessees' obligations thereunder, cash or securities deposited thereunder to secure the performance by the Tenant or other lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (the "Rents"), and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt, and all of Borrower's claims and rights to the payment of damages arising from any rejection by a lessee of any of the Leases under the Bankruptcy Code;

(g) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property (individually, a "Policy" and collectively, the "Policies"), including without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(h) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(k) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(l) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including without limitation, the right, upon the occurrence and during the continuance of an Event of Default (defined below), to receive and collect any sums payable to Borrower thereunder;

(m) Intangibles. All trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(n) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (m) above; and

(o) Proceeds and Products. All other proceeds and products of the foregoing.

SECTION 1.2 ASSIGNMENT OF LEASE AND RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to the current and future Lease(s) and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 10.1(h), Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold a portion of the Rents sufficient to discharge all current sums due on the Debt for use in the payment of such sums.

SECTION 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (defined in Section 2.3), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code.

SECTION 1.4 FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. The debtor is the Borrower and the secured party is the Lender and their addresses are those set forth in the preamble of this Security Instrument. Borrower shall notify Lender not less than thirty (30) days prior to (a) any change in the name under which Borrower conducts its business, (b) any change of the location of the chief executive office of Borrower, and (c) the opening of any new place of business or the closing of any existing place of business of Borrower, and any change in the location of the places where the Personal Property, or any part thereof, or the books and records, or any part thereof, are kept.

SECTION 1.5 PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including without limitation, any sums deposited into escrow for the payment of taxes and insurance premiums, net proceeds of any insurance award, and condemnation awards or payments

described in Section 3.5, and all Rents held, as additional security for the Obligations until expended or applied as provided in this Security Instrument or the Other Security Documents.

SECTION 1.6 CONDITIONS TO GRANT. TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever; PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void, and this Security Instrument shall be released at the cost of Borrower (except if prohibited by local law).

ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

SECTION 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the payment of the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"):

- (a) the indebtedness evidenced by the Note in lawful money of the United States of America;
- (b) interest, default interest, prepayment charges, if any, late charges and other sums, as provided in the Note, this Security Instrument, or the Other Security Documents (defined below);
- (c) all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument, or the Other Security Documents;
- (d) all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and
- (e) all sums advanced and costs and expenses incurred by Lender in connection with the Debt or any part thereof, any renewal, refinancing, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender.

SECTION 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the "Other Obligations"):

- (a) all other obligations of Borrower contained herein;
- (b) each obligation of Borrower contained in the Note and any other related loan documents; and
- (c) each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, this Security Instrument, or the Other Security Documents.

SECTION 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "Obligations."

ARTICLE 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

SECTION 3.1 PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

SECTION 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note, and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or

guaranty payment of the Note (the "Other Security Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

SECTION 3.3 INSURANCE. Borrower shall comply, or shall cause the Tenant to comply with all of the terms and provisions and shall maintain, or cause to be maintained, with respect to the policies required pursuant to the Lease (each a "Policy", collectively, the "Policies").

SECTION 3.4 PAYMENT OF TAXES, ETC. Borrower shall promptly pay, or cause the Tenant to pay (i) all taxes, assessments, water rates, sewer rates, governmental impositions, and other charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), (ii) all maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and (iii) all charges for utility services provided to the Property as same become due and payable. Borrower will, or cause Tenant to, deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property.

SECTION 3.5 CONDEMNATION. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument, and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Borrower shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be paid directly to Lender. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt, subject to the rights and obligation of the Tenant under the Lease in respect of the restoration of the Property.

SECTION 3.6 RESTORATION AFTER CASUALTY/CONDEMNATION. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, or if the Property or any portion thereof is taken by the power of eminent domain, Borrower shall give prompt notice of such damage or taking to Lender and shall promptly commence and diligently prosecute or shall cause the Tenant under the Lease to promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty or taking, with such alterations as may be approved by Lender (the "Restoration") and in accordance with the provisions and requirements of the Lease.

SECTION 3.7 LEASE AND RENTS. Borrower agrees faithfully to perform all its obligations under the Lease or any other future lease related to the Property at any time assigned to Lender as additional security, and to refrain from any action or inaction which would result in termination of the Lease or in the diminution of the value thereof or of the Rents due thereunder. The Tenant and all future lessees under the Lease made after the date of recording of this Security Instrument shall, at Lender's option, and without any further documentation, attorn to Lender as lessor if for any reason Lender becomes lessor thereunder, and Lender shall not be responsible under such Lease for matters arising prior to Lender becoming lessor thereunder; provided, however, Lender shall not become lessor or obligated as lessor under the Lease unless or until it shall elect in writing to do so. Borrower hereby agrees to authorize and direct the Tenant named in the Lease or any other or future lessees or occupants of the Property and all lease guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any lease guaranties from and after the date hereof, and to continue so to do until otherwise notified by Lender.

SECTION 3.8 MAINTENANCE AND USE OF PROPERTY. Borrower shall cause, or shall cause the Tenant under the Lease to cause, the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property and except as may be permitted under the Lease) without the consent of

Lender. Borrower shall, or shall cause the Tenant under the Lease to, promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.5 hereof and shall, or shall cause the Tenant under the Lease to, complete and pay for any structure at any time in the process of construction or repair on the Land in accordance with the provisions of the Lease. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof without Lender's prior written consent. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, (a) Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender and (b) Borrower shall provide, or cause the Tenant under the Lease to provide, an "Ordinance or Law Coverage" or "Enforcement" endorsement to the Policies.

SECTION 3.9 WASTE. Borrower shall not commit or suffer, or allow any Tenant under the Lease to commit or suffer, any waste of the Property or make, or allow any Tenant under the Lease to make, any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action, or allow any Tenant under the Lease to take any action, that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

SECTION 3.10 COMPLIANCE WITH LAWS. Borrower shall, or shall cause the Tenant under the Lease to, promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting the Property, or the use thereof ("Applicable Laws").

SECTION 3.11 PAYMENT FOR LABOR AND MATERIALS. Borrower shall, or shall cause the Tenant under the Lease to, promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof.

SECTION 3.12 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property (including without limitation, each Lease) or given by Borrower to Lender for the purpose of further securing an Obligation and any amendments, modifications or changes thereto.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

SECTION 4.1 WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Fee Parcel, and the Improvements thereon, and owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

SECTION 4.2 BUSINESS PURPOSES. The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

SECTION 4.3 ILLEGAL ACTIVITY. No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity and to the best of Borrower's knowledge, there are no illegal activities or activities relating to controlled substance at the Property.

ARTICLE 5 - OBLIGATIONS AND RELIANCES

SECTION 5.1 RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

SECTION 5.2 NO RELIANCE ON LENDER. Borrower is experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

SECTION 5.3 NO LENDER OBLIGATIONS. Notwithstanding the provisions of Subsections 1.1(f) and (l) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Lease; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note, or the Other Security Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

SECTION 5.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument, and the Other Security Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth herein, in the Lease and in the Other Security Documents without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument, and the Other Security Documents; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth herein, and in the Other Security Documents.

ARTICLE 6 - FURTHER ASSURANCES

SECTION 6.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Other Security Documents, any note, bond or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

SECTION 6.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the Property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower,

on demand and within ten (10) days after receipt of written notice from Lender, will execute and deliver to Lender one or more chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property.

SECTION 6.3 CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes, or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the Other Security Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

ARTICLE 7 - DUE ON SALE; ENCUMBRANCE

SECTION 7.1 NO SALE; ENCUMBRANCE. Borrower agrees that Borrower shall not, without the prior written consent of Lender, (a) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than pursuant to the lease of space in the Improvements to Tenant or future tenants in accordance with the provisions of Section 3.7, or (b) permit the voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any transfer or disposition (directly or indirectly, by operation of law or otherwise) of a legal or beneficial ownership interest in Borrower, any partners of Borrower, or any direct or indirect legal or beneficial owner of Borrower or any of its partners.

ARTICLE 8 - PREPAYMENT; RELEASE OF PROPERTY

SECTION 8.1 PREPAYMENT. The Debt may be prepaid in whole or in part.

SECTION 8.2 INTENTIONALLY OMITTED.

ARTICLE 9 - DEFAULT

SECTION 9.1 EVENTS OF DEFAULT. The following shall constitute an "Event of Default" under this Security Instrument:

(a) failure of Borrower to make payment of any amount then due under the Note within ten (10) calendar days after Lender's written demand for such amount;

(b) failure of Borrower (except as set forth under clause (a) above) to pay any amount, costs, expenses or fees (including reasonable attorneys' fees) of Lender, as expressly required by any provision of the Note or the Security Instrument within ten (10) days after Lender's written demand for such amount;

(c) failure of Borrower (except as set forth under any other clause of this Section 9.1) to comply with or perform, or any breach or violation by Borrower of, any warranty, representation, covenant, agreement, prohibition, restriction or condition contained herein, in the Note or the Security Instrument, which failure or breach

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Commercial Mortgage - Captain D's, Calera, Shelby County, Alabama



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or violation continues uncured to Lender's reasonable satisfaction for fifteen (15) calendar days after the delivery by Lender of written notice to Borrower describing such failure or breach or violation; provided, however, that if such failure or breach or violation shall be not be curable within said fifteen (15) calendar day period and Borrower is diligently attempting to cure such failure or breach or violation within such period, then such failure or breach or violation shall not constitute a Default unless it shall continue uncured to Lender's reasonable satisfaction for such longer period of time as may be necessary in Lender's reasonable judgment to effect such cure;

(d) except as provided in and permitted under the Note or the Security Instrument, any sale, assignment, transfer, conveyance, mortgaging, encumbering or other change in, or collateral assignment of, the legal title to or beneficial interest in the Property or Borrower, or any part thereof, or any interest therein, including without limitation, the granting of any subordinate lien, whether voluntarily or involuntarily by operation of law (unless promptly cured, released or bonded off to the reasonable satisfaction of Lender) and whether or not of record or for consideration;

(e) any default shall occur under the Security Instrument or any Loan Document which remains uncured after the expiration of any applicable notice and/or cure period (unless cured);

(f) a material misrepresentation or material error or withholding of material information by Borrower incident to the Loan; or

(g) the occurrence of any event deemed to be a default under the Lease, which remains uncured after any applicable notice or cure period provided for therein.

ARTICLE 10 - RIGHTS AND REMEDIES

SECTION 10.1 REMEDIES. Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

(a) declare the entire unpaid Debt to be immediately due and payable;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law or in equity in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) subject to the provisions of the Note, institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or the Other Security Documents;

(f) subject to the provisions of the Note and applicable law, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Debt;

(h) subject to any applicable law, the license granted to Borrower under Section 1.2 shall automatically be revoked and Lender, subject to the rights of Tenant under the Lease, may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto located at the office of or otherwise in the possession of the Borrower and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including without limitation, the right to make, cancel, enforce or modify the Lease, obtain and evict the Tenant, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay, or cause Tenant to pay, monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property, if any, or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of such Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Security Document and subject to the rights of Tenant under the Lease, to the payment of the following items in any order in its sole discretion: (i) Taxes, and Other Charges; (ii) insurance premiums for the Policies; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, this Security Instrument, and the Other Security Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument and the Other Security Documents;

(k) subject to the rights of Tenant under the Lease, surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned insurance premiums for the Policies and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such insurance premiums;

(l) subject to the rights of Tenant under the Lease, apply the undisbursed balance of any sums deposited with Lender by Borrower to cover deficiencies in connection with a Restoration, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or

(m) pursue such other remedies as Lender may have under applicable law or in equity.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 10.1 to the contrary, if a Default relating to a voluntary or involuntary bankruptcy shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

SECTION 10.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument, or the Other Security Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

SECTION 10.3 RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized, subject to the rights of Tenant under the Lease, to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 10.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the interest rate set forth in the Note during the continuance of a Default thereunder, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor.

SECTION 10.4 ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and, after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

SECTION 10.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

SECTION 10.6 EXAMINATION OF BOOKS AND RECORDS. Lender shall have the right to review Tenant's records related to the restaurant operation located at the Property, and other related financial information of Tenant, which are received by Borrower pursuant to the Lease at any office regularly maintained by Borrower or its affiliates where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers.

SECTION 10.7 OTHER RIGHTS, ETC.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the Other Security Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to

determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated, but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

SECTION 10.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

SECTION 10.9 RIGHT OF ENTRY. Subject to Tenant's rights under the Lease, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

SECTION 10.10 NO LIABILITY OF LENDER. This Security Instrument shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default. This Security Instrument shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the Tenant or any other parties, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

SECTION 10.11 NO MORTGAGEE IN POSSESSION. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

SECTION 10.12 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the Other Security Documents and the performance and discharge of the Other Obligations.

SECTION 10.13 BANKRUPTCY.

(a) Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the Tenant under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease upon assignment and assumption thereof. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

SECTION 10.14 INTENTIONALLY OMITTED.

ARTICLE 11 - ENVIRONMENTAL MATTERS

SECTION 11.1 INTENTIONALLY OMITTED.

SECTION 11.2 LENDER'S RIGHTS. Lender and any other person or entity designated by Lender, including, but not limited to, any representative of a governmental entity, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have, subject to the rights of the Tenant under the Lease, the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use including, but not limited to, conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender.

ARTICLE 12 - WAIVERS

SECTION 12.1 WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, or any of the Other Security Documents, or the Obligations.

SECTION 12.2 MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Laws.

SECTION 12.3 WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and (b) with respect to matters for which Lender is required by Applicable Laws to give notice.

SECTION 12.4 WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

SECTION 12.5 SOLE DISCRETION OF LENDER. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole discretion of Lender, except as may be otherwise expressly and specifically provided herein.

SECTION 12.6 WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE NOTE ITSELF, THIS SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE 13 - EXCULPATION

SECTION 13.1 EXCULPATION. The exculpation provisions of the Note are hereby incorporated by reference to the fullest extent as if the text of such sections were set forth in their entirety herein.

ARTICLE 14 - NOTICES

SECTION 14.1 NOTICES. All notices or other communications hereunder shall be in writing and shall be either (i) hand delivered, (ii) sent by overnight delivery service (e.g., Federal Express) with receipt signature required, or (iii) sent via certified U. S. Mail, return receipt requested, to the party entitled or required to receive the same at the address set forth in the preamble of this Security Instrument. Borrower shall simultaneously provide a copy of such Notice to Dale A. Burket, Esquire, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., P. O. Box 2809, 215 North Eola Drive, Orlando, Florida 32802. Either party may change its address for notice by providing written notice of such change to the other party in the manner set forth in this paragraph.

ARTICLE 15 - APPLICABLE LAW

SECTION 15.1 CHOICE OF LAW. This Security Instrument shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located.

SECTION 15.2 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Laws.

ARTICLE 16 - COSTS

SECTION 16.1 LEGAL FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with the preparation of the Note, this Security Instrument and the Other Security Documents, and (b) Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees to the fullest extent permitted by law, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property, whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the rate equal to the default rate set forth in the Note from the date paid or incurred by Lender until such expenses are paid by Borrower.

ARTICLE 17 - DEFINITIONS

SECTION 17.1 GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent mortgagee" the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but

not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Lease and the Rents and enforcing its rights hereunder.

SECTION 17.2 HEADINGS, ETC. The headings and captions of various Articles and Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

ARTICLE 18 - MISCELLANEOUS PROVISIONS

SECTION 18.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

SECTION 18.2 LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

SECTION 18.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note, this Security Instrument or any of the Other Security Documents is held to be invalid, illegal or unenforceable in any respect, the Note, this Security Instrument or such Other Security Document shall be construed without such provision.

SECTION 18.4 DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

SECTION 18.5 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

ARTICLE 19 - INTENTIONALLY OMITTED

ARTICLE 20 - RECOURSE

SECTION 20.1 INTENTIONALLY OMITTED.

ARTICLE 21 - SPECIAL ALABAMA PROVISIONS

SECTION 21.1 Notwithstanding anything contained in this Security Instrument to the contrary, the following additional provisions shall be incorporated into, shall supplement and, to the extent of any inconsistency with the preceding provisions hereof, shall be deemed to modify and amend the applicable provisions of this Security Instrument to the same extent as if the provisions of this Article 21 were initially set forth above.

(a) If an Event of Default shall have occurred, Lender may sell the Property at public outcry to the highest bidder for cash in front of the courthouse door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any other person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

The proceeds of any foreclosure sale shall be applied as follows:

1. First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Security Instrument;
2. Second, to the repayment of any money, with interest thereon, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;
3. Third, to the payment and satisfaction of the indebtedness hereby specially secured with interest to date of sale; and
4. Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expenses of ascertaining who is such owner.

(b) Certain of the Property is or will become "fixtures" (as that term is defined in the Alabama Uniform Commercial Code) on the Property described or referred to in this Security Instrument. From the date of its recording, this Security Instrument shall be effective as a financing statement filed as a fixture financing statement with respect to all goods and Personal Property constituting part of the Property which are or are to become fixtures related to the Property and Improvements described herein. For this purpose, the following information is set forth:

- i. Name and address of debtor: Rob Wolf and Jennifer L. Wolf, as husband and wife, and Jerry Ono, as trustee of The Jerry Ono 2004 Living Trust dated March 3, 2004, 850 Montgomery Street, #100, San Francisco, California 94133.
- ii. Name and address of secured party: CNL Restaurant Capital, LP, CNL Center at City Commons, 450 South Orange Avenue, Orlando, Florida 32801.
- iii. Description of the types (or items of property covered by this Fixture Filing): see Section 1.1.
- iv. Description of the real estate to which the property described in (iii) is attached or upon which it is located: see Exhibit "A" attached hereto.
- v. This document covers goods which are or are to become fixtures.

(c) Borrower hereby states that the Property does not constitute part of the homestead of any mortgagor/grantor under this Security Agreement nor does it constitute part of the homestead of any mortgagor/grantor's spouse.

[Signatures on Next Page]

IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Borrower to be effective as of the day and year first above written.

"BORROWER"

Signed, Sealed and Delivered
in the presence of:

Name: Gidney Bryan

Name: Annie Nobilione

ROB WOLF

STATE OF California
COUNTY OF San Francisco

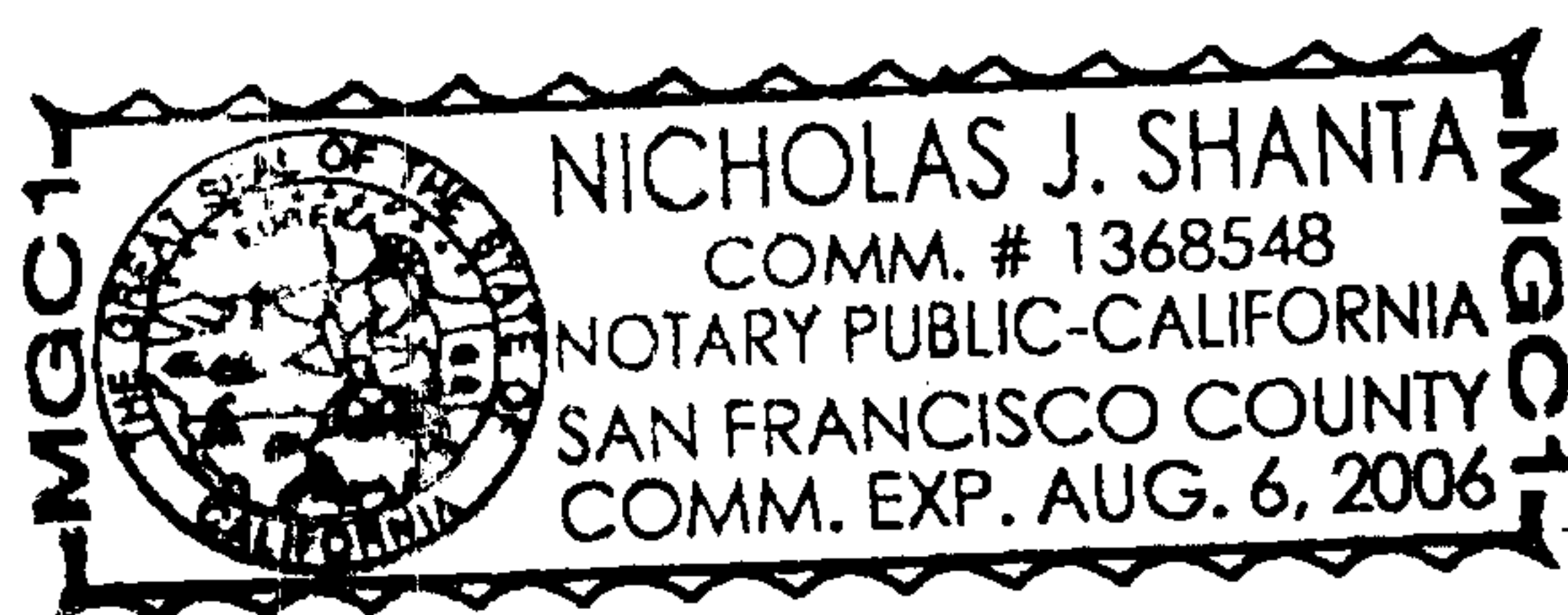
I, the undersigned, a notary public in and for said County in said State, hereby certify that **ROB WOLF**, a married man, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 29th day of December 2005.

Mu Mutt
Notary Public

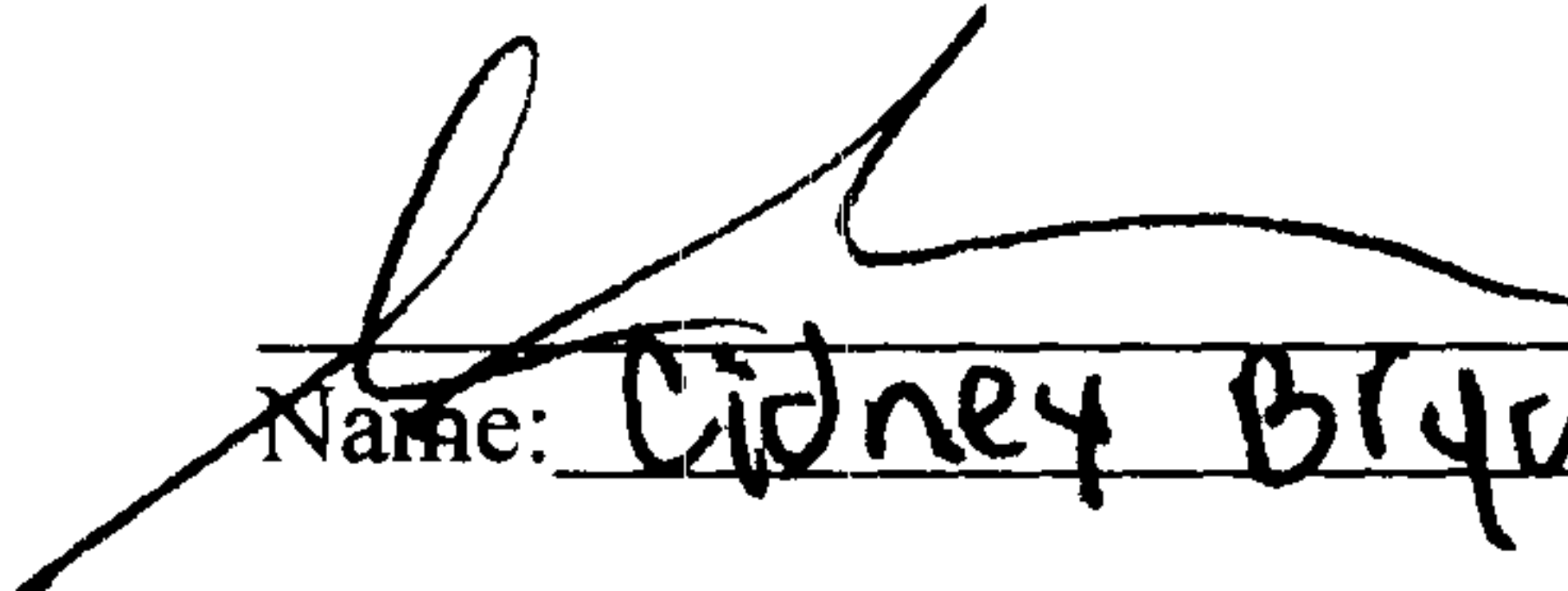
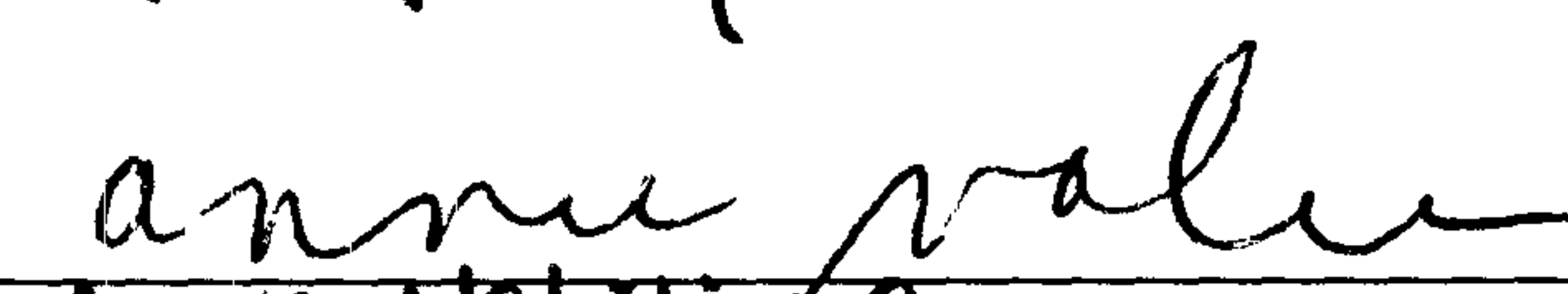
My Commission Expires: 8-6-06

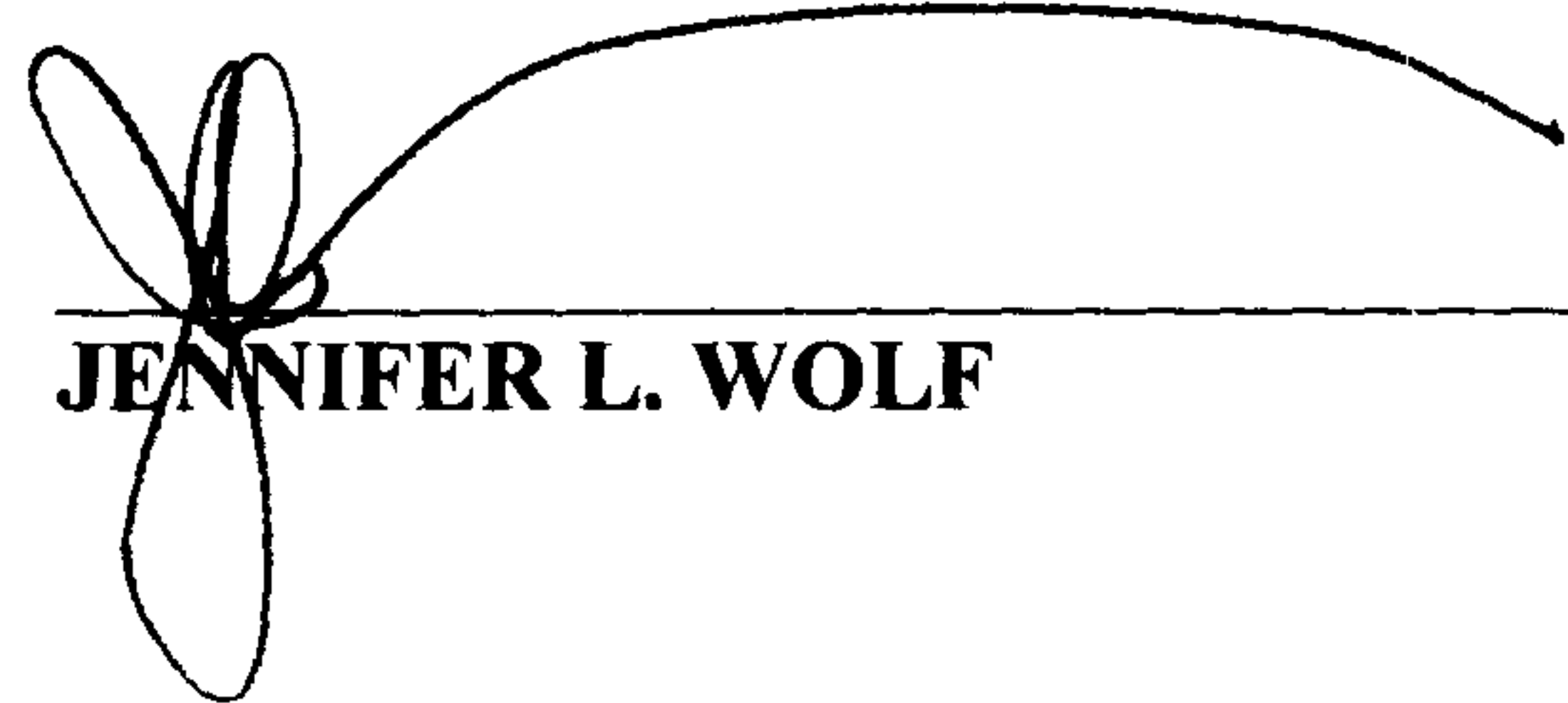
[NOTARIAL SEAL]



"BORROWER"

Signed, Sealed and Delivered
in the presence of:


Name: Sidney Bryan

Name: Annie Nobilione

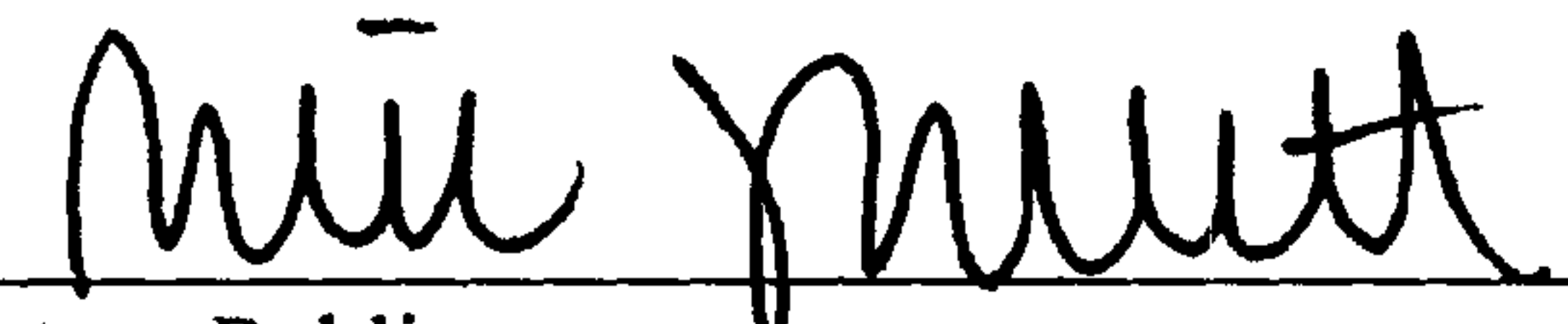

JENNIFER L. WOLF

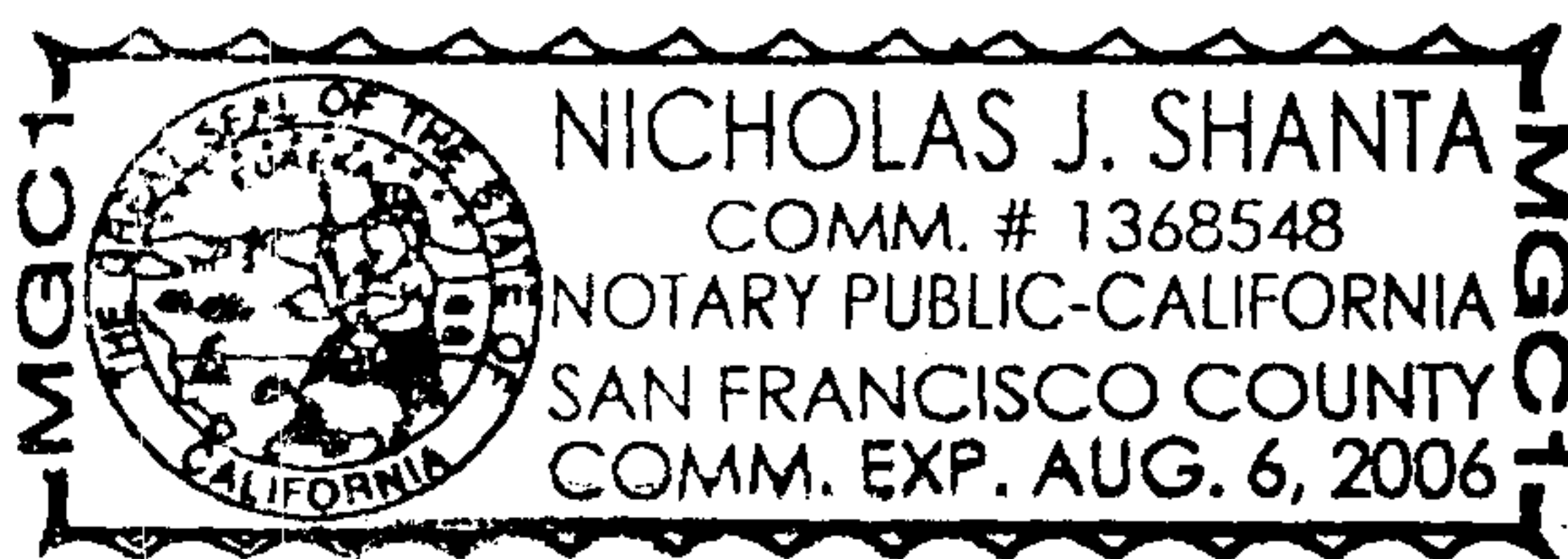
STATE OF California
COUNTY OF San Francisco

I, the undersigned, a notary public in and for said County in said State, hereby certify that **JENNIFER L. WOLF**, a married woman, 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 the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 29th day of December 2005.

[NOTARIAL SEAL]

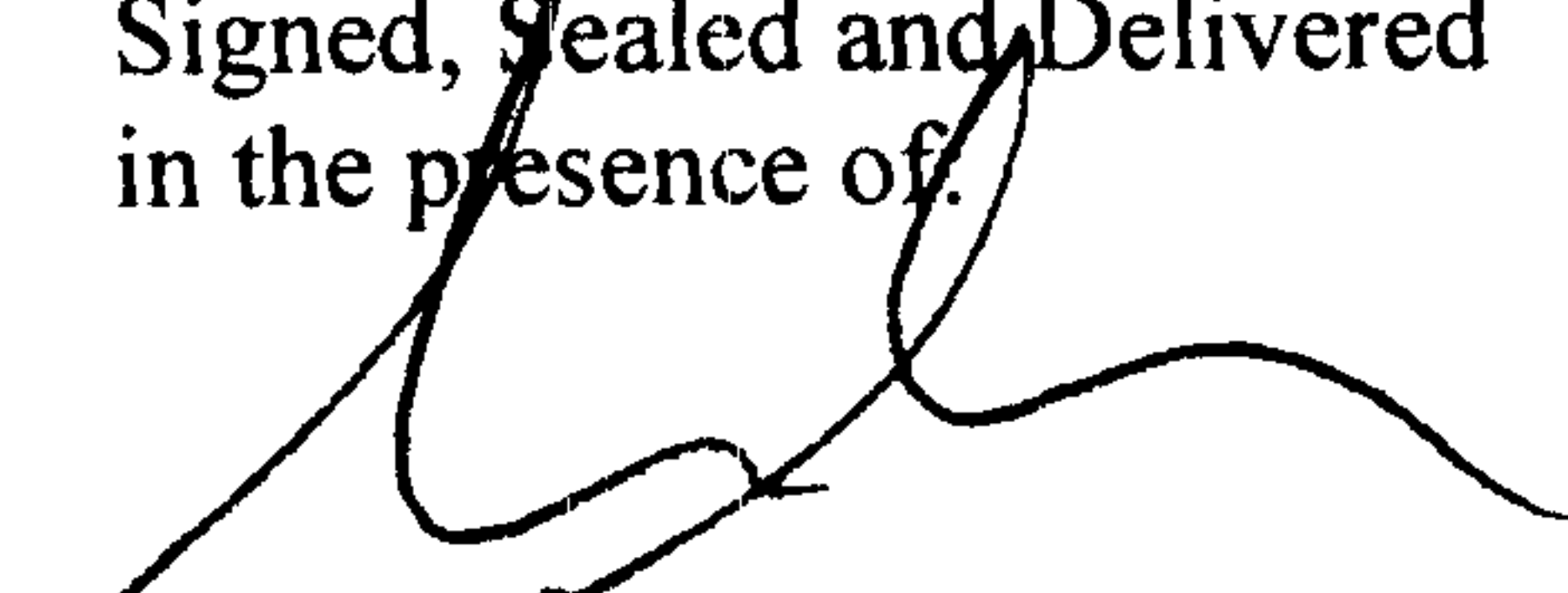

Notary Public
My Commission Expires: 8-6-05




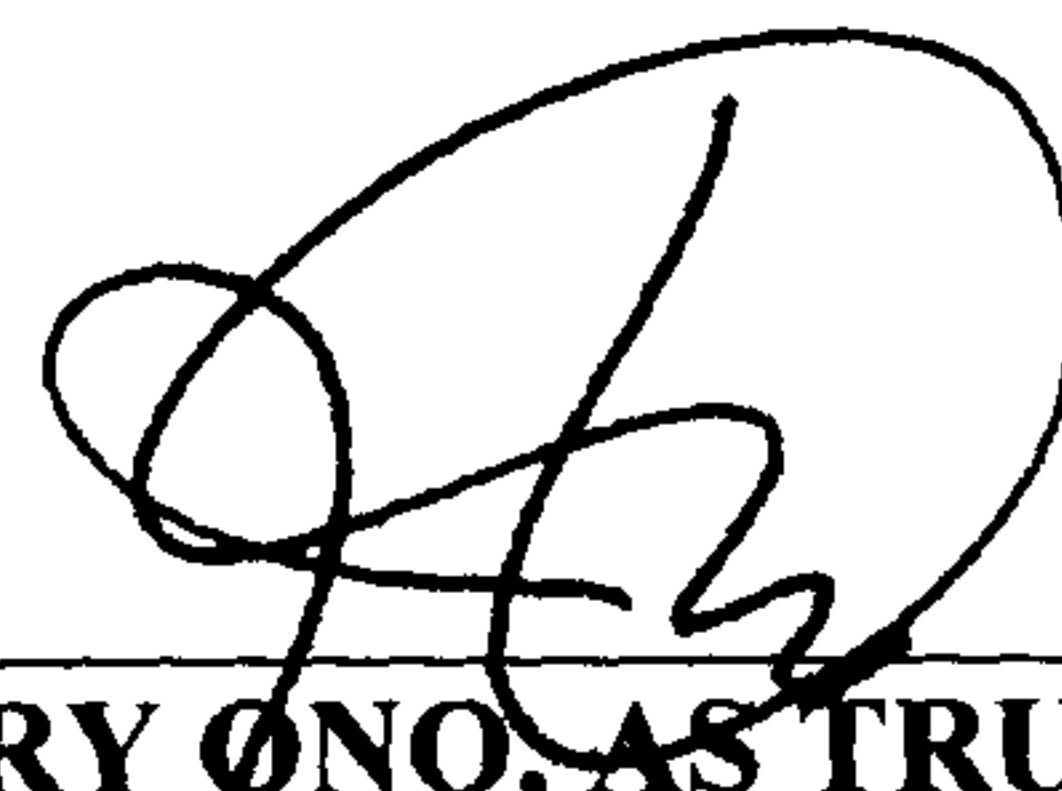
20060110000017100 20/23 \$1239.50
Shelby Cnty Judge of Probate, AL
01/10/2006 02:07:36PM FILED/CERT

“BORROWER”

Signed, Sealed and Delivered
in the presence of:


Name: Sidney Bryan


Name: Annie Nobilione



JERRY ONO, AS TRUSTEE OF THE JERRY ONO
2004 LIVING TRUST DATED MARCH 3, 2004

STATE OF California
COUNTY OF San Francisco

I, the undersigned, a notary public in and for said County in said State, hereby certify that **JERRY ONO, AS TRUSTEE OF THE JERRY ONO 2004 LIVING TRUST DATED MARCH 3, 2004**, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

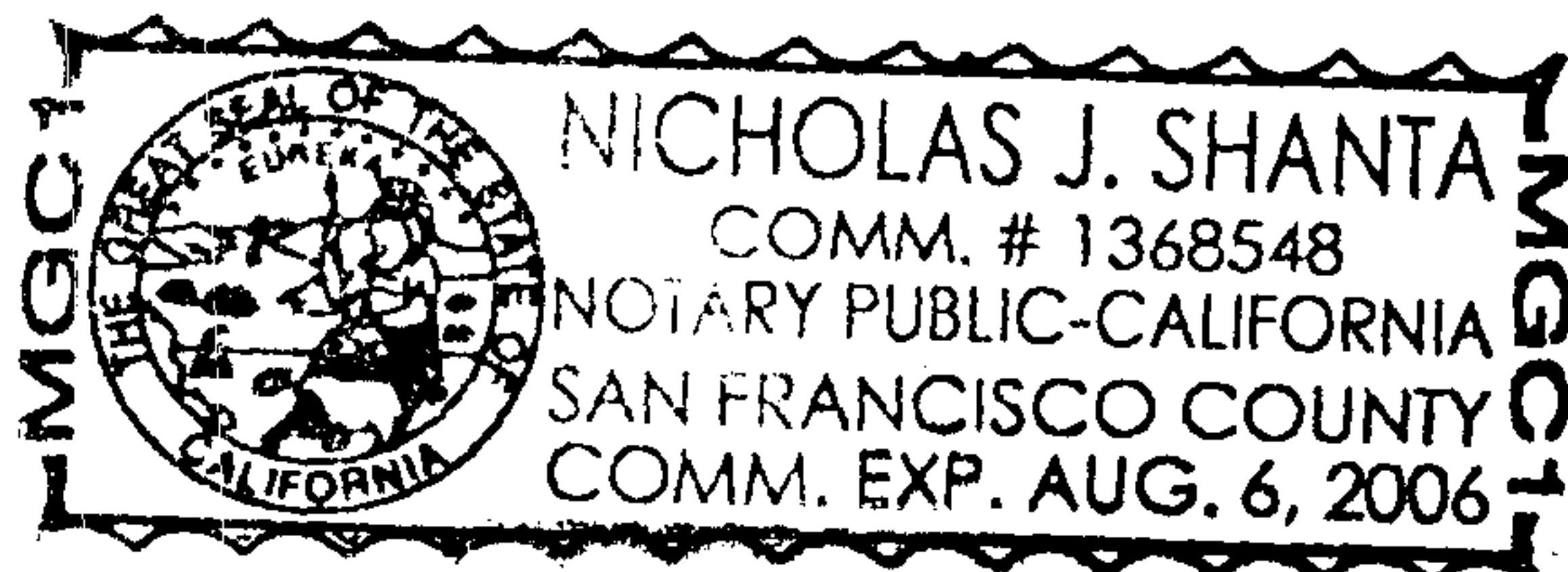
Given under my hand and official seal this the 29th day of December 2005.



Notary Public

My Commission Expires: 8-6-06

[NOTARIAL SEAL]





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Shelby Cnty Judge of Probate, AL
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EXHIBIT "A"

(Legal Description)

Parcel I:

Lot 4A, according to Baker Seafood, Inc. Resurvey (being a resurvey of Lots 4 and 5, Wal-Mart Supercenter #3271 Subdivision, as recorded in Map Book 27, Page 117) as recorded in Map Book 31, Page 92, in the Office of the Judge of Probate of Shelby County, Alabama, also being situated in the Northwest Quarter of the Southeast Quarter of the Section 4, Township 22 North, Range 2 West, St. Stephens Meridian, Shelby County, Alabama, and being more particularly described as follows:

Commence at point at the Southwest Corner of the Southwest Quarter of the Northeast Quarter of Section 4, Township 22 North, Range 2 West, St. Stephens Meridian, Shelby County, Alabama; thence run North 02 degrees 06 minutes 24 seconds West along the West line of said Quarter Section for a distance of 512.99 feet to a point; thence run South 89 degrees 47 minutes 07 seconds East for a distance of 1,036.65 feet to a point on the West right-of-way margin of U.S. Highway 31; thence run South 10 degrees 16 minutes 53 seconds East along said right-of-way margin for a distance of 386.25 feet to an iron pin, said point being the True Point of Beginning; thence continue South 10 degrees 16 minutes 53 seconds East along said right-of-way margin for a distance of 80.23 feet to an iron pin; thence run South 79 degrees 34 minutes 19 seconds West along said right-of-way margin for a distance of 49.72 feet to an iron pin, said point being the point of a curve to the right having a radius of 854.81 feet and an arc distance of 83.80 feet; thence run along said curve to the right and along said right-of-way margin a chord bearing South 07 degrees 31 minutes 03 seconds East and a chord distance of 83.76 feet to an iron pin; thence run North 89 degrees 39 minutes 17 seconds West for a distance of 188.73 feet to an iron pin; thence run North 00 degrees 22 minutes 34 seconds East for a distance of 111.08 feet to an iron pin, said point being the point of a curve to the right having a radius of 43.50 feet and an arc distance of 60.24 feet; thence run along said curve to the right a chord bearing North 40 degrees 02 minutes 50 seconds East and a chord distance of 55.54 feet to an iron pin; thence run North 79 degrees 43 minutes 07 seconds East for a distance of 120.73 feet to an iron pin; thence run South 10 degrees 16 minutes 53 seconds East for a distance of 5.00 feet to an iron pin; thence run North 79 degrees 43 minutes 07 seconds East for a distance of 40.25 feet to an iron pin; thence run South 65 degrees 30 minutes 48 seconds East for a distance of 18.21 feet to a point and back to the True Point of Beginning.

Said property being the same property as conveyed to Captain D's, LLC by that certain General Warranty Deed dated June 24, 2005, and recorded as Instrument # 20050630000326440 in the Office of the Judge of Probate of Shelby County, Alabama.

Parcel II:

Together with a non-exclusive access easement as conveyed to Baker Seafood, Inc. on May 29, 2001, and recorded in Instrument #2001-25731, including ingress and egress access across the following described property:

Commence at the Southwest Corner of the Southwest Quarter of the Northeast Quarter of Section 4, Township 22 North, Range 2 West, Shelby County, Alabama; thence North 02 degrees 06 minutes 24 seconds West 512.99 feet; thence South 89 degrees 47 minutes 07 seconds East 1,036.65 feet; thence South 10 degrees 16 minutes 53 seconds East 386.25 feet to the Westerly margin of U.S. Highway 31; thence continue along said road South 10 degrees 16 minutes 53 seconds East 80.24 feet; thence continue along said right-of-way South 79 degrees 34 minutes 19 seconds West 49.72 feet; thence continue along said right-of-way on a curve, said curve concave to the West and having a radius of 854.82 feet, along a



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chord bearing and distance South 02 degrees 26 minutes 38 seconds East for a chord distance of 234.44 feet to the beginning of a 25-foot ingress and egress access easement; thence leaving said right-of-way along a curve, said curve concave to the South and having a radius of 121.50 feet, along a chord bearing North 79 degrees 08 minutes 51 seconds West for a chord distance of 44.19 feet; thence North 89 degrees 37 minutes 26 seconds West 121.82 feet to the beginning of a curve, said curve concave to the Northeast and having a radius of 23.50 feet, along a chord bearing North 44 degrees 37 minutes 26 seconds West for a chord distance of 33.23 feet; thence North 00 degrees 23 minutes 01 second East 230.63 feet to the beginning of a curve, said curve concave to the Southeast and having a radius of 43.50 feet, along a chord bearing North 40 degrees 02 minutes 50 seconds East for a chord distance of 55.54 feet; thence North 79 degrees 43 minutes 07 seconds East 120.73 feet; thence South 10 degrees 16 minutes 53 seconds East 5.0 feet; thence North 79 degrees 43 minutes 07 seconds East 40.25 feet; thence South 65 degrees 30 minutes 48 seconds East 18.21 feet to the point of beginning; said easement being 25 feet left of the above-described line and being a 25-foot ingress and egress access easement situated in Shelby County, Alabama.

Said easement being the same easement granted Baker Seafood, Inc. by that certain Access Easement entered into as of May 29, 2001, and recorded as Instrument # 20030619000384230 in the Office of the Judge of Probate of Shelby County, Alabama.

Parcel III:

Together with a non-exclusive easement for the benefit of Parcel I for the purpose of ingress and egress as created by that certain access easement between Wal-Mart Real Estate Business Trust and P&N Calera, L.L.C., dated January 30, 2001, and recorded on February 9, 2001, under Instrument No. 2001-04817, over, under and across the following described property:

A parcel of land for ingress and egress situated in the Southwest Quarter of the Northeast Quarter of Section 4, Township 22 South, Range 2 West, St. Stephens Meridian, Shelby County, Alabama, and being more particularly described as follows:

Commence at an axle found at the Southwest Corner of the Southwest Quarter of the Northeast Quarter of Section 4, Township 22 South, Range 2 West, St. Stephens Meridian, Shelby County, Alabama; thence run North 02 degrees 06 minutes 24 seconds West along the West line of said quarter for a distance of 512.99 feet; thence, leaving said quarter line, run South 89 degrees 47 minutes 07 seconds East for a distance of 1,036.65 feet to the Westerly right-of-way of Highway 31 (right-of-way width being 100 feet); said point also being the Northeast Corner of Lot 3 according to Wal-Mart Supercenter #3271 Subdivision, as recorded in Map Book 27, Page 117, in the Office of the Judge of Probate of Shelby County, Alabama; thence run South 10 degrees 16 minutes 53 seconds West, along the boundary of said Lot 3, for a distance of 284.0 feet to the Southeast Corner of said Lot 3; said point also being the point of beginning; thence, leaving said Lot 3, continue South 10 degrees 16 minutes 53 seconds East for a distance of 102.17 feet to the Northeast Corner of Lot 4 of said Wal-Mart Supercenter #3271 Subdivision; thence North 65 degrees 30 minutes 48 seconds West, along the North Line of said Lot 4, for a distance of 18.21 feet; thence run South 79 degrees 43 minutes 07 seconds West, along the North Line of said Lot 4, for a distance of 5.00 feet; thence run South 79 degrees 43 minutes 07 seconds West, along the North Line of said Lot 4, for a distance of 120.73 feet to the point of curvature of a curve to the left having a radius of 43.50 feet, a central angle of 79 degrees 20 minutes 33 seconds, a chord length of 55.54 feet, and a chord bearing of South 40 degrees 02 minutes 05 seconds West; thence continue, along the arc of said curve, for a distance of 60.24 feet to the point of tangency of said curve; thence run South 00 degrees 22 minutes 34 seconds West, along the West Boundary Line of Lot 4, Lot 5, and Lot 6, for a distance of 576.95 feet to the Southwest Corner of Lot 6, said point also being the North Boundary Line of Lot 2 of said Wal-Mart Supercenter #3271 Subdivision; thence run North 89 degrees 37 minutes 26 seconds West,



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along the North Boundary Line of said Lot 2, for a distance of 696.60 feet; thence run South 37 degrees 41 minutes 38 seconds West, along the North Boundary Line of said Lot 2, for a distance of 42.10 feet; thence run North 89 degrees 37 minutes 26 seconds West, along the North Boundary Line of said Lot 2, for a distance of 99.54 feet to the Northerly right-of-way line of I-65 (right-of-way width varies); thence run North 52 degrees 34 minutes 36 seconds West, along said right-of-way, for a distance of 38.56 feet to the Southwest Corner of Lot 1 of said Wal-Mart Supercenter #3271 Subdivision; thence run North 02 degrees 06 minutes 24 seconds West, along the West Boundary Line of said Lot 1, for a distance of 41.81 feet; thence, leaving said West Line, run South 89 degrees 37 minutes 26 seconds East, for a distance of 99.94 feet; thence run North 37 degrees 41 minutes 38 seconds East for a distance of 42.10 feet; thence run South 89 degrees 37 minutes 26 seconds East for a distance of 693.78 feet; thence run North 00 degrees 22 minutes 34 seconds East for a distance of 619.79 feet; thence run North 79 degrees 43 minutes 07 seconds East, along the South Line of said Lot 3, for a distance of 213.93 feet; thence run North 52 degrees 46 minutes 38 seconds East, along the South Boundary Line of said Lot 3, for a distance of 21.59 feet to the point of beginning.

Parcel IV:

Together with an easement for utilities in the Declaration of Easement dated June 13, 2003, by Baker Seafood, Inc. and recorded on June 19, 2003 under Instrument # 20030619000384230 in the Office of the Judge of Probate of Shelby County, Alabama.