

20060110000017110 1/11 \$41.00
Shelby Cnty Judge of Probate, AL
01/10/2006 02:07:37PM FILED/CERT

RETURN TO AFTER RECORDING:

LandAmerica National Commercial Services
450 S. Orange Avenue, Suite 170
Orlando, FL 32801
Attn: Christi Pawlak
LCS Case No. 05-002084

PREPARED BY:

Dale A. Burket, Esquire
Lowndes, Drosdick, Doster,
Kantor & Reed, P.A.
215 North Eola Drive
P. O. Box 2809
Orlando, Florida 32802

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

THIS SUBORDINATION NON-DISTURBANCE AND ATTORNMENT AGREEMENT (hereinafter referred to as the "Agreement"), made and entered into as of the 30th day of December, 2005, by and among **CNL RESTAURANT CAPITAL, LP**, a Delaware limited partnership, whose address is 450 S. Orange Avenue, Orlando, Florida 32802 hereinafter referred to as the "Lender"), **CAPTAIN D'S, LLC**, a Delaware limited liability company, whose address is 1717 Elm Hill Pike, Suite 1-A, Nashville, TN 37210 (hereinafter referred to as the "Tenant"), and **ROB WOLF AND JENNIFER L. WOLF, HUSBAND AND WIFE, AS JOINT TENANTS, AS TO AN UNDIVIDED 68.39% INTEREST AND JERRY ONO, AS TRUSTEE OF THE JERRY ONO 2004 LIVING TRUST DATED MARCH 3, 2004, AS TO AN UNDIVIDED 31.61% INTEREST, ALL AS TENANTS IN COMMON**, whose address is 850 Montgomery Street, #100, San Francisco, California 94133 (hereinafter referred to as the "Landlord");

WITNESSETH:

WHEREAS, Lender is the holder of a mortgage loan (hereinafter referred to as the "Loan") to Landlord, which Loan is secured by, inter alia, a **COMMERCIAL MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** executed by Landlord in favor of Lender (hereinafter referred to as the "Mortgage"), encumbering Landlord's property located at 101 Super Center Drive, Calera, in Shelby County, Alabama, as described in the attached Exhibit "A" (hereinafter referred to as the "Mortgaged Premises"); and

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

WHEREAS, Lender, in connection with the Loan, requires that the Lease and all of the rights of Tenant thereunder be subordinated to the Mortgage and all of the rights of Lender thereunder, subject to the terms of this Agreement; and

WHEREAS, Tenant desires to receive certain assurances that its possession of the Premises will not be disturbed in such event, and Lender is willing to grant certain assurances upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants herein contained and intending to be legally bound, hereby agree as follows:

1. Subject to the terms of this Agreement, the Lease and all of the rights of Tenant thereunder shall be and are hereby declared to be and at all times hereafter shall be and remain subject and subordinate in all respects to the Mortgage and all of the rights of Lender thereunder. Notwithstanding such subordination, Lender hereby agrees that (a) the Lease and the leasehold estate thereby created will not be extinguished or terminated and the rights thereunder of Tenant will not be disturbed, affected, or impaired by the foreclosure of such Mortgage, delivery of a deed in lieu of foreclosure of such Mortgage, or the exercise of other rights and remedies that the Mortgage provides; (b) Tenant shall not be named or joined as a party defendant or otherwise in any proceeding for the foreclosure of such Mortgage or to enforce any rights under the Mortgage; (c) all condemnation awards and payments and all proceeds of insurance paid or payable with respect to the Premises shall be applied and used in the manner set forth in the Lease; and (d) neither the Mortgage nor any other security instrument executed in connection therewith shall be construed as subjecting in any manner to the lien thereof any trade fixtures, business equipment, signs or other personal property at any time supplied or installed by Tenant in or on the Premises, regardless of the manner or mode of attachment thereof to the Premises. In the event that Lender succeeds to the interest of Landlord under the Lease and/or title to the Premises, Tenant agrees to attorn to and to recognize Lender (as mortgagee in possession or otherwise), or the purchaser at such foreclosure sale, as Tenant's landlord for the balance of the term of the Lease, in accordance with the terms and provisions thereof, but subject, nevertheless, to the provisions of this Agreement. Accordingly, from and after such event, Lender and Tenant shall have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Landlord had before Lender (or such other purchaser) succeeded to the interest of Landlord thereunder.

2. Lender hereby agrees with Tenant that, so long as Tenant and/or its permitted successors and assigns comply with all of the terms, provisions, agreements, covenants and obligations set forth in the Lease, Tenant's possession of the Premises under the Lease shall not be disturbed or interfered with by Lender.

3. Tenant hereby agrees that Lender, or any purchaser at a foreclosure sale, shall not be (a) liable for any act or omission of Landlord under the Lease, (b) subject to any offsets or defenses which Tenant may have at any time hereafter against Landlord, (c) bound by any rent which Tenant may have paid to Landlord for more than the current month, and (d) bound by any amendment or modification of the Lease made without Lender's prior written consent.

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

5. INTENTIONALLY OMITTED.

6. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto, or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their successors and assigns.

7. This Agreement shall be construed in accordance with the laws of the State where the Premises are located.

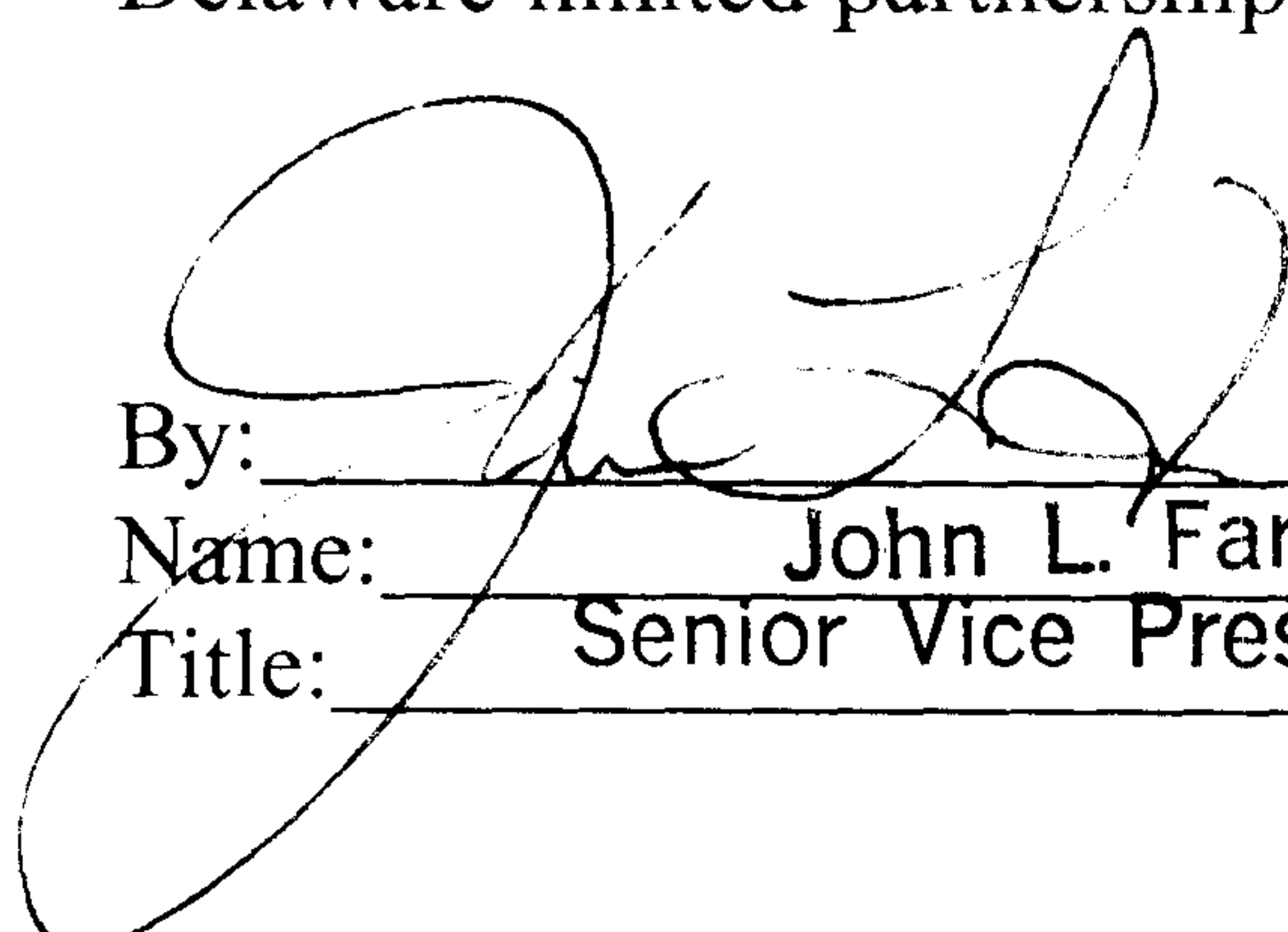
8. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one Agreement.

[Signatures begin on Next Page]

The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

"LENDER"

CNL RESTAURANT CAPITAL, LP, a
Delaware limited partnership

By: 
Name: John L. Farren
Title: Senior Vice President

STATE OF FLORIDA
ORANGE COUNTY

I, the undersigned, a notary public in and for said County in said State, hereby certify that John L. Farren, whose name as Senior Vice President of **CNL RESTAURANT CAPITAL, LP, a** Delaware limited partnership, 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/she, as such officer and with full authority, executed the same voluntarily for and as the act of said .

Given under my hand and official seal this the December 29, 2005.


Notary Public

[NOTARIAL SEAL]

My Commission Expires: April 25, 2006



William F. Brown, II
COMMISSION # 00111/35 EXPIRES
April 25, 2006
NOTARY PUBLIC - FLORIDA

"TENANT"

CAPTAIN D'S, LLC, a Delaware limited liability company

By Michael T. Folks
Name Michael T. Folks
Title Vice President

STATE OF Tennessee
Davidson COUNTY

I, the undersigned, a notary public in and for said County in said State, hereby certify that Michael T. Folks, whose name as Vice President of **CAPTAIN D'S, LLC**, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 29th day of December, 2008.

Wanda G. Parsons
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 5/23/09



"LANDLORD"

Rob Wolf
ROB WOLF

STATE OF California
San Francisco COUNTY

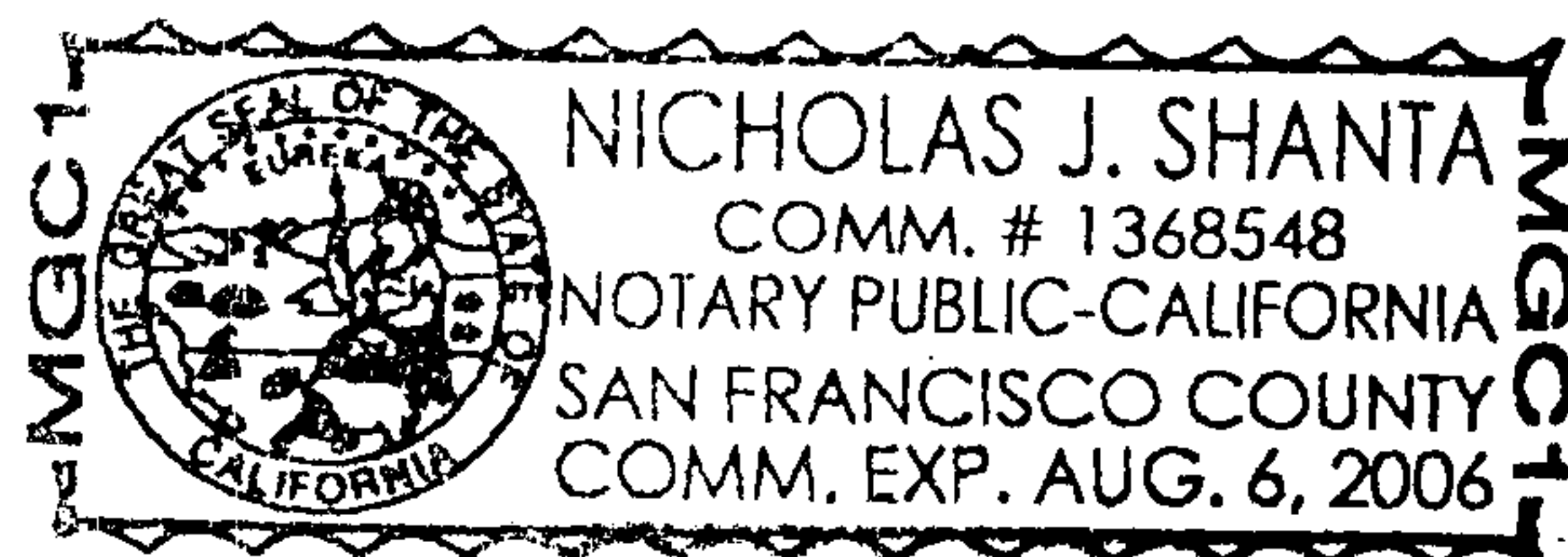
I, the undersigned, a notary public in and for said County in said State, hereby certify that Rob Wolf, whose name as _____ of **ROB WOLF**, a married man, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said individual.

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

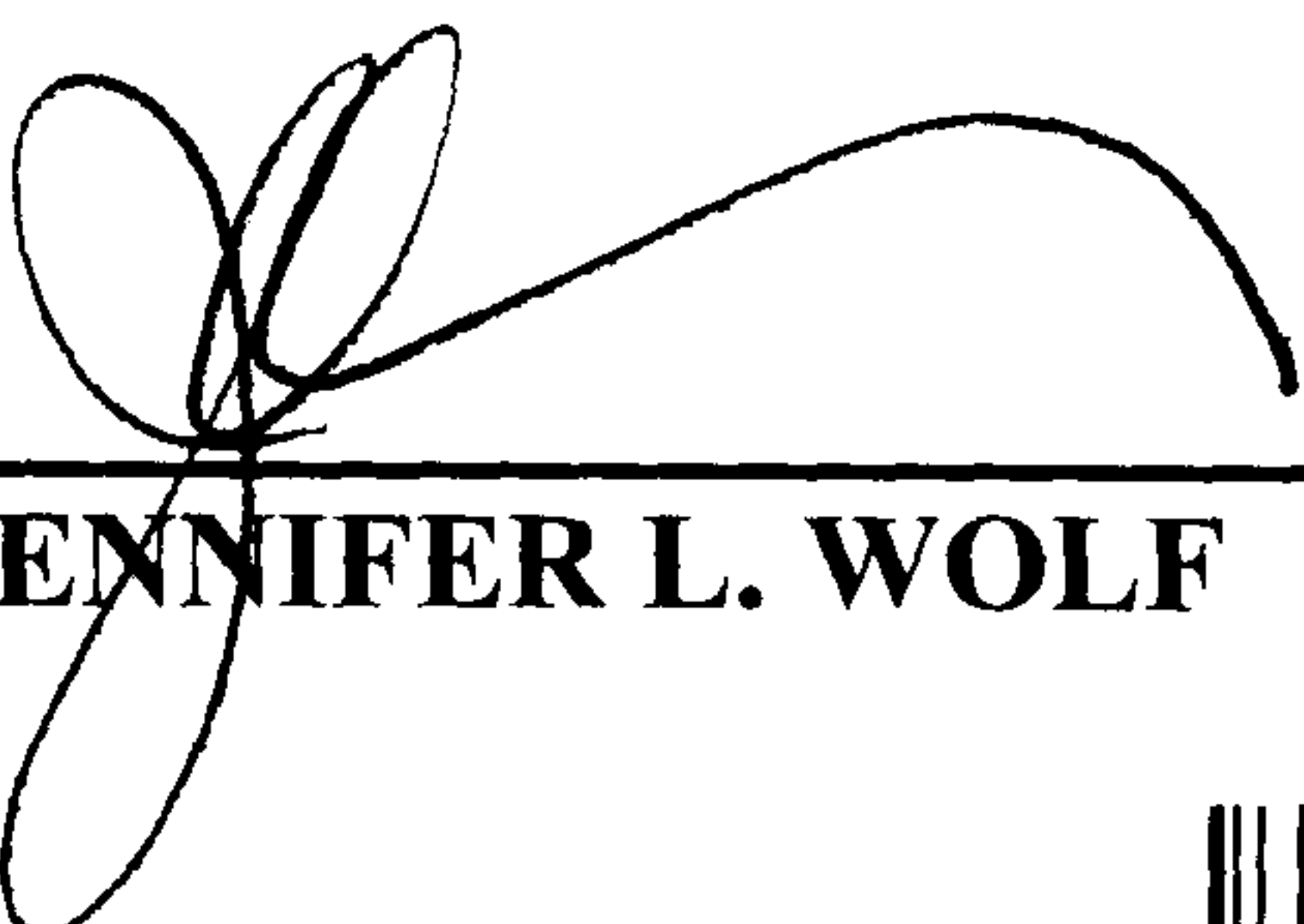
Mia Muth
Notary Public

[NOTARIAL SEAL]


My Commission Expires: 8-6-06



"LANDLORD"


JENNIFER L. WOLF

STATE OF California
San Francisco COUNTY

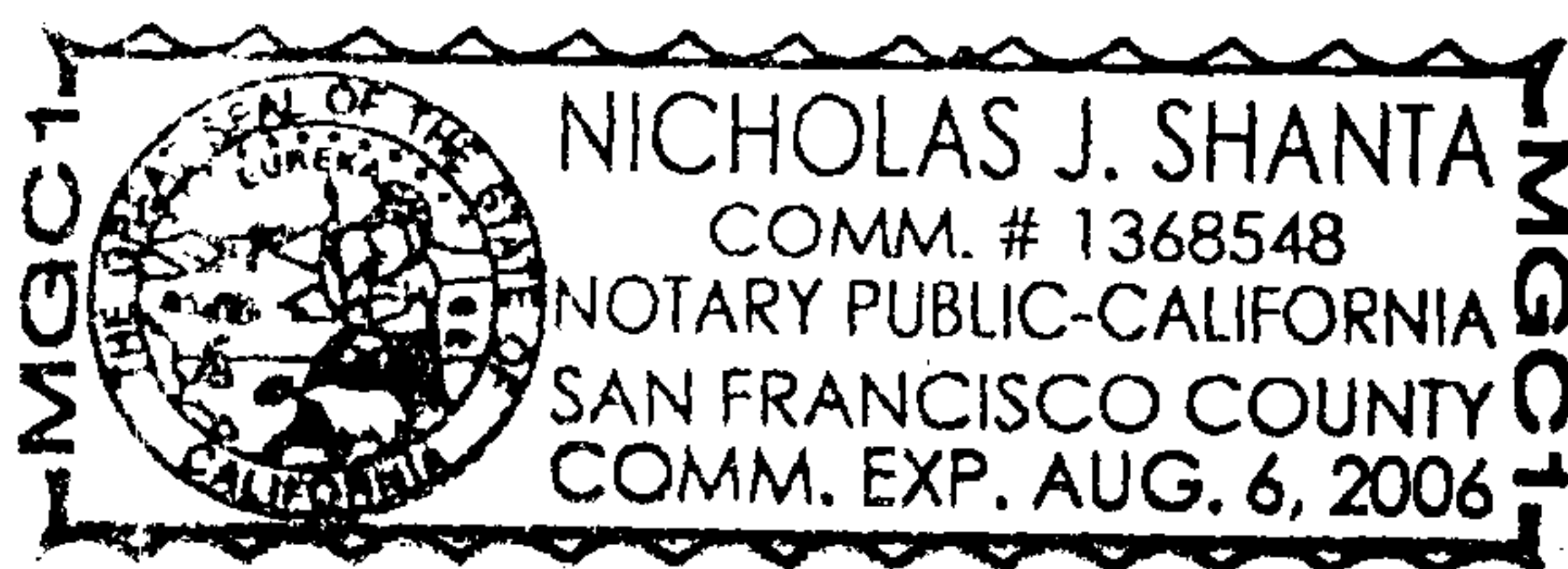

20060110000017110 7/11 \$41.00
Shelby Cnty Judge of Probate, AL
01/10/2006 02:07:37PM FILED/CERT

I, the undersigned, a notary public in and for said County in said State, hereby certify that Jennifer L. Wolf, whose name as _____ of JENNIFER L. WOLF, a married woman, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said individual.

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


Notary Public

[NOTARIAL SEAL]



My Commission Expires: 8-6-06

20060110000017110 8/11 \$41.00
Shelby Cnty Judge of Probate, AL
01/10/2006 02:07:37PM FILED/CERT

"LANDL...

[Handwritten signature]

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

STATE OF California
San Francisco COUNTY

I, the undersigned, a notary public in and for said County in said State, hereby certify that Jerry Ono, whose name as _____ of **JERRY ONO, AS TRUSTEE OF THE JERRY ONO 2004 LIVING TRUST DATED MARCH 3, 2004**, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said individual.

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

[Handwritten signature]

Notary Public

[NOTARIAL SEAL]

My Commission Expires: 8-6-06

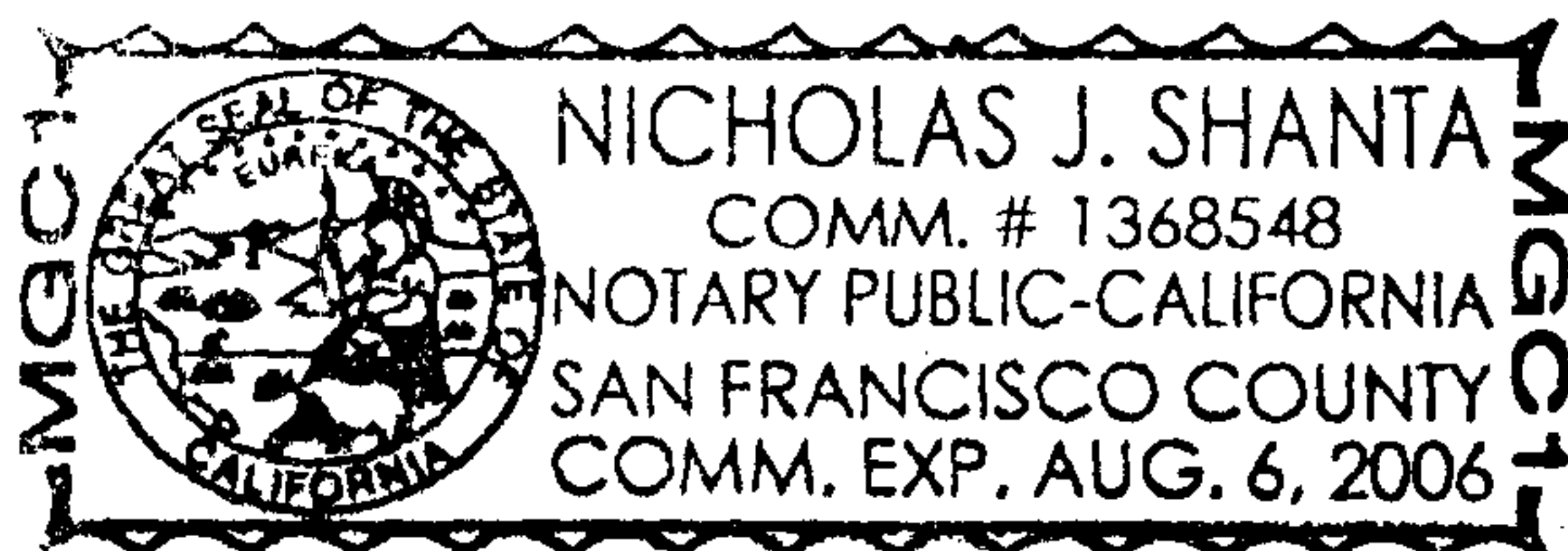


EXHIBIT "A"

20060110000017110 9/11 \$41.00
Shelby Cnty Judge of Probate, AL
01/10/2006 02:07:37PM FILED/CERT

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 CNL Net Lease Funding 2003, LLC by that certain Special Warranty Deed dated August 15, 2005, and recorded as Instrument # 20050819000428670 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 396.25 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

EXHIBIT "A"

Legal Description (continued)

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,

EXHIBIT "A"


20060110000017110 11/11 \$41.00
Shelby Cnty Judge of Probate, AL
01/10/2006 02:07:37PM FILED/CERT

Legal Description (continued)

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.