


RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

IMPAC COMMERCIAL CAPITAL CORP.
19500 JAMBORREE Rd.
IRVINE, CA 92612

Attn: QUALITY CONTROL


20061219000617930 1/11 \$41.00
Shelby Cnty Judge of Probate, AL
12/19/2006 03:10:51PM FILED/CERT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement")) is made and entered into as of this 11th day of DECEMBER, 2006, by and among Impac Commercial Capital Corporation ("Mortgagee"), Starbucks Corporation, a Washington corporation ("Tenant") and Veronica M. Raczowski ("Landlord").

RECITALS

A. Mortgagee is the holder of a certain note (the "Note") and mortgagee under a mortgage dated DECEMBER 5, 2006 (the "Mortgage"), in which Landlord is named as the mortgagor, which Mortgage was recorded on DECEMBER 19, 2006, in the Official Records of SHELBY County, State of ALABAMA, as Document No. 20061219000617910. The Mortgage covers certain real property together with all appurtenances thereto and improvements thereon (the "Property") all as more particularly described in Exhibit A attached hereto and made a part hereof and which property is commonly known as Whitestone Shopping Center, in the City of Alabaster, County of Shelby, State of Alabama.

B. Landlord is the owner in fee simple of the Property and is the current obligor under the Note.

C. By Lease dated May 18, 2006, (the "Lease") Landlord leased to Tenant those certain premises (the "Premises") which constitutes or forms a portion of the Property covered by the Mortgage and commonly known as Whitestone Shopping Center, all as more particularly described in said lease.

D. The Lease is or may become (subject to this Agreement) subordinate in priority to the lien of the Mortgage.

E. Tenant wishes to obtain from Mortgagee certain assurances that Tenant's possession of the Premises will not (subject to this Agreement) be disturbed by reason of the enforcement of the Mortgage covering the Premises or a foreclosure of the lien thereunder.

F. Mortgagee is willing to provide such assurances to Tenant upon and subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above, the reciprocal promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do mutually agree as follows:

1. **Ratification.** The Lease now is or shall become upon the mutual execution of this Agreement subject and subordinate in all respects to the lien of the Mortgage and all renewals, modifications and extensions thereof, subject to the terms and conditions of this Agreement. Mortgagee acknowledges receipt of a copy of the Lease and hereby approves the same. Tenant hereby affirms that the Lease is in full force and effect and that the Lease has not been modified or amended.

2. **Landlord's Default.** From and after the date Tenant receives a fully executed copy of this Agreement, Tenant will not seek to terminate the Lease by reason of any act or omission that constitutes (or would over time constitute) a default of Landlord until Tenant shall have given written notice of such act or omission to Mortgagee (at Mortgagee's last address furnished to Tenant) and until a period of thirty (30) days shall have elapsed, Mortgagee shall have the right, but not the obligation, to remedy such act or omission, provided however that if the act or omission does not involve the payment of money from Landlord to Tenant and (i) is of such a nature that it could not be reasonably remedied within the thirty (30) day period aforesaid, or (ii) the nature of the act or omission or the requirements of local law require Mortgagee to appoint a receiver or to foreclose on or commence legal proceedings to recover possession of the Property in order to effect such remedy and such legal proceedings and consequent remedy cannot reasonably be achieved within said thirty (30) days, then Mortgagee shall have such further time as is reasonable under the circumstances to effect such remedy (not to exceed forty five (45) days after the expiration of the thirty (30) day period aforesaid) provided that Mortgagee shall notify Tenant, within ten (10) days after receipt of Tenant's notice, of Mortgagee's intention to effect such remedy and provided further that Mortgagee institutes immediate legal proceedings to appoint a receiver for the Property or to foreclose on or recover possession of the Property within said thirty (30) day period and thereafter prosecutes said proceedings and remedy with due diligence and continuity to completion. Notwithstanding the foregoing, Mortgagee shall have no rights under this Section 2 if Mortgagee is an entity that controls, is controlled by, or is under common control with Landlord.

3. **Non-Disturbance and Attornment.** So long as Tenant is not in default under the Lease (beyond any period given Tenant to cure such default) as would entitle Landlord to terminate the Lease or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant thereunder, Mortgagee will not disturb the peaceful and quiet possession or right of possession of the Premises by Tenant nor shall the Lease or its appurtenances be extinguished by reason of any Foreclosure (as hereinafter defined) or otherwise, nor join Tenant as a party in any action or proceeding brought pursuant to the Mortgage.

In the event that Mortgagee or its successors or assigns, as defined in Paragraph 7 hereof ("Successor Landlord") acquires the interest of Landlord or comes into the possession of or acquires title to the Premises (the "Succession") by reason of the foreclosure (judicial or non-judicial) or enforcement of the Mortgage (including a private power of sale) or the Note or obligations secured thereby or by a conveyance in lieu thereof or other conveyance or as a result of any other means (any or all of the foregoing hereinafter referred to as a "Foreclosure"), then the Lease and all appurtenances thereto shall remain in full force and effect and Tenant shall be bound to Successor Landlord under all of the provisions of the Lease for the balance of the term thereof (including any extensions or renewals thereof which may be effected in accordance with any options contained in the Lease) with the same force and effect as if Successor Landlord was Landlord under the Lease, and Tenant shall attorn to Successor Landlord as its landlord, such attornment to be effective and self operative, without the execution of any further instruments on the part of either of the parties hereto, immediately upon the Succession; and further, in such event, Successor Landlord shall be bound to Tenant under all of the provisions of the Lease, and Tenant shall, from

and after such Succession, have the same remedies against Successor Landlord for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord thereunder, provided, however, that if Successor Landlord is not an entity that controls, is controlled by, or is under common control with Landlord, then Successor Landlord shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 2 hereof) of such act or omission to the party who was the then holder of the Mortgage (whether or not such holder elected to cure or remedy such act or omission); or

(b) subject to any offsets (except those expressly permitted under the Lease) or defenses which Tenant might have against any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 2 hereof) of the state of facts or circumstances under which such offset or defense arose to the party who was the then holder of the Mortgage (whether or not such holder elected to cure or remedy such condition); or

(c) bound by any rent or additional rent which Tenant might have paid to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under the Lease; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is available to the party who was the holder of the Mortgage at the time of a Foreclosure.

(e) bound by any amendment or modification of the Lease made after the date of this Agreement without the consent of the party who was the holder of the Mortgage at the time of such amendment or modification, unless such amendment or modification was subsequently affirmed by an intervening holder of the Mortgage.

Tenant shall be under no obligation to pay rent to Mortgagee or Successor Landlord until Tenant receives written notice from Mortgagee or Successor Landlord stating that Mortgagee or Successor Landlord is entitled to receive the rents under the Lease directly from Tenant. Landlord, by its execution hereof, hereby authorizes Tenant to accept such direction from Mortgagee or Successor Landlord and to pay the rents directly to Mortgagee or Successor Landlord and waives all claims against Tenant for any sums so paid at Mortgagee's or Successor Landlord's direction. Tenant may conclusively rely upon any written notice Tenant receives from Mortgagee or Successor Landlord notwithstanding any claims by Landlord contesting the validity of any term or condition of such notice, including any default claimed by Mortgagee or Successor Landlord, and Tenant shall have no duty to inquire into the validity or appropriateness of any such notice.

4. Notices of Default/Tenant's Right to Cure. Mortgagee hereby agrees to give to Tenant a copy of each notice of a failure on the part of the mortgagor or obligor under the Mortgage or Note to perform or observe any of the covenants, conditions or agreements of such Mortgage or Note at the same time as whenever any such notice shall be given to the said mortgagor or obligor, such copy to be sent as provided in Paragraph 6 herein. Further, Mortgagee shall accept the cure by Tenant of any default, which cure shall be made within ten (10) days in the case of monetary defaults of Landlord and within thirty (30) days in the case of non-monetary defaults following Tenant's receipt of such notice provided however that (i) if the failure of performance does not involve the payment of money from Landlord to Tenant, and (ii) is of such a nature that it could not be reasonably remedied within the thirty (30) day period aforesaid, then Tenant shall have such further time as is reasonable under the circumstances to effect such remedy provided that Tenant shall notify Mortgagee, within ten (10) days after receipt of Mortgagee's notice, of Tenant's intention to effect such remedy and provided further that Tenant institutes steps to effect such remedy within said thirty (30) day period and thereafter prosecutes said remedy with due diligence and continuity to completion. Mortgagee agrees that it will accept such performance by Tenant of any covenant, condition or agreement to be performed by mortgagor or obligor under the Mortgage or Note with the same force and effect as though performed by such mortgagor or obligor. The provisions of this Paragraph 4 are intended to confer additional

rights upon Tenant and shall not be construed as obligating Tenant to cure any default of any such mortgagor or obligor.

5. Agreement to Release Proceeds or Awards.

(a) **Casualty.** In the event of a casualty at the Premises, Mortgagee shall release its interest in any insurance proceeds applicable to the nonstructural improvements installed by Tenant. Mortgagee acknowledges that it has no interest and waives any interest in Tenant's personal property, furnishings, machinery, trade fixtures, equipment, signs and any safety systems (such as, without limitation, fire and security monitoring and alarm systems) installed at or about the Premises, or any insurance proceeds are payable with respect thereto under either Landlord's or Tenant's policies.

(b) **Eminent Domain.** In the event of a public taking or act of eminent domain, Mortgagee shall release its interest in that portion of the award to which Tenant is entitled pursuant to the Lease, as well as its interest in so much of the award applicable to the improvements installed by Tenant as shall be necessary for the purposes of restoration, consistent with Landlord's and Tenant's rights and obligations under the Lease.

6. Notices. Whenever a provision is made under this Agreement for any notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice or declaration to the other party, in order to be effective such notice or declaration shall be in writing and served either personally (provided that proof of delivery thereof can be produced) or sent by United States mail, certified, postage prepaid, or by pre-paid nationally recognized overnight courier service (provided that proof of delivery thereof can be produced), addressed at the addresses set forth below or at such address as either party may advise the others from time to time.


To Mortgagee: Impac Commercial Capital Corporation
1401 Dove Street
Newport Beach, CA 92660

To Tenant: Starbucks Corporation
Attn: Property Management Department
RE: Starbucks Coffee Company Store #10796
Mailstop S-RE3

by mail: P.O. Box 34067
Seattle, WA 98124-1067

or by overnight delivery: 2401 Utah Avenue South, Suite 800
Seattle, WA 98134


To Landlord: Veronica M. Raczowski
708 California Street
Huntington Beach, CA 92660


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Mortgagee and Landlord shall send a duplicate copy of any notice given hereunder to the attention of the Law and Corporate Affairs Department at the same address, Mailstop S-LA1. No notice to Tenant shall be effective unless it is addressed to the attention of Property Management Department and as otherwise set forth above. No notice delivered to the Premises shall be effective. Any party may change the address by written notice to the other parties clearly stating such party's intent to change the address for all purposes of this Agreement, which new address shall

be effective one (1) month after receipt. Notice shall be deemed given when received or when receipt is refused, provided that such notice was sent pursuant to the requirements of this Section 6.

7. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, heirs, successors and assigns it being understood that the obligations herein of Mortgagee shall extend to it in its capacity as mortgagee under the Mortgage and to its successors and assigns, including anyone who shall have succeeded to its interest or to Landlord's interest in the Premises or acquired possession thereof by Foreclosure or otherwise.


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8. **Miscellaneous.**

8.1 **Authority.** Each party hereby represents and warrants that this Agreement has been duly authorized, executed and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with the terms hereof.

8.2 **Severability.** The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

8.3 **Interpretation.** Article and section headings are not a part hereof and shall not be used to interpret the meaning of this Agreement. This Agreement shall be interpreted in accordance with the fair meaning of its words and both parties certify they either have been or have had the opportunity to be represented by their own counsel and that they are familiar with the provisions of this Agreement, which provisions have been fully negotiated, and agree that the provisions hereof are not to be construed either for or against either party as the drafting party.

8.4 **Amendments.** This Agreement may be modified only in writing, signed by the parties in interest, at the time of the modification. Landlord and Mortgagee specifically acknowledge that Tenant's employees at the Premises do not have authority to modify this Agreement or to waive Tenant's rights hereunder.

8.5 **Waivers.** No waiver of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision. A party's consent to or approval of any act shall not be deemed to render unnecessary obtaining such party's consent to or approval of any subsequent act. No waiver shall be effective unless it is in writing, executed on behalf of the party by the person to whom notices are to be addressed.

8.6 **Cumulative Remedies.** Except where otherwise expressly provided in this Agreement, no remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

8.7 **Choice of Law.** This Agreement shall be governed by the laws of the state where the Premises are located.

8.8 **Attorneys' Fees.** If either party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, proceeding, trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court.


8.9 **Consents.** Whenever the right of approval or consent is given to a party pursuant to this Agreement, that party shall not unreasonably withhold, condition or delay its consent unless this Agreement expressly provides otherwise.

8.10 Waiver of Jury Trial. With respect to any litigation arising out of or in connection with this Agreement, each party hereby expressly waives the right to a trial by jury.

8.11 No Other Mortgage. Landlord represents and warrants to Tenant that, as of the date hereof, no lender, other than Mortgagee, has a security interest in the Property.

9. Effectiveness of Agreement. If, within thirty (30) days of Tenant's execution of this Agreement, Tenant has not received a fully executed original of this Agreement at the notice address listed above, this Agreement shall be null and void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.


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MORTGAGEE

Impac Commercial Capital Corporation

By: 

ROBERT FARRINGTON

Its: **VP-Commercial Underwriting Manager**

TENANT

Starbucks Corporation,
a Washington corporation

By: 

Nathan Weinberger

director portfolio management
Store Development

Its: _____

Date: December 1, 2006

LANDLORD

Veronica Raczowski

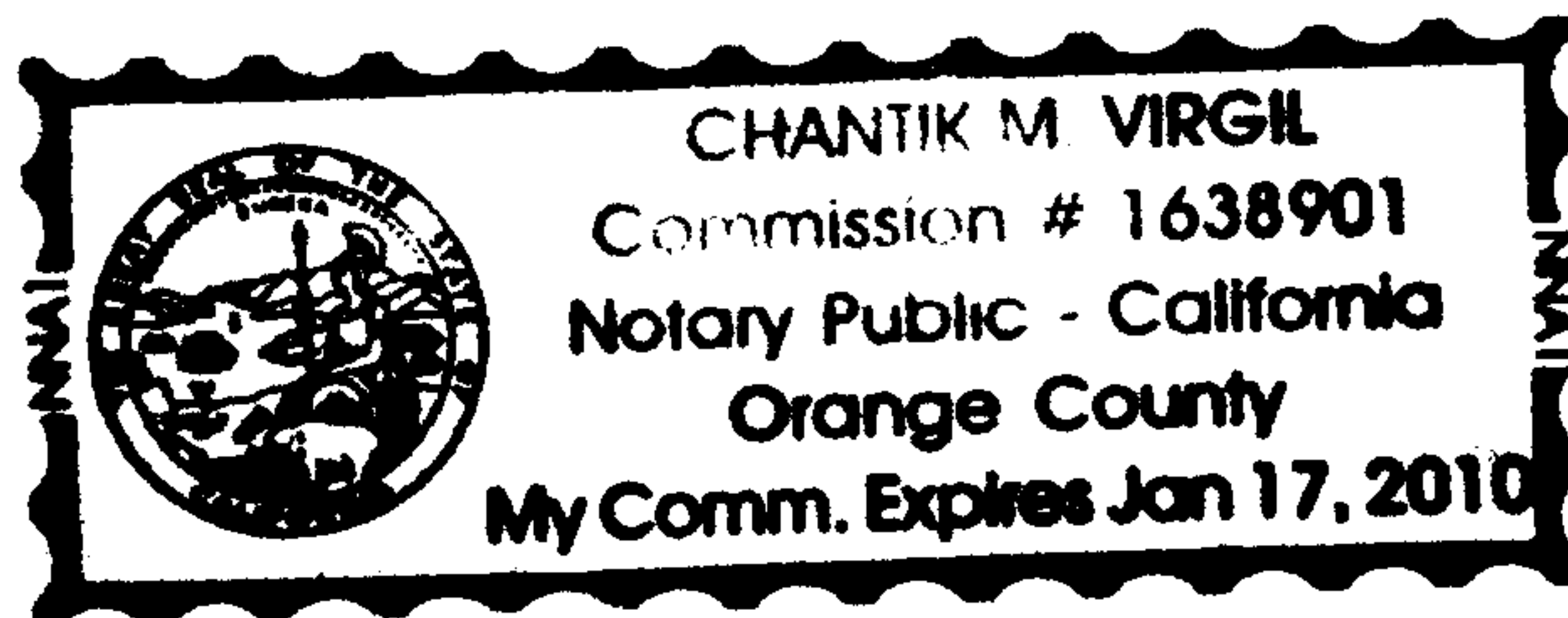
By: _____

Its: _____

STATE OF California)
COUNTY OF Orange) SS

On this 11th day of December, 2006, before me, the undersigned, a Notary Public in and for the State of California, personally appeared Robert Farrington, to me known as, ~~or providing~~ VP-Commercial Underwriting Manager of IMPAC Commercial Capital Corp., the Corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said Corporation for the uses and purposes therein mentioned and stated that he is authorized to execute said instrument.

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



Chantik M. Virgil
Notary Public in and for the State of _____
Residing at _____
My commission expires: _____
Print Name: Chantik M. Virgil

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STATE OF _____)
COUNTY OF _____) SS

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, to me known as, or providing satisfactory evidence that he/she is the _____ of _____, the _____ that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said _____ for the uses and purposes therein mentioned and stated that he/she is authorized to execute said instrument.

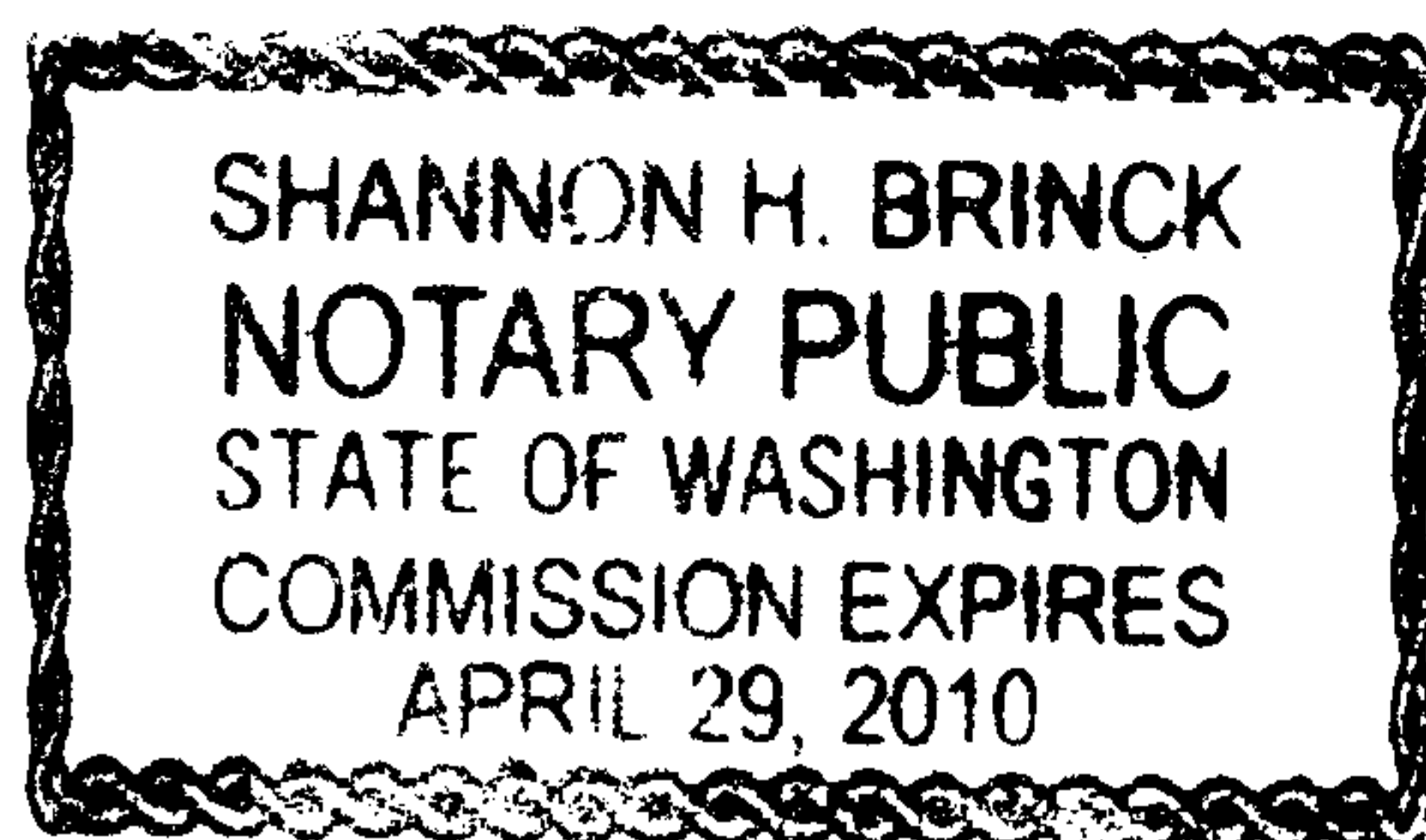
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last written above.

Notary Public in and for the State of _____
Residing at _____
My commission expires: _____
Print Name: _____

STATE OF WASHINGTON)
County of King) ss
)

On this 1st day of Dec. 2006, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared Nathan Weinberger, to me known as, or providing satisfactory evidence that he/she is the director portfolio management, Store Development of Starbucks Corporation, a Washington corporation, the corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated that he/she is authorized to execute said instrument.

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



Shannon Brinck
Notary Public in and for the State of Washington

Residing at _____
My commission expires: 4-29-2010
Print Name: Shannon Brinck

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8.10 Waiver of Jury Trial. With respect to any litigation arising out of or in connection with this Agreement, each party hereby expressly waives the right to a trial by jury

8.11 No Other Mortgage Landlord represents and warrants to Tenant that, as of the date hereof, no lender, other than Mortgagee, has a security interest in the Property.

9. Effectiveness of Agreement. If, within thirty (30) days of Tenant's execution of this Agreement, Tenant has not received a fully executed original of this Agreement at the notice address listed above, this Agreement shall be null and void

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written

MORTGAGEE

Impac Commercial Capital Corporation

By: _____

Its: _____

TENANT

Starbucks Corporation,
a Washington corporation

By: _____

Nathan Weinberger
director portfolio management
Store Development

Its: _____

Date: December 1, 2006

LANDLORD

Raczowski
Veronica Raczowski *VR*

By: _____

Its: _____

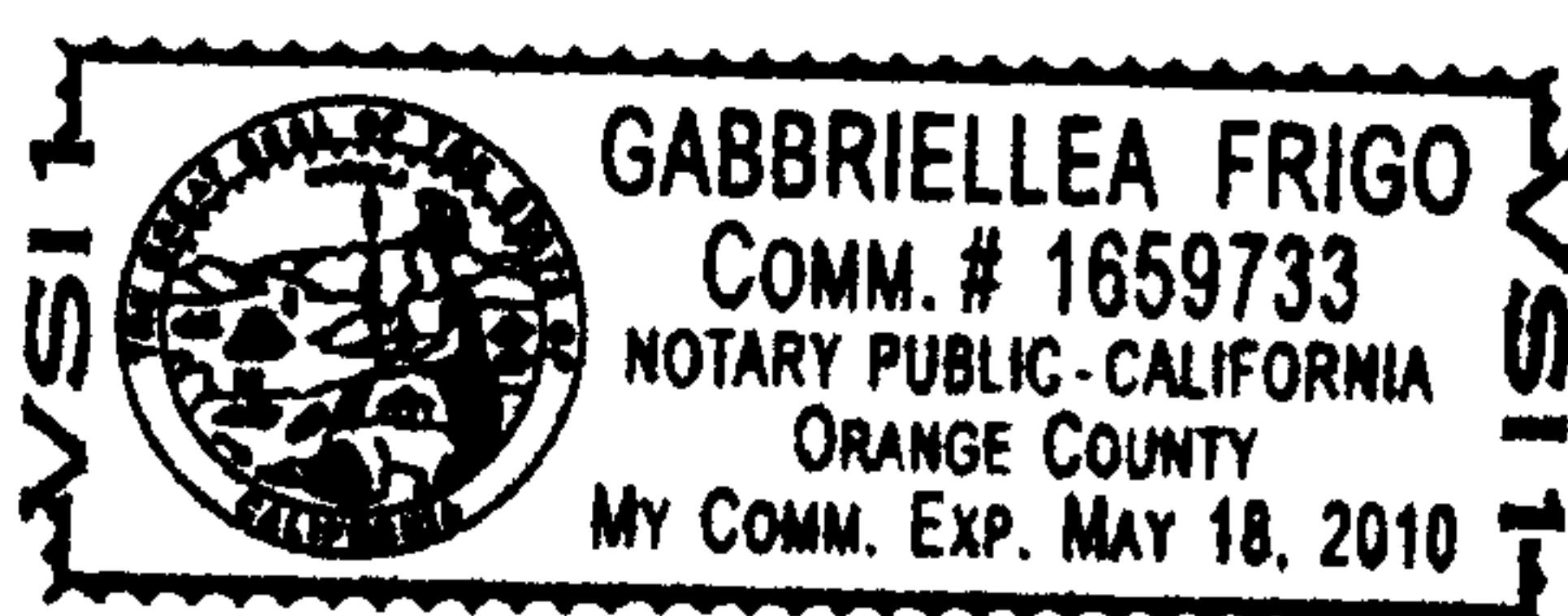
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STATE OF California

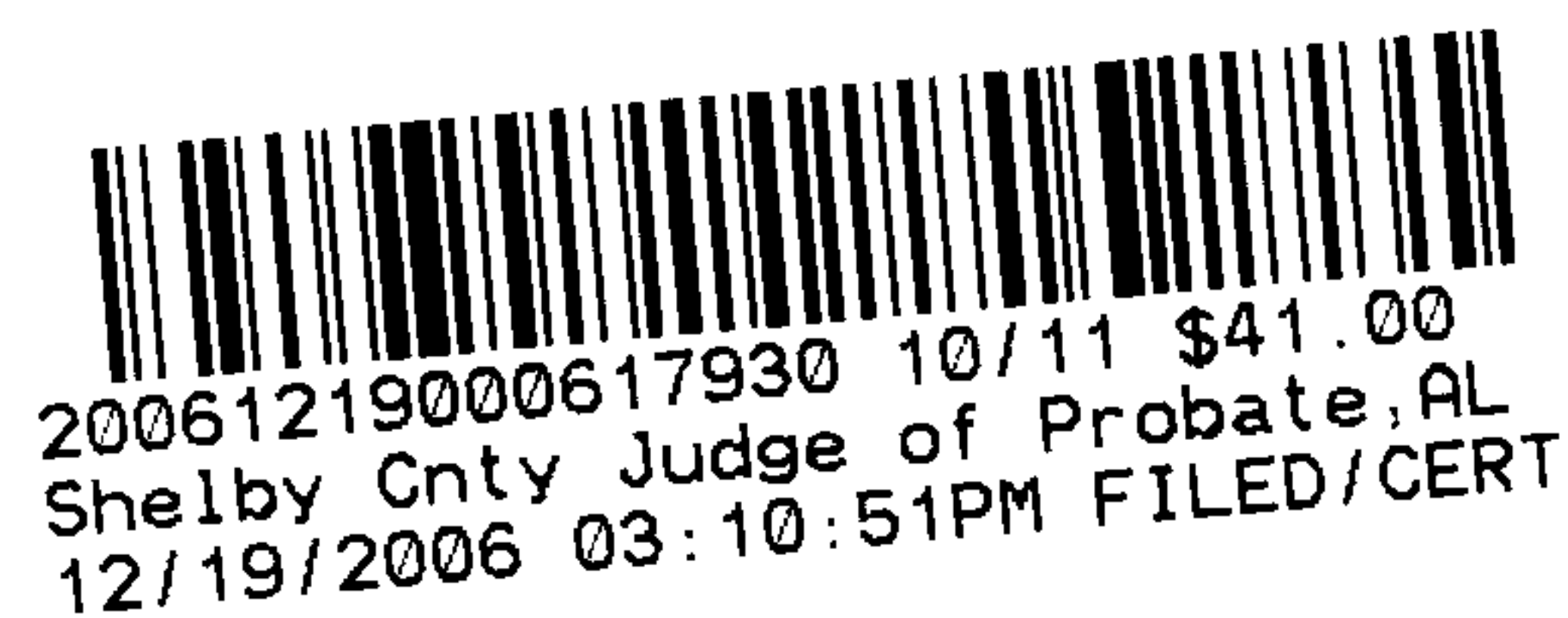
COUNTY OF Orange

On this 11th day of December, '06, before me, the undersigned, a Notary Public in and for the State of California, personally appeared Veronica Raczewska, to me known as, or providing satisfactory evidence that he/she is the individual of _____, the _____ that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said individual for the uses and purposes therein mentioned and stated that he/she is authorized to execute said instrument.

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




Notary Public in and for the State of California
Residing at 14042 College St. Westminster, CA 92683
My commission expires: May 18, 2010
Print Name: Gabriella Frigo



STATE OF _____)
) ss
COUNTY OF _____)

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, to me known as, or providing satisfactory evidence that he/she is the _____ of _____, the _____ that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said _____ for the uses and purposes therein mentioned and stated that he/she is authorized to execute said instrument

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last written above

Notary Public in and for the State of _____
Residing at _____
My commission expires: _____
Print Name: _____

EXHIBIT A

Legal Description

Tax Parcel Number: 23-6-14-2-001-001.005
[To be revised upon subdivision]


That certain tract of land situated in Shelby County, Alabama and more particularly described as follows:

Lot 6-A

A parcel of land located in the northeast quarter of the northwest quarter of Section 14, Township 21 South, Range 3 West being a portion of Lot 6, White Stone Center Subdivision as recorded in the Probate Office of said County in Map Book 33 at Page 138A & 138B, said parcel being more particularly described as follows:

COMMENCE at the northwest corner of said Section 14; thence run South 89 degrees, 03 minutes, 42 seconds East and along the section line 1538.52 feet to the northwest corner of said Lot 6, White Stone Center Subdivision and the POINT OF BEGINNING, said POINT lying on the east right-of-way of Alabama Highway 119, a variable-width right-of-way; thence continue South 89 degrees, 03 minutes, 42 seconds East along the section line 169.97 feet; thence run South 19 degrees, 34 minutes, 47 seconds East 98.49 feet; thence run North 70 degrees, 25 minutes, 13 seconds East 8.25 feet; thence run South 19 degrees, 34 minutes, 47 seconds East 22.06 feet; thence run South 67 degrees, 21 minutes, 34 seconds East 10.43 feet; thence run South 22 minutes, 38 minutes, 43 seconds West 59.02 feet to a point on the north right-of-way of Kent Dairy Road, a 60-foot wide right-of-way; thence run North 67 degrees, 21 minutes, 17 seconds West and along said right-of-way 253.58 feet to a point on said east right-of-way of Alabama Highway 119; thence run North 25 degrees, 20 minutes, 17 seconds East and along said right-of-way 74.03 feet to the POINT OF BEGINNING.

Said Lot 6-A containing 0.576 acres, more or less.


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