

20061113000554810 1/11 \$41.00
Shelby Cnty Judge of Probate, AL
11/13/2006 01:47:52PM FILED/CERT

RECORDING REQUESTED BY
~~AND WHEN RECORDED MAIL TO~~

Susan R. Proffitt, Esq.

Mayer, Brown, Rowe & Maw LLP

77 South Wacker Drive

Chicago, Illinois 606064637

When recorded mail to:

LandAmerica Financial Group, Inc.

Attn: A. Brown

1850 N. Central Avenue, Suite 300

Phoenix, AZ 85004

Escrow No. 06-49259

(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

**SUBORDINATION, NON-DISTURBANCE AND
ATTORNMEN T AGREEMENT
(136 1st St. N., Alabaster, AL)**

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT (the "**Agreement**") is entered into as of November 7, 2006 by and among **EXPRESS OIL CHANGE, L.L.C.**, a Delaware limited liability company, ("**Tenant**"), **SOVEREIGN EO, LLC**, a Delaware limited liability company ("**Borrower/Landlord**"), and **BMO CAPITAL MARKETS CORP.**, individually and as agent for the lenders from time to time pursuant to the Loan Agreement (defined hereinafter), a Delaware corporation ("**Lender**").

R E C I T A L S

A. Tenant is the Tenant and Borrower is the Landlord under that certain lease dated as of March 15, 2006 ("**Lease**").

B. Borrower has requested that Lender make a loan to Borrower to be secured by a Mortgage or Deed of Trust from Borrower for the benefit of Lender (the "**Mortgage**"), covering the property wherein the premises ("**Premises**") covered by the Lease are located, which property (the "**Property**") is described more fully in Exhibit "A". The Mortgage and all other documents to be executed by Borrower in connection with the requested loan (the "**Loan**") being herein collectively called the "**Loan Documents**".

C. Lender is willing to make the Loan, provided that, as a condition precedent thereto, Landlord and Tenant execute this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to make the Loan, Tenant, Borrower, and Lender hereby agree and covenant as follows:

1. **Subordination.** The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants and provisions of the Mortgage and to the lien thereof, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease. Notwithstanding the above provisions or anything to the contrary contained herein, in no event shall (a) Tenant have any liability under, or in any way be bound by, the Loan Documents, Tenant's liability being limited to its obligations under the Lease, under this Agreement, under any other agreements as to which Tenant is a party and otherwise as provided at law or in equity, or (b) this Agreement be deemed to be an amendment of the Lease.

2. **Non-disturbance and Attornment.** Provided that Tenant is not in default under any of the terms, covenants or conditions of the Lease, beyond any applicable notice and cure periods, Tenant's rights under the Lease and possession of the Premises thereunder shall not be affected or disturbed by Lender in the exercise of any of its rights and remedies under the "Credit Agreement" (as that term is defined in the Mortgage) or the Loan Documents. Upon foreclosure of the Mortgage, Tenant shall continue in occupancy of the Premises upon the terms and conditions of the Lease, shall attorn to Lender to the same extent and with the same force as if Lender were the Landlord under the Lease, and shall be bound by and perform all of the obligations imposed upon Tenant by the Lease. Tenant's attornment hereunder shall be effective and self-operative without the execution of any other instruments on the part of any party hereto, immediately upon Lender's acquisition of title to the Property. Tenant shall, within ten (10) days after request by Lender, execute any instrument, reasonably requested by Lender or take any action reasonably specified by Lender further to confirm attornment hereunder in accordance with the provisions of this Agreement. Without limitation, and notwithstanding the above provisions, upon foreclosure of the Mortgage (provided that Tenant is not in default thereunder beyond any applicable cure period), a foreclosure sale (or other exercise of rights by Lender) shall not affect Tenant's right to possession of the Premises or any other rights of Tenant under the Lease, but subject to the terms and conditions hereunder, including, without limitation, Section 3 and Section 4(f).

3. **Rights of Lender.** If Lender exercises its rights or remedies under the Loan Documents, or any of them, then Lender shall be entitled, but not obligated, to exercise any and all claims, rights, powers, privileges and remedies of Landlord under the Lease and shall be further entitled to the benefits of and to receive and enforce performance of all of the covenants, terms and conditions to be performed by Tenant under the Lease. Lender shall not, by execution of this Agreement, be or become subject to any liability or obligation to Tenant under the Lease or otherwise, unless and until Lender has obtained title to the Premises by foreclosure or otherwise,

and then only to the extent of liabilities or obligations accruing subsequent to the date Lender acquires (and prior to the date it disposes of) title to the Premises (it being understood that if Lender so acquires title to the Premises, Lender shall be bound to perform all obligations of Landlord pursuant to Exhibit D of the Lease) ; provided, however, that Lender shall not be:

(a) liable for any act or omission of any prior lessor (including Landlord) or subsequent lessor, provided any non-monetary defaults of an ongoing nature which continue after Lender or any successor in interest succeeds to the interests of Landlord under the Lease shall continue to constitute a default under the Lease;

(b) subject to any counterclaims, offsets, abatements, or defenses which Tenant might have against any prior lessor (including Landlord);

(c) bound by any rent or additional rent which Tenant might have paid in advance to any prior lessor (including Landlord) for any period beyond the month in which Lender succeeds to the interest of Landlord under the Lease;

(d) responsible for any security deposit, cleaning deposit or other prepaid charge which Tenant may have paid in advance to any prior lessor (including Landlord) which has not been delivered to Lender (Lender acknowledging that Lender will be responsible for any security deposit that is delivered or obtained by Lender);

(e) bound by any previous amendment or modification or termination (other than a termination permitted by the Lease after Landlord's default and expiration of notice and cure periods to Lender provided herein) of the Lease or by any waiver or forbearance by any prior landlord (including Landlord) unless the same was approved in writing by Lender;

(f) responsible for the performance of (or contribution toward) any work to be done by the landlord under the Lease to render the Premises ready or available for occupancy by the Tenant; or

(g) personally liable under or in connection with the Lease (Tenant's recourse being limited to Lender's interest in the Property).

Notwithstanding the foregoing provisions of this Section 3, Tenant shall retain all rights and remedies against Landlord.

4. **Certain Acknowledgments and Agreements by Tenant.**

(a) **Loan Disbursements.** Lender, in making any disbursements of the Loan to Borrower, shall be under no obligation or duty to oversee or direct the application of the proceeds of such disbursements, and such disbursements may be used by Borrower for purposes other than improvement of the Property.

(b) **Notice and Cure.** If Landlord commits any act or omission which constitutes a default under the Lease, or which would give Tenant the right, either immediately or after a lapse of time, to terminate the Lease, or to claim a partial or total eviction, Tenant shall not exercise any such right, or remedy with respect thereto: until it has given notice of such act

or omission to Lender, and Lender has failed to cure such default within twenty (20) after the date of such notice to Lender or, if the default cannot be cured within such twenty (20) day period and delay in the exercise of a remedy would not be reasonably likely to cause any material adverse harm to Tenant or the Premises, the cure period shall be extended for the period required to cure the default (but such cure period, including any extension, shall not in the aggregate exceed sixty (60) days) and so long as Lender commences to cure the default within the initial thirty (30) day period and actively, diligently and in good faith proceeds with and continues the cure of such default until it is fully cured. Nothing contained in this Section 4(b) shall obligate Lender to effect a cure of any act or omission of Landlord.

(c) **Notices.** Tenant shall send to Lender a copy of any notice or statement given by Tenant to Landlord under the Lease at the same time such notice or statement is sent to Landlord.

(d) **Option Rights.** Tenant warrants and represents that it has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof, or any interest therein, but to the extent that Tenant has had or hereafter acquires any such right or option, Tenant hereby acknowledges that such right or option is made subject and subordinate to the Loan Documents pursuant to this Agreement and is hereby waived and released against Lender.

(e) **New Lease.** Upon Lender's written request at or after any foreclosure under the Loan Documents, or any of them, Tenant shall execute a new lease of the Premises upon the same terms and conditions as the Lease between Landlord and Tenant, which new lease shall cover any unexpired term of the Lease existing prior to such foreclosure (but there shall be no requirement for an additional deposit) and which new lease shall have an Exhibit D which shall be the same (without modification) as Exhibit D to the Lease. Any additional leases that Lender and Tenant may enter into beyond the term of the Lease shall include terms similar to the terms in the Lease.

(f) **Rental Payments and Performance Under Lease.** Tenant shall not pay any installment of rent, or any other amount or charge due under the Lease, more than thirty (30) days prior to the due date thereof.

(g) **Modification and Cancellation of Lease.** Tenant shall not enter into any termination (other than a termination permitted by the Lease after Landlord's default and expiration of notice and cure periods to Lender provided herein), cancellation, surrender, or material amendment or modification of the Lease without Lender's prior written consent.

(h) **Tenant Estoppel Statement.** Borrower and Tenant hereby certify that (i) the Lease has not been amended or restated; (ii) the Lease is in good standing and in full force and effect and has not been modified or amended; (iii); Tenant has accepted the Premises, and Landlord has completed all construction and improvements required under the terms of the Lease to be completed by Landlord; (iv) the term of the Lease commenced on March 15, 2006 and will terminate on March 31, 2026; (v) Tenant has no options to renew or extend the term of the Lease except as provided in the Lease; (vi) there are no defaults of Tenant nor, to Tenant's knowledge, Landlord, under the Lease nor any existing conditions

which upon the giving of notice or lapse of time or both would constitute a default by Landlord or Tenant under the Lease; (vii) Tenant has not received any rental concession which is presently in effect or will in the future be in effect in connection with renting the Premises, and there are no offsets or credits against the payment of rent due under the Lease; (viii) Landlord has not advised Tenant of any prior assignment, hypothecation or pledge of the Lease or the rents due thereunder; (ix) Tenant has not assigned the Lease nor subleased the Premises; (x) there are no other agreements or understandings, whether written or oral, between Tenant and Landlord with respect to the Lease, except the memorandum of lease previously recorded.

(i) **Transfers by Tenant.** Tenant hereby agrees that any transfer of the Lease requiring Landlord's consent shall also require the prior written approval of Lender, in Lender's good-faith discretion.

5. **Certain Acknowledgments and Agreements by Landlord.**

(a) **Right of Lender to Receive Rental Payments.** In the event of any Event of Default under the Loan Documents, Lender has the right to give notice to Tenant to pay all rent and all other sums due or payable under the Lease directly to Lender. Landlord hereby expressly authorizes and directs Tenant (and Tenant agrees) to make such payments directly to Lender upon receipt of such notice (regardless of any conflicting claims made by Landlord as to whether a default exists or otherwise) and Landlord hereby releases and discharges Tenant of and from any liability to Landlord on account of any such payments made by Tenant hereunder.

(b) **Agreement Does Not Alter Loan Documents.** Borrower acknowledges that the Credit Agreement and the other Loan Documents remain in full force and effect, enforceable in accordance with their terms, and that this Agreement does not constitute a waiver by Lender of any of its rights thereunder, or in any way release Borrower from its obligations to comply with any of the terms, provisions, conditions, covenants, agreements or obligations under the Credit Agreement or the other Loan Documents.

6. **No Merger.** Borrower, Tenant, and Lender agree that unless Lender shall otherwise expressly consent in writing, fee title to the Property and the leasehold estate created by the Lease shall not merge but shall remain separate and distinct, notwithstanding the union of said estates in the Borrower or the Tenant or any third party by purchase, assignment or otherwise.

7. **Modifications; Lease Not Amended; Alterations to Loan.** This Agreement may not be modified orally or in any other manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall not be deemed to alter or modify any of the terms, covenants, conditions or obligations of the Lease, except to the extent specifically set forth herein. No renewal, extension, modification, consolidation or replacement of the Loan Documents, or any of them, or any other provision of the loan evidenced by the Credit Agreement, or any waiver of any term thereof, shall in any manner affect the obligations of Tenant under the Lease or this Agreement, and Tenant hereby unconditionally relinquishes, waives and releases any and all claims or defenses based thereon.

8. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective heirs, successors and assigns (including, in the case of Lender, anyone who shall have succeeded to Borrower's interest in the Premises by, through or under foreclosure of the Loan Documents, or any of them; and the term "foreclosure" shall be deemed to include judicial foreclosure, foreclosure by any power of sale granted under the Loan Documents, or the acquisition of Borrower's estate in the Property by voluntary deed or assignment in lieu of foreclosure); and provided, however, that the obligations and liabilities of Lender, and each of its successors and assigns, shall be binding upon Lender and each such successor only during such period as Lender or such successor retains an interest in the Loan Documents.

9. **Severability.** If any term of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those to which it is invalid and unenforceable, shall not be affected thereby, and in such event this Agreement shall be construed to the extent necessary as if such invalid or unenforceable provision had never been contained herein.

10. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the state in which the Premises are located (without regard to conflicts of law).

11. **Attorneys' Fees.** If any action or proceeding is brought by any party against any other party under this Agreement, the prevailing party shall be entitled to recover for the reasonable fees of its attorneys in such action or proceeding such amount as the court may adjudge reasonable.


12. **Notices.** Whenever a party shall desire to give or serve any notice, demand, request or other communication with respect to this Agreement ("**Notice**"), each such Notice shall be in writing and shall be personally served or sent by a commercial overnight delivery service or by certified mail, return receipt requested, and shall be deemed to have been received on the date actually received if personally served or on the next business day after deposit with an overnight delivery service or on the date of receipt or refusal as shown on the return receipt if sent by certified mail or by the overnight carrier's proof of delivery, as the case may be. The addresses of the parties to which Notices shall be sent (until notice of a change is served as provided in this paragraph) are as set forth below the signature of such party on the signature page of this Agreement.

13. **Terminology.** Whenever used in this Agreement (including any Exhibit hereto), the word "including", "includes", or "include" shall be read as though the phrase ", without limitation," immediately followed the same.

14. **Duplicate Originals, Counterparts.** This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement 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 Agreement. The failure

of any party hereto to execute any counterpart of this Agreement shall not relieve the other signatories from their obligations hereunder.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN TO BORROWER.


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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

NOTICE: THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT CONTAINS PROVISIONS WHICH ALLOW AN AFFILIATE OF THE LANDLORD OBLIGATED ON THE LEASE TO OBTAIN A LOAN, ALL OR A PORTION OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN IMPROVEMENT OF THE PROPERTY.


BORROWER/LANDLORD:

Sovereign EO, LLC, a Delaware limited liability company

By: Jeffrey G. Hopper
Name: Jeffrey G. Hopper
Title: Vice President

Address:
116 Village Boulevard
Princeton, NJ 08540
Telephone: (609) 524-4090

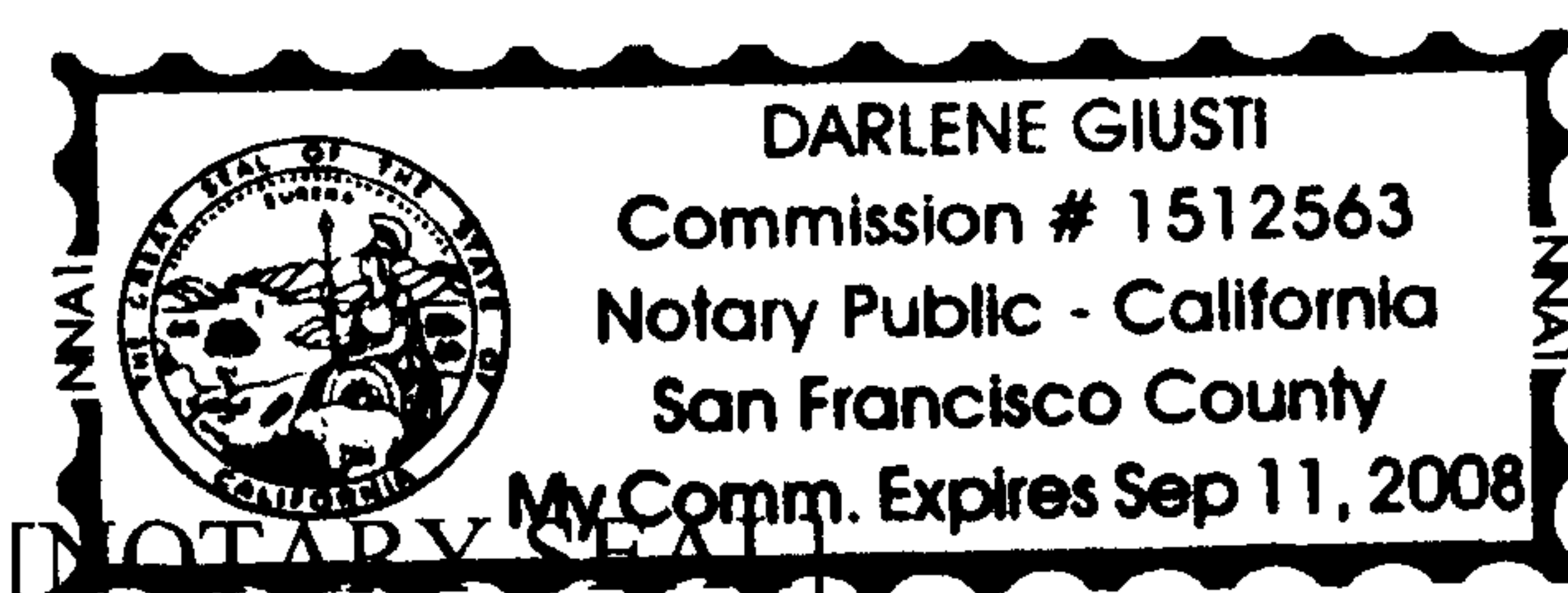
With a copy to:
General Counsel
777 California Ave.,
Palo Alto, CA. 94304


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STATE OF California)
COUNTY OF San Francisco

I, the undersigned, a notary public in and for said county in said state, hereby certify that JEFFREY HOPPER, whose name as Vice President of Sovereign EO, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act on behalf of said company.

Given under my hand and official seal this 9th day of October, 2006.



Darlene Giusti
• Notary Public
My commission expires: 9-11-08

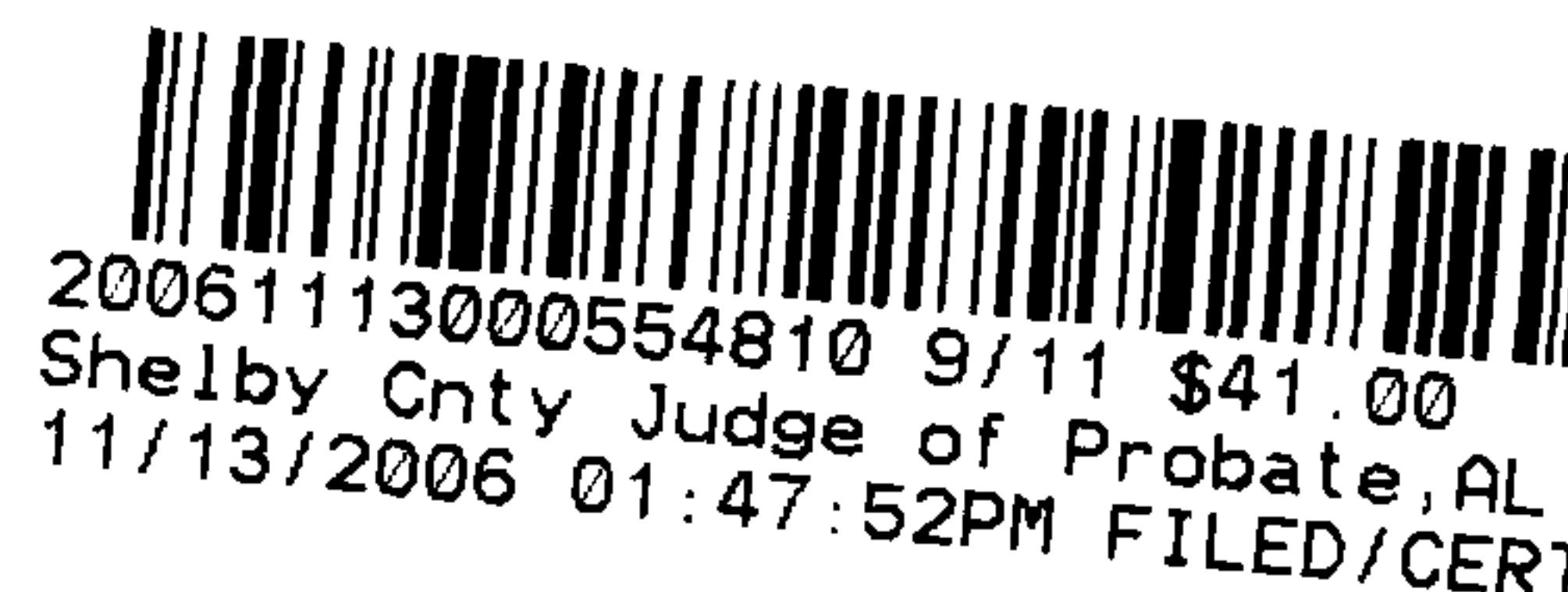
TENANT:

EXPRESS OIL CHANGE, L.L.C., a Delaware
limited liability company

By: Richard A. Brooks
Name: Richard A. Brooks
Title: CEO

Address:

190 West Valley Avenue
Birmingham, AL 25209
Attention: Richard A. Brooks, CEO
Facsimile: (205) 940-6026



STATE OF Alabama
COUNTY OF Jefferson

I, the undersigned, a notary public in and for said county in said state, hereby certify that Richard A. Brooks, whose name as CEO of EXPRESS OIL CHANGE, L.L.C., 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on behalf of said company.

Given under my hand and official seal this 5th day of Oct., 2006.

Juanice C. Parrish
• Notary Public

My commission expires: _____

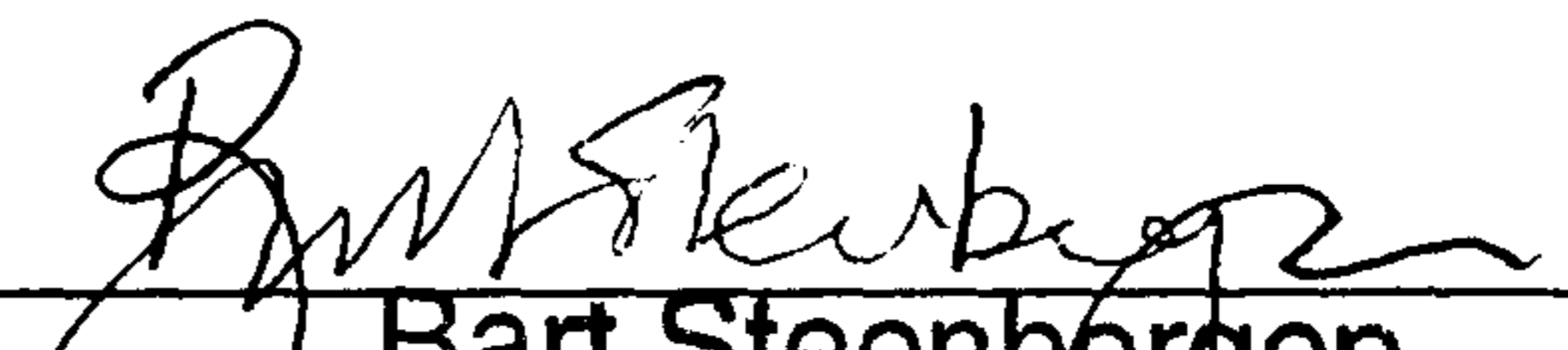
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 3, 2007
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS

[NOTARY SEAL]

LENDER:

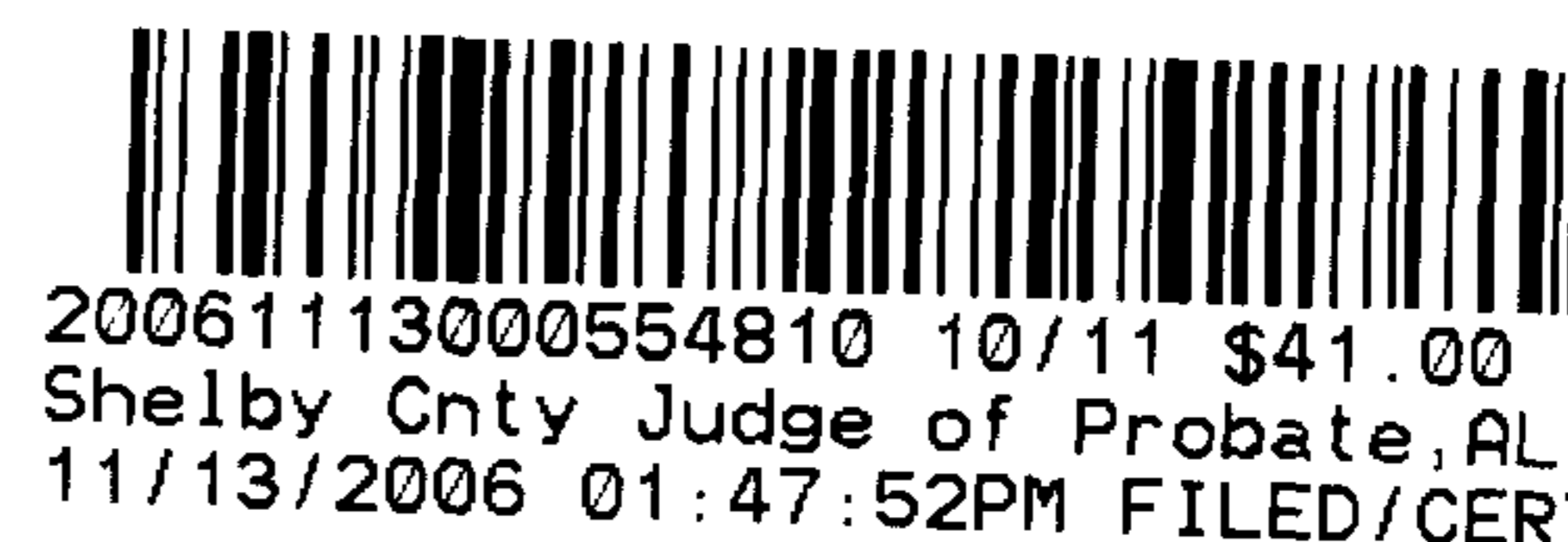
LENDER:

BMO CAPITAL MARKETS CORP.,
a Delaware corporation

By: 
Name: Bart Steenbergen
Title: Managing Director

Address:

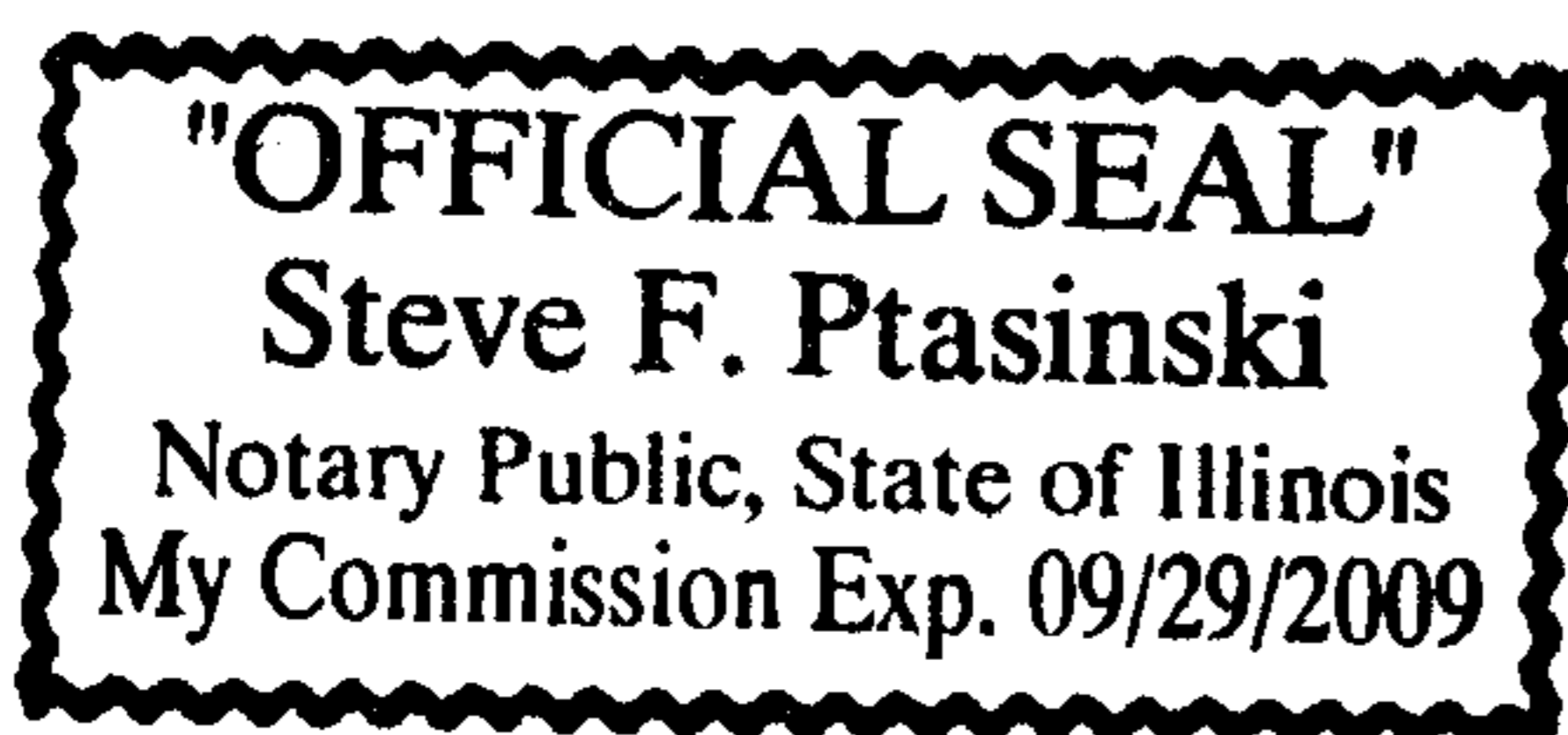
BMO Capital Markets Corp.
115 South LaSalle Street
13th Floor West
Chicago, IL 60603




STATE OF ILLINOIS)
COUNTY OF COOK)

I, the undersigned, a notary public in and for said county in said state, hereby certify that BART STEENBERGEN, whose name as M.D. of **BMO CAPITAL MARKETS CORP.**, a Delaware corporation, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and on behalf of said corporation.

Given under my hand and official seal this 26 day of OCTOBER, 2006.



[NOTARY SEAL]


• Notary Public
My commission expires: 9/29/09

136 1st Street N
Alabaster, AL

Exhibit "A"
Legal Description

Lots 3, 4, 5, 6, 7 and the South half of Lot 8, Block 2, according to Nickerson-Scott Survey as recorded in Map Book 3, page 34, in the Probate Office of Shelby County, Alabama.



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