  
20080617000247210 1/24 \$87.00  
Shelby Cnty Judge of Probate, AL  
06/17/2008 02:33:42PM FILED/CERT

This instrument prepared by  
and when recorded, return to:

Click & Null, P.C.  
3475 Piedmont Road NE  
Suite 1910  
Atlanta, Georgia 30305  
Attn: W. Gregory Null  
Ref: CWCcapital/Winn Dixie - Helena

ABOVE SPACE FOR RECORDER'S USE

#### ASSUMPTION AND RELEASE AGREEMENT

THIS ASSUMPTION AND RELEASE AGREEMENT (this "*Agreement*") is made effective as of June 16, 2008 (the "*Effective Date*"), by and among **HELENA I, LLC**, a Delaware limited liability company ("*Original Borrower*"), having an address at 365 South Street, Morristown, NJ 07960, **LAMAR WESTERN L.P.**, a Delaware limited partnership ("*Original Borrower Principal*"), having an address at 365 South Street, Morristown, NJ 07960, **K & H HELENA, LLC**, a Delaware limited liability company ("*Assumptor*"), having an address at P.O. Box 1197, Los Altos, CA 94023, **CHRISTIAN HANSEN**, having an address at P.O. Box 1197, Los Altos, CA 94023, **CINDY H. HANSEN**, having an address at P.O. Box 1197, Los Altos, CA 94023, **THOMAS KUO**, having an address at P.O. Box 1197, Los Altos, CA 94023, **DIANA KUO**, having an address at P.O. Box 1197, Los Altos, CA 94023, **ALEX SHU-JEI CHEN**, having an address at P.O. Box 1197, Los Altos, CA 94023, and **LIU LIN LI CHEN**, having an address at P.O. Box 1197, Los Altos, CA 94023, each an individual (individually and collectively, "*Assumptor Principal*"), **CWCAPITAL LLC**, a Massachusetts limited liability company ("*Lender*"), having an address at 63 Kendrick Street, Needham, Massachusetts 02494, Attention: Servicing Department.

## RECITALS:

A. Original Borrower executed and delivered to the order of Lender that certain Promissory Note dated May 9, 2007 (together with all addenda, modifications, amendments, riders, exhibits and supplements thereto, the "**Note**"), in the stated principal amount of \$4,825,000.00, which Note evidences a loan (the "**Loan**") made by Lender to Original Borrower. To secure the repayment of the Note, Original Borrower, among other things, executed and delivered that certain Mortgage, Assignment of Leases and Rents and Security Agreement dated May 9, 2007 (together with all addenda, modifications, amendments, riders, exhibits and supplements thereto, the "**Security Instrument**"), recorded on May 10, 2007, as Instrument No. 20070510000219820 in the Office of the Judge of Probate of Shelby County, Alabama, which grants a lien on certain property described on Exhibit A attached hereto and incorporated herein by reference and more particularly described in the Security Instrument (the "**Premises**"; the Premises together with all the property encumbered by Security Instrument is herein after referred to as the "**Security Property**"), and that certain Assignment of Leases and Rents, dated May 9, 2007 (together with all addenda, modifications, amendments, riders, exhibits and supplements thereto the "**Assignment of Leases and Rents**"), recorded as Instrument No. 20070510000219830 of the aforesaid records. Original Borrower is liable for the payment and performance of all of Original Borrower's obligations under the Note, the Security Instrument, the Assignment of Leases and Rents and any and all other documents evidencing, securing, guaranteeing or otherwise pertaining to the Loan (such documents together with all addenda, modifications, amendments, riders, exhibits and supplements thereto are herein referred to as the "**Loan Documents**"). The term Loan Documents for the purposes of this Agreement shall also be deemed to include that certain Environmental and Hazardous Substance Indemnification Agreement dated May 9, 2007, made by Original Borrower for the benefit of Lender (together with all addenda, modifications, amendments, riders, exhibits and supplements thereto, the "**Hazardous Substance Indemnity**"), and that certain Guaranty dated May 9, 2007, made by Original Borrower Principal for the benefit of Lender (together with all addenda, modifications, amendments, riders, exhibits and supplements thereto, the "**Guaranty Agreement**").

B. Lender, as the holder of the Note and beneficiary under the Security Instrument, has been asked to consent to the transfer of the Security Property to Assumptor (the "**Transfer**") and the assumption by Assumptor and Assumptor Principal of the obligations of Original Borrower and Original Borrower Principal, respectively, under the Loan Documents (the "**Assumption**").

C. Lender has agreed to consent to the Transfer and the Assumption subject to the terms and conditions stated below.



## AGREEMENT:

In consideration of the foregoing and the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Original Borrower, Original Borrower Principal, Assumptor and Assumptor Principal agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein as a substantive, contractual part of this Agreement.

2. Assumption of Obligation. Assumptor agrees to and does hereby assume as of the origination date of the Loan, all of the payment and performance obligations of Original Borrower set forth in the Note, the Security Instrument and the other Loan Documents in accordance with their respective terms and conditions, as the same may be modified by this Agreement including, without limitation, payment of all sums due and payable under the Note. Assumptor further agrees to abide by and be bound by all of the terms of the Loan Documents, all as though each of the Loan Documents had been made, executed and delivered by Assumptor. The provisions of the Loan Documents are incorporated herein by reference as if fully set forth herein. Assumptor acknowledges and agrees that any reference to Original Borrower in the Loan Documents shall be deemed to refer to Assumptor. Assumptor hereby adopts, ratifies and confirms as of the date hereof all of the representations, warranties and covenants of Original Borrower contained in the Loan Documents in connection with the Loan including, but not limited to, the Hazardous Substance Indemnity, as if Assumptor were Original Borrower named in the Loan Documents.

3. Original Borrower's Acknowledgments, Representations and Warranties. Original Borrower acknowledges, represents, warrants and covenants to Lender as of the date of this Agreement that:

(a) The Note has an unpaid principal balance as of the date of this Agreement, of \$4,825,000.00, and prior to default bears interest at the rate of 5.88% per annum, subject to adjustment as set forth in the Loan Documents. There is presently a balance of \$39,084.80 in the Tax and Insurance Impound Fund (as defined in the Security Instrument), a balance of \$1,427.20 in the Replacement Escrow Fund (as defined in the Security Instrument), a balance of \$0.00 in the Leasing Escrow Fund (as defined in the Security Instrument), and a balance of \$0.00 in the Repair and Remediation Fund (as defined in the Security Instrument), all maintained by Lender in connection with the Loan. Contemporaneously herewith, Original Borrower has transferred and assigned to Assumptor all right, title and interest of Original Borrower in and to such Reserves (as defined in the Security Instrument). Lender has no further duty or obligation of any nature to Original Borrower relating to such balances in the Reserves.

(b) The Note requires that monthly payments of interest only be made on or before the first day of each month through and including June 1, 2010, and monthly payments of principal and interest in the amount of \$28,557.12 be made on or before the first day of each month thereafter beginning on July 1, 2010 through and including June 1, 2017, the "Anticipated Repayment Date" (as defined in the Note), in accordance with



Section 1.02 of the Note, provided that all sums due under the Loan Documents will be immediately due and payable in full on June 1, 2037, if not sooner accelerated or paid.

(c) The Security Instrument is a valid first lien on the Security Property for the full unpaid principal amount of the Loan and all other amounts as stated in the Loan Documents.

(d) There are no defenses, offsets or counterclaims to the Note, the Security Instrument or the other Loan Documents.

(e) There are no defaults by Original Borrower under the provisions of the Note, the Security Instrument or the other Loan Documents, nor are there any conditions which with the giving of notice or the passage of time or both may constitute a default by Original Borrower under the provisions of the Note, the Security Instrument or the other Loan Documents.

(f) All provisions of the Note, the Security Instrument and the other Loan Documents are valid, in full force and effect, and enforceable in accordance with their terms.

(g) There are no subordinate liens of any kind covering or relating to the Security Property, nor are there any mechanics' liens or liens for unpaid taxes or assessments encumbering the Security Property, nor has notice of a lien or notice of intent to file a lien been received.

(h) Simultaneously with the execution and delivery hereof, Original Borrower has conveyed and transferred all of the Security Property to Assumptor and has assigned and transferred to Assumptor all leases, tenancies, security deposits and prorated rents of the Security Property in effect as of the date hereof (the "*Leases*") retaining no rights therein or thereto. Immediately prior to the Transfer, Original Borrower was the owner of the Security Property.

(i) Original Borrower has not received and shall not hereafter receive (i) a mortgage from Assumptor encumbering the Security Property, or (ii) a pledge of direct or indirect interests in Assumptor to secure the payment of any sums due Original Borrower or obligations to be performed by Assumptor.

(j) Original Borrower is duly authorized to execute, deliver and perform this Agreement.

Original Borrower understands and intends that Lender will rely upon the acknowledgments, representations, warranties and covenants contained herein.

4. Assumptor's and Assumptor Principal's Representations and Warranties. Assumptor and Assumptor Principal jointly and severally represent and warrant to Lender as of the date of this Agreement that neither Assumptor nor Assumptor Principal has any knowledge that any of the representations made by Original Borrower in Section 3 above are not true and



correct. Assumtor further acknowledges, represents, warrants and covenants to Lender as of the date of this Agreement that:

(a) Simultaneously with the execution and delivery hereof, Assumtor has purchased from Original Borrower all of the Security Property, has accepted Original Borrower's assignment of the Leases, and has assumed the performance of Original Borrower's obligations under the Leases from and after the date hereof.

(b) Assumtor has not granted to Original Borrower (i) a mortgage or other lien upon the Security Property or (ii) a pledge of direct or indirect interests in Assumtor to secure any debt or obligations owed to Original Borrower.

(c) There is no bankruptcy, receivership or insolvency proceeding pending or threatened against Assumtor or Assumtor Principal.

(d) Assumtor is duly authorized to execute, deliver and perform this Agreement.

Assumtor and Assumtor Principal understand and intend that Lender will rely on the representations and warranties contained herein.

5. Consent to Transfer and Assumption. Lender hereby consents to the Transfer and to the Assumption, subject to the terms and conditions set forth in this Agreement. Lender's consent to the Transfer of the Security Property to Assumtor and Lender's consent to the Assumption are not intended to be and shall not be construed as a consent to any subsequent transfer or assumption which requires Lender's consent pursuant to the terms of the Loan Documents.

6. Reserves and Impounds. Original Borrower shall and does hereby assign to Assumtor and its successors and assigns all of Original Borrower's right, title and interest in and to the Reserves (as defined in the Security Instrument) and all other accounts that may have been established with Lender (together with all funds held therein) pursuant to the Loan Documents, and Lender is hereby released from any further responsibility or liability to Original Borrower in connection with any such Reserves and other accounts. Any request by Assumtor for disbursement from such Reserves made in accordance with Section 6 of the Security Instrument must be for costs incurred solely by Assumtor on or after the Effective Date.

7. Assumption by Assumtor Principal of Liability for the Exceptions to Non-Recourse. Assumtor Principal hereby adopts, ratifies and confirms all of the representations, warranties and covenants of Original Borrower Principal under the Loan Documents as if Assumtor Principal were the borrower principal, guarantor or indemnitor, as applicable, named therein, and jointly and severally assumes all liability of Original Borrower Principal under the Loan Documents as of the origination date of the Loan, including, without limitation, the provisions of the Guaranty Agreement. Reference in any Loan Document to Original Borrower Principal henceforth shall be deemed to refer to Assumtor Principal. In addition to the foregoing, Assumtor Principal has executed and delivered to Lender that certain Guaranty dated of even date herewith.



8. Release of Original Borrower and Original Borrower Principal. In reliance on Original Borrower's and Assumptor's acknowledgments, representations and warranties in this Agreement and in consideration for releases contained in Section 13 of this Agreement, Lender releases Original Borrower and Original Borrower Principal from their respective obligations under the Loan Documents, *provided that* neither Original Borrower nor Original Borrower Principal is released from any liability pursuant to this Agreement or any of the Loan Documents including, without limitation, the provisions of the Hazardous Substance Indemnity, the provisions of the Guaranty Agreement, Section 2.04 of the Note, and Sections 34, 35, 36 and 38 of the Security Instrument, for any liability that relates to the period prior to the date hereof regardless of when any environmental hazard or other condition giving rise to any such liability thereunder is discovered. If any material element of the representations and warranties contained herein as the same relate to Original Borrower and Original Borrower Principal is false as of the date of this Agreement or in the event Original Borrower or Original Borrower Principal take or cause any other party hereto (other than Lender) to take any actions which are in contradiction with the provisions of Section 13 of this Agreement, then the release set forth in this Section 8 shall be deemed canceled effective as of the date of this Agreement and Original Borrower and Original Borrower Principal shall remain obligated under the Loan Documents as though there had been no such release. Nothing contained herein shall be deemed to impair the right of Lender to name Original Borrower, for purposes of extinguishing Original Borrower's interest in the Security Property, as a party defendant in any action or suit for judicial foreclosure and sale under the Security Instrument or for purposes of appointment of a receiver for the Security Property, or for purposes of enforcement of the Assignment of Leases and Rents.

9. No Impairment of Lien. Nothing set forth herein shall affect the priority or extent of the lien of the Security Instrument or any of the other Loan Documents, nor, except as expressly set forth herein, release or change the liability of any party who may now be or after the date of this Agreement may become liable, primarily or secondarily, under the Loan Documents. Except as expressly modified hereby, the Note, the Security Instrument, and the other Loan Documents remain unchanged, are hereby ratified and reaffirmed in all respects and shall remain in full force and effect, and this Agreement shall have no effect on the priority or validity of the liens, operation and effect of the Security Instrument and the other Loan Documents, all of which are incorporated herein by reference. Nothing herein shall be construed to constitute a novation of the Loan or of any of the Loan Documents.

10. Costs. Assumptor agrees to pay all fees and costs (including reasonable attorneys' fees) incurred by Lender in connection with Lender's consent to and approval of the Transfer of the Security Property and the assumption fee equal to 0.50% of the outstanding principal balance of the Loan, which is required to be paid by Assumptor to Lender in consideration of the consent to the Transfer and to the Assumption.

11. Financial Information. Assumptor and Assumptor Principal represent and warrant to Lender that all financial information and information regarding the management capability of Assumptor and Assumptor Principal provided to Lender was true and correct as of the date provided to Lender and remains materially true and correct as of the date of this Agreement.

12. Notice. Without amending, modifying or otherwise affecting the provisions of the Loan Documents except as expressly set forth herein, Lender shall, from and after the date of



this Agreement, (i) deliver any notices to the "Borrower" (as defined in the Loan Documents) which are required to be delivered pursuant to the Loan Documents, or are otherwise delivered by Lender thereunder at Lender's sole discretion, to the Assumptor's address set forth in the preamble, above, and (ii) deliver any notices to the "Guarantor" (as defined in the Loan Documents) which are required to be delivered pursuant to the Loan Documents, or are otherwise delivered by Lender thereunder at Lender's sole discretion, to the Assumptor Principal's address set forth in the preamble, above.

13. Complete Release. Original Borrower and Original Borrower Principal hereby jointly and severally, unconditionally and irrevocably release and forever discharge Lender and its successors, assigns, agents, directors, officers, employees and attorneys, and each current or substitute trustee, if any, under the Security Instrument (collectively, "**Indemnitees**") from all Claims (as defined below). Assumptor and Assumptor Principal hereby jointly and severally, unconditionally and irrevocably release and forever discharge Indemnitees from all Claims arising on or before the date hereof. Original Borrower and Original Borrower Principal jointly and severally agree to indemnify Indemnitees and defend and hold them harmless from any and all claims, losses, causes of action, costs and expenses of every kind or character incurred by or asserted against Indemnitees in connection with Claims, the Transfer or the breach by Original Borrower or Original Borrower Principal of the Loan Documents, as amended herein, but only to the extent that such claims, losses, causes of action, costs and expenses arise out of or are in any way connected with or result from the acts, actions or omissions of Original Borrower or Original Borrower Principal. Assumptor and Assumptor Principal jointly and severally agree to indemnify Indemnitees, and defend and hold them harmless from any and all claims, losses, causes of action, costs and expenses of every kind or character incurred by or asserted against Indemnitees in connection with Claims, the Transfer or the breach by Assumptor or Assumptor Principal of the Loan Documents, as amended herein, but only to the extent that such claims, losses, causes of action, costs and expenses arise out of or are in any way connected with or result from the acts, actions or omissions of Assumptor or Assumptor Principal.

As used in this Agreement, the term "**Claims**" shall mean any and all possible claims, demands, actions, fees, costs, expenses and liabilities whatsoever, known or unknown, at law or in equity, which Original Borrower, Original Borrower Principal, or any of their respective partners, limited partners, members, officers, directors, shareholders, agents or employees may now or hereafter have against Indemnitees, and irrespective of whether any such Claims arise out of contract, tort, violation of laws, regulations or otherwise, arising out of or relating to the Loan or any of the Loan Documents including, without limitation, any contracting for, charging, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable thereto and any loss, cost or damage of any kind or character arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of Indemnitees, including any requirement that the Loan Documents be modified as a condition to the transactions contemplated by this Agreement, any charging, collecting or contracting for prepayment premiums, transfer fees or assumption fees, any breach of fiduciary commitment, undue influence, duress, economic coercion, violation of any federal or state securities or Blue Sky laws or regulations, conflict of interest, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental or emotional distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advance, breach of contract, deceptive trade



practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Note or wrongfully attempting to foreclose on any collateral relating to the Note, but in each case only to the extent permitted by applicable law. Original Borrower, Assumptor, Original Borrower Principal and Assumptor Principal agree that Lender has no fiduciary or similar obligations to any of such parties and that their relationship is strictly that of creditor and debtor. This release is accepted by Lender pursuant to this Agreement and shall not be construed as an admission of liability on the part of any party hereto. Original Borrower, Original Borrower Principal, Assumptor and Assumptor Principal hereby represent and warrant that they are the current legal and beneficial owners of all Claims, if any, released hereby and have not assigned, pledged or contracted to assign or pledge any such Claims to any other person.

14. Usury. The provisions of the Note, Section 14 of the Security Instrument and the other Loan Documents limiting the amount of interest which may be contracted for, charged or received on the indebtedness evidenced thereby and dealing with the rights and duties of the parties with respect to the charging or receiving of interest in excess of the maximum rate permitted by applicable law, are hereby incorporated in this Agreement by reference as though fully set forth herein. To the extent permitted by law, Original Borrower, Assumptor, Original Borrower Principal and Assumptor Principal hereby waive and release all claims and defenses based upon usury in connection with the execution and delivery of the Note and the other Loan Documents and the borrowing of the funds represented by the Loan.

15. Modifications. The Loan Documents are hereby modified as follows:

(a) Section 6(c) of the Security Instrument is hereby deleted in its entirety, and the following is substituted therefor:

As of June \_\_, 2008, Borrower has paid to Lender the amount of \$20,000.00 to be held and applied for the purposes specified in this Subsection. In addition, Borrower shall pay to Lender on the Payment Date in each calendar month an amount equal to \$900, which shall be deposited with and held by Lender for the purposes specified in this Subsection. Funds paid to Lender pursuant to this Subsection, together with any additions thereto, may be referred to herein as the **"Leasing Escrow Fund."** Lender may in its reasonable discretion from time to time reassess its estimate of the amount necessary for the Leasing Escrow Fund, in which case the monthly amount payable by Borrower to Lender for deposit into the Leasing Escrow Fund shall change in accordance with such estimate on 30 days' written notice to Borrower. In addition, Borrower shall pay to Lender for deposit in the Leasing Escrow Fund all funds received by Borrower from or on behalf of tenants or lease guarantors in connection with any default by any tenant or the termination of any Lease, including, but not limited to, any settlement amounts, cancellation fees, penalties, drawings under letters of credit, debits to security deposits, and funds for tenant improvements, leasing commissions or other charges (collectively, **"Lease Settlement Payments"**). Borrower's obligation to pay the monthly amount for deposit into the Leasing Escrow Fund shall be suspended during any time when the balance in the Leasing Escrow Fund (exclusive of the amount of Lease Settlement Payments that have been deposited therein) equals or exceeds \$35,000. At such time as the



balance (exclusive of Lease Settlement Payments) is less than \$35,000, then Borrower's obligation to make such monthly payments shall resume, subject to subsequent suspension and resumption in accordance with the foregoing. Borrower shall utilize funds drawn from the Leasing Escrow Fund only for tenant improvement and leasing commission obligations incurred following the date hereof for new and renewal Leases entered into by Borrower in accordance with the provisions of Section 8 below. Upon written application of Borrower, Borrower shall be entitled to draw upon the Leasing Escrow Fund to pay for costs for which such Reserve has been established after such costs shall have been incurred by Borrower and invoiced, provided that all such costs shall have been approved by Lender in its sole discretion, and that the Disbursement Conditions shall have been satisfied.

(b) Section 10(c)(iii) of the Security Instrument is hereby deleted in its entirety, and the following is substituted therefor:

"Christian Hansen and Thomas Kuo at all times continue to maintain control over the day-to-day operation and management of Borrower."

(c) The definition of "Manager" contained in Section 11(ii) of the Security Instrument is hereby amended by deleting "Lamar Asset Management and Realty, Inc." and substituting the following therefor: "Retail Specialists, Inc."

(d) The definition of "Management Agreement" contained in Section 11(ii) of the Security Instrument is hereby amended by deleting "The Real Estate Management Agreement dated May 9, 2007" and the substituting the following therefor: "the Management and Leasing Agreement dated May 5, 2008."

(e) Section 11(kk) of the Security Instrument is hereby deleted in its entirety and the following is substituted therefor: "No financial advisors, brokers, underwriters, placement agents, agents or finders have been dealt with by the Borrower in connection with the Loan."

(f) Section 39 of the Security Instrument is hereby amended by deleting the Borrower notice address and substituting the following therefor:

P.O. Box 1197  
Los Altos, CA 94023

With a copy to:

Richard Silvester  
3101 Clayton Road  
Concord, CA 94519  
Fax: 925-687-0770



(g) Section 63(e) of the Security Instrument and Section 3.07 of the Note are hereby amended to delete "as defined in that certain Guaranty of even date herewith made by Lamar Western L.P. in favor of Lender" and substituting the following therefor: "as defined in that certain Guaranty dated as of June \_\_\_, 2008, made by Christian Hansen, Cindy H. Hansen, Thomas Kuo, Diana Kuo, Alex Shu-Jei Chen, and Liu Lin Li Chen in favor of Lender."

16. Further Assurances. Original Borrower, Original Borrower Principal, Assumptor and Assumptor Principal agree to perform such other and further acts, and to execute such additional documents, agreements, notices or financing statements, as Lender deems necessary or desirable from time to time to create, preserve, continue, perfect, validate or carry out any of Lender's rights under this Agreement and/or the other Loan Documents.

17. Miscellaneous.

(a) This Agreement shall be construed according to and governed by the laws of the jurisdiction(s) which are specified by the Security Instrument. In the event the Security Instrument does not specifically state what jurisdiction's laws govern, this Agreement shall be construed according to and governed by the laws in which the Premises is located without regard to its conflicts of law principles.

(b) If any provision of this Agreement is adjudicated to be invalid, illegal or unenforceable, in whole or in part, it will be deemed omitted to that extent and all other provisions of this Agreement will remain in full force and effect.

(c) No change or modification of this Agreement shall be valid unless the same is in writing and signed by all parties hereto.

(d) The captions contained in this Agreement are for convenience of reference only and in no event define, describe or limit the scope or intent of this Agreement or any of the provisions or terms hereof.

(e) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns.

(f) This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

(g) Time is of the essence with respect to all the provisions of this Agreement.

(h) **WAIVER OF JURY TRIAL. ORIGINAL BORROWER, ORIGINAL BORROWER PRINCIPAL, ASSUMPTOR, ASSUMPTOR PRINCIPAL, AND LENDER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON**



**THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE LOAN DOCUMENTS OR THIS AGREEMENT.**

(i) THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS AMENDED, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(j) THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS AS SET FORTH IN SECTION 13 HEREOF.

18. Reservation of Rights. Nothing contained in this Agreement shall prevent or in any way diminish or interfere with any rights or remedies including, without limitation, the right to contribution, which Lender may have against Original Borrower, Original Borrower Principal, Assumptor, Assumptor Principal or any other party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at Title 42, U.S.C. Section 9601, et. seq.), as it may be amended from time to time, any successor statute thereto or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.

19. Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws. None of Assumptor, Assumptor Principal, any of their respective officers, directors, shareholders, partners, members or affiliates, or any other person directly or indirectly owning any equity interest in Assumptor or Assumptor Principal, is or will be an entity or person: (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("**EO13224**"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("**OFAC**") most current list of "***Specially Designated Nationals and Blocked Persons***" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>); (iii) who commits, threatens to commit or supports "***terrorism***", as that term is defined in EO 13224; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i) through (iv) above are herein referred to as a "***Prohibited Person***"). Each of Assumptor and Assumptor Principal covenants and agrees that none of Assumptor, Assumptor Principal, any of their respective officers, directors, shareholders, partners, members or affiliates, or any other person directly or indirectly owning any equity interest in Assumptor or Assumptor Principal will: (x) conduct any business, or engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person; or (y) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. On request by Lender from time to time, each of Assumptor and Assumptor Principal further covenants and agrees promptly to deliver to Lender any such certification or other evidence as may be requested by Lender in its sole and absolute discretion, confirming that no violation of this Section shall have occurred. To Assumptor's knowledge, no tenant at the Security Property currently is identified on the OFAC



list referred to above or otherwise qualifies as a Prohibited Person, and no tenant at the Security Property is owned or controlled by a Prohibited Person. Assumptor shall cause Manager to implement commercially reasonable procedures to protect against any Prohibited Person's being or controlling any tenant at the Premises. No Transfer shall be permitted if such Transfer will violate this Section 19.

20. Single Member Delaware LLC. Assumptor hereby represents, warrants and covenants as of the date hereof and until such time as the Loan is paid in full, that:

(a) The limited liability company agreement (the "*LLC Agreement*") of Assumptor shall provide that (i) upon the occurrence of any event that causes the sole member of Assumptor ("*Member*") to cease to be its sole member (other than (A) upon an assignment by Member of all of its limited liability company interest in Assumptor and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of such sole Member and the admission of an additional member of Assumptor in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as special member ("*Special Member*") of Assumptor shall, without any action of any other person and simultaneously with the Member ceasing to be the Member of Assumptor, automatically be admitted as a member of Assumptor and shall continue Assumptor without dissolution and (ii) Special Member may not resign from Assumptor or transfer its rights as Special Member unless a successor Special Member has been admitted to Assumptor as Special Member in accordance with requirements of the laws of the State of Delaware. The LLC Agreement shall further provide that (1) Special Member shall automatically cease to be a member of Assumptor upon the admission to Assumptor of a substitute Member, (2) Special Member shall be a member of Assumptor that has no interest in the profits, losses and capital of Assumptor and has no right to receive any distributions of Assumptor's assets, (3) pursuant to Section 18-301 of the Delaware Limited Liability Company Act (the "*Act*"), Special Member shall not be required to make any capital contributions to Assumptor and shall not receive a limited liability company interest in Assumptor, (4) Special Member, in its capacity as Special Member, may not bind Assumptor, and (5) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Assumptor, including, without limitation, the merger, consolidation or conversion of Assumptor. In order to implement the admission of Special Member to Assumptor, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission as Special Member of Assumptor, Special Member shall not be a member of Assumptor.

(b) Upon the occurrence of any event that causes Member to cease to be a member of Assumptor, to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Assumptor, agree in writing (i) to continue Assumptor and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Assumptor, effective as of the occurrence of the event that terminated the continued membership of Member in Assumptor. Any action initiated by or brought against Member or Special Member under any Creditors Rights Laws (defined hereinafter) shall not cause Member or Special Member to cease to be a member of Assumptor and upon the occurrence of such an event, the business of Assumptor shall continue without



dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Assumptor upon the occurrence of any action initiated by or brought against Member or Special Member under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors (collectively, "***Creditors Rights Laws***"), or the occurrence of an event that causes Member or Special Member to cease to be a member of Assumptor.

21. 1031 Exchange. Assumptor has informed Lender that Assumptor is acquiring the Property and assuming the Loan as part of a transaction that Assumptor anticipates will comply with the provisions of Section 1031 of the Internal Revenue Code, allowing the deferment of any taxable gain or loss on the exchange of like kind property. Assumptor acknowledges that it has not relied on any advice, representations or statements of Lender or its employees or agents concerning the tax, legal or investment consequences of such Assumptor's acquisition of the Premises and the assumption of the Loan, including, without limiting the generality of the foregoing, whether the acquisition of the Premises and assumption of the Loan will comply with the requirements of Section 1031 of the Internal Revenue Code or whether such Assumptor's investment in the Premises is suitable, but instead Assumptor has obtained such tax, legal and investment advice as to the effect of its acquisition of the Premises and assumption of the Loan from its own legal and other financial advisors.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written, with the intent that this shall be deemed an instrument under seal.

**ASSUMPTOR:**

**K & H HELENA, LLC**, a Delaware limited liability company

By: K & H Fairway Plaza, LLC, a California limited liability company

By:   
Name: Christian Hansen  
Title: Manager

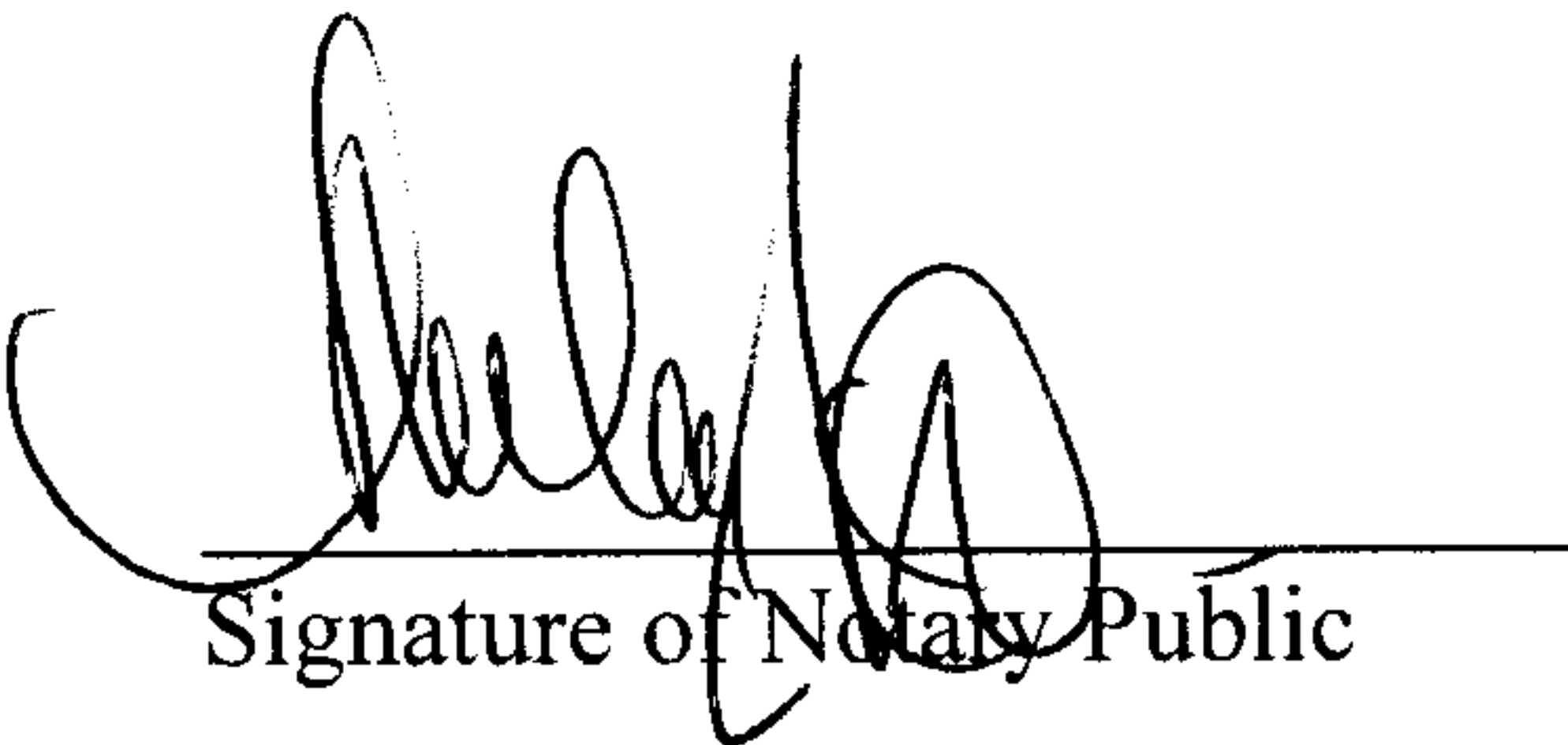
STATE OF CALIFORNIA

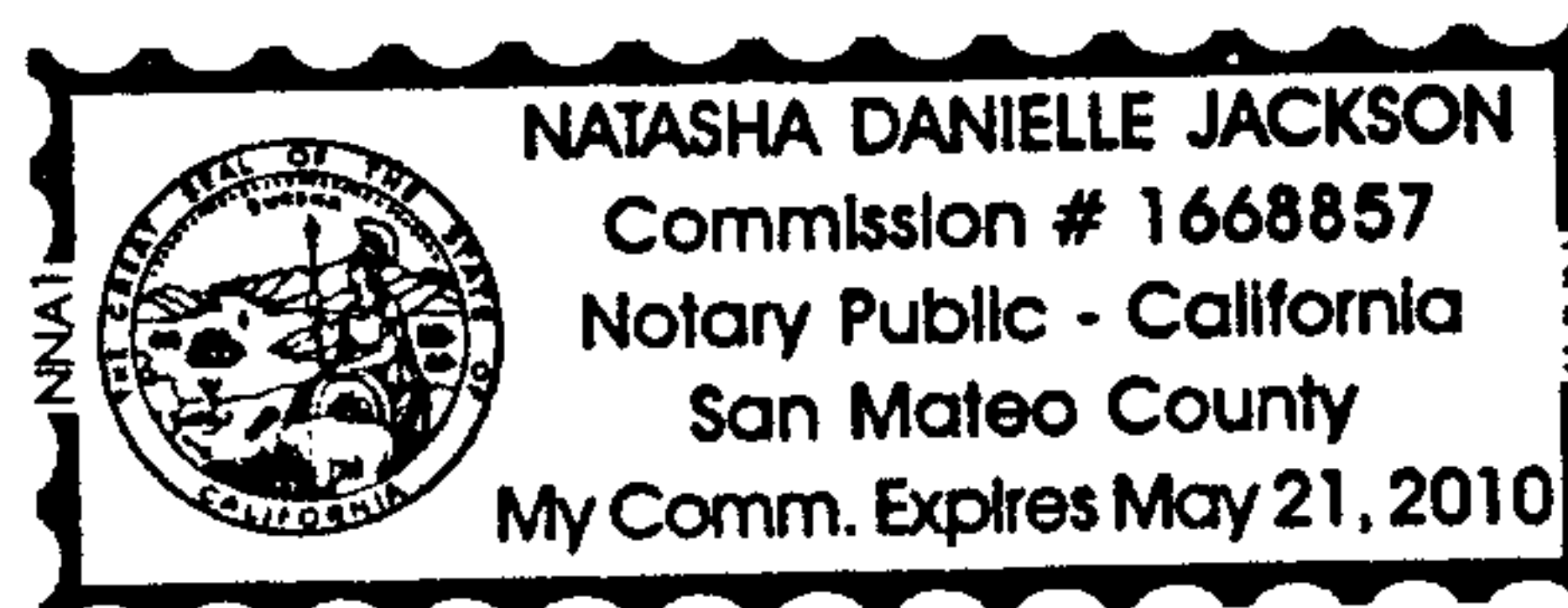
COUNTY OF Santa Clara

On June 5<sup>th</sup>, 2008, before me, Natasha Danielle Jackson, a Notary Public, personally appeared Christian Hansen, as Manager of K & H Fairway Plaza, LLC, a Delaware limited liability company, as sole member of K & H Helena, LLC, a Delaware limited liability company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Signature of Notary Public



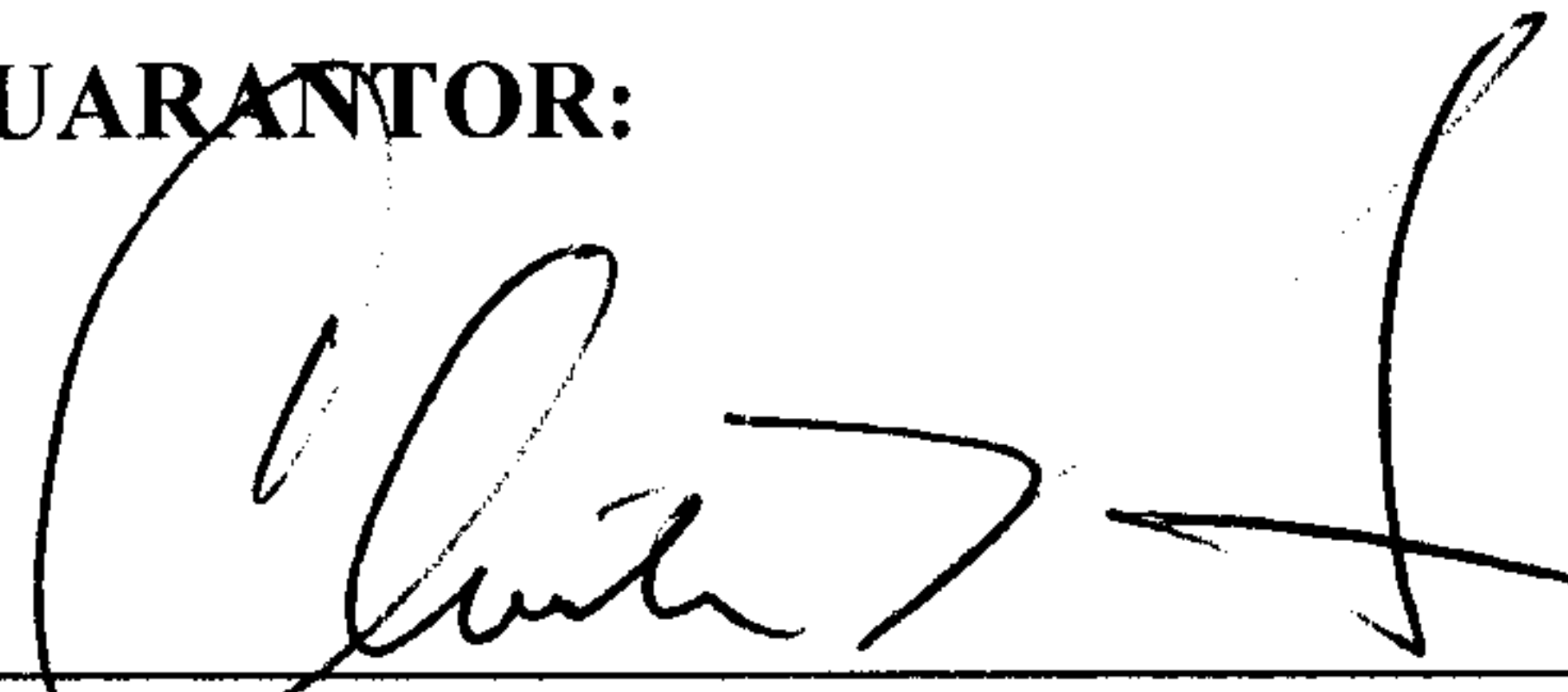
(Place Notary Seal Above)

**[SIGNATURES CONTINUE ON NEXT PAGE]**



[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

GUARANTOR:



CHRISTIAN HANSEN, an individual

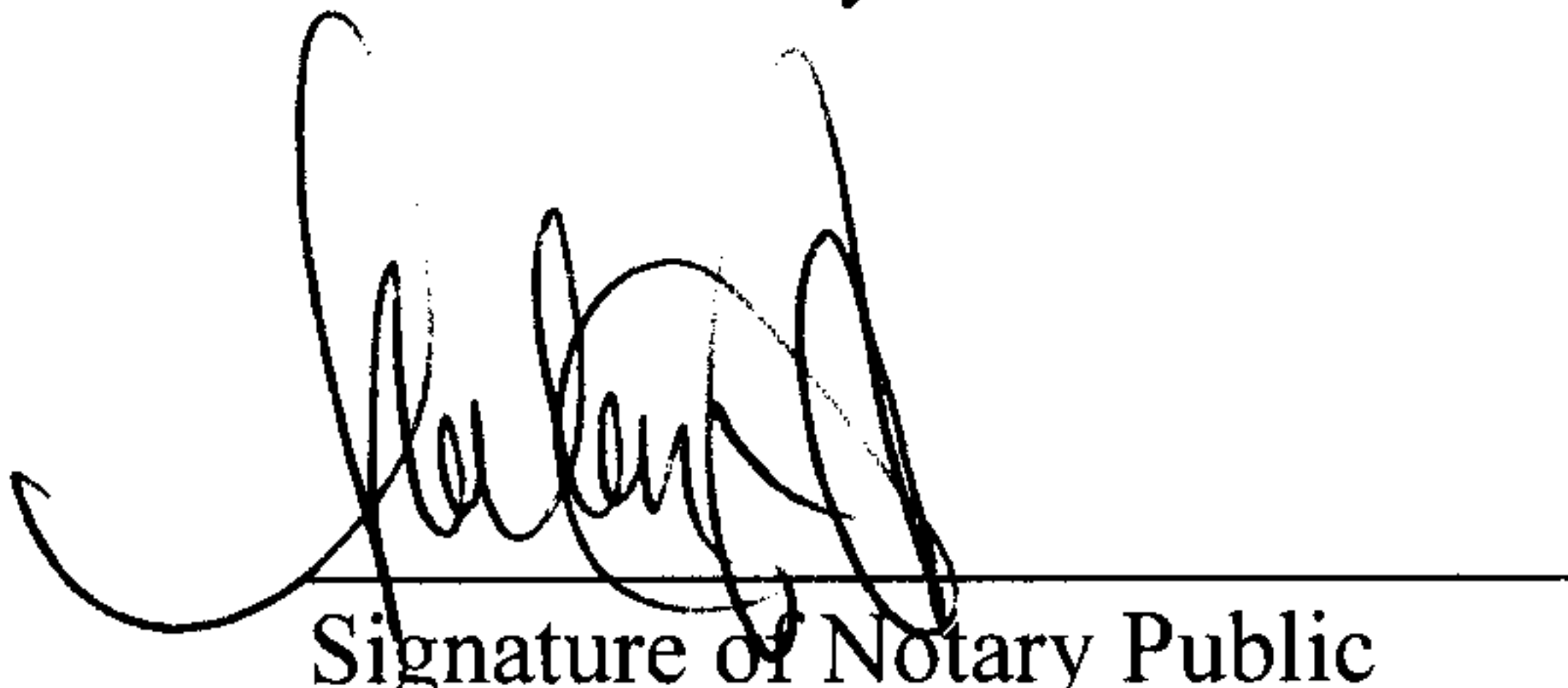
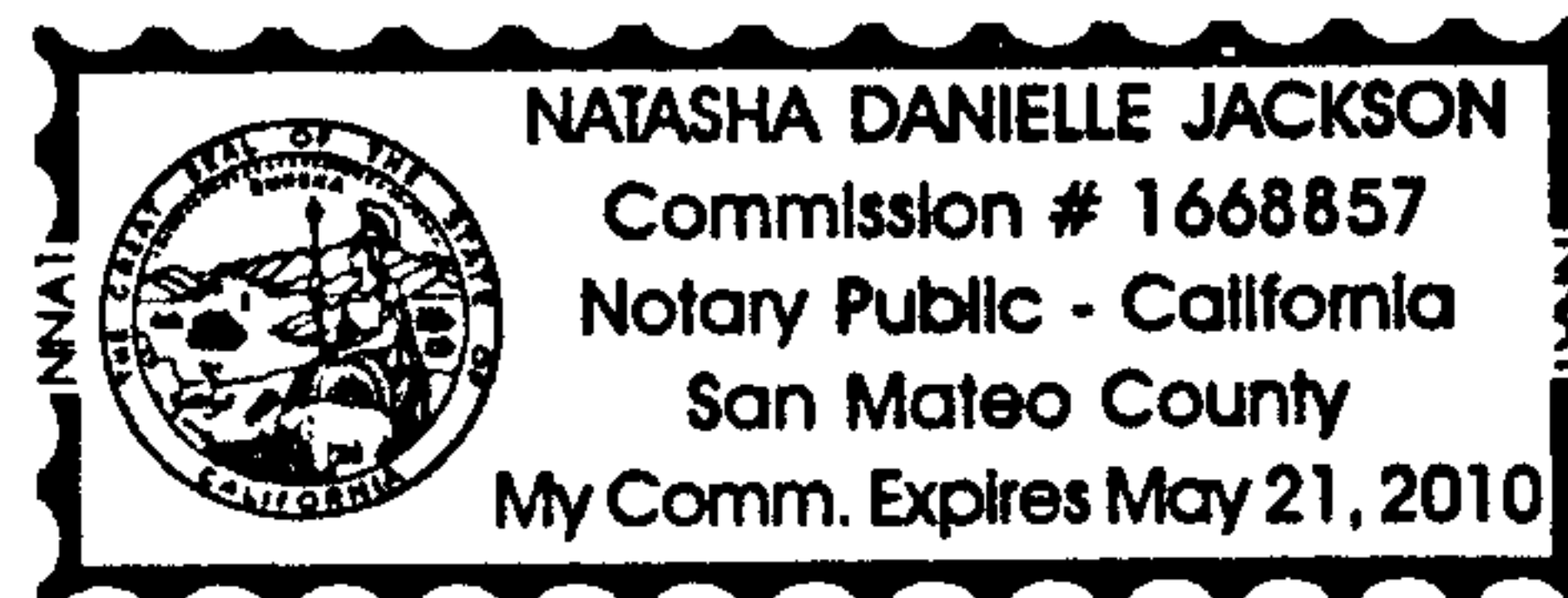
STATE OF CALIFORNIA

COUNTY OF Santa Clara

On June 5<sup>th</sup>, 2008, before me, Natasha Danielle Jackson, a Notary Public, personally appeared Christian Hansen, an individual, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Signature of Notary Public

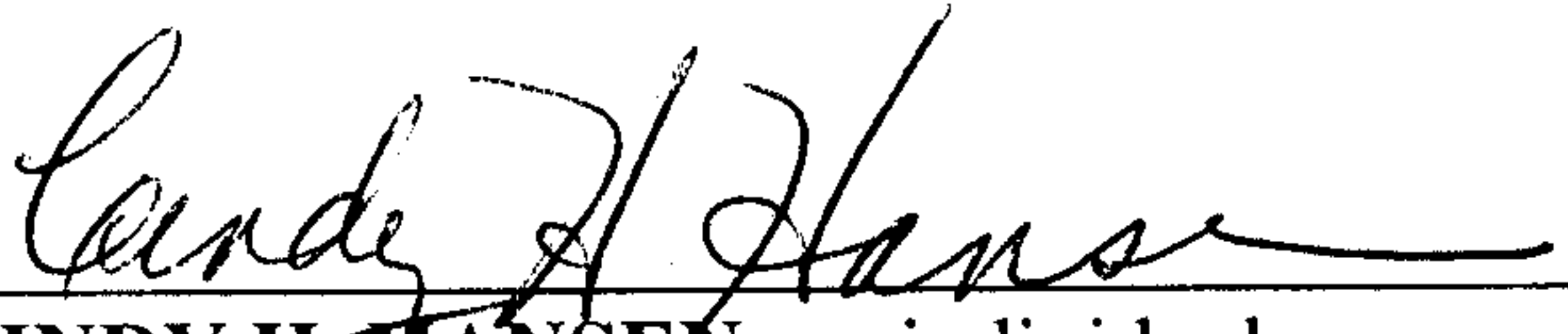
(Place Notary Seal Above)

[SIGNATURES CONTINUE ON NEXT PAGE]



[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

GUARANTOR:

  
CINDY H. HANSEN, an individual

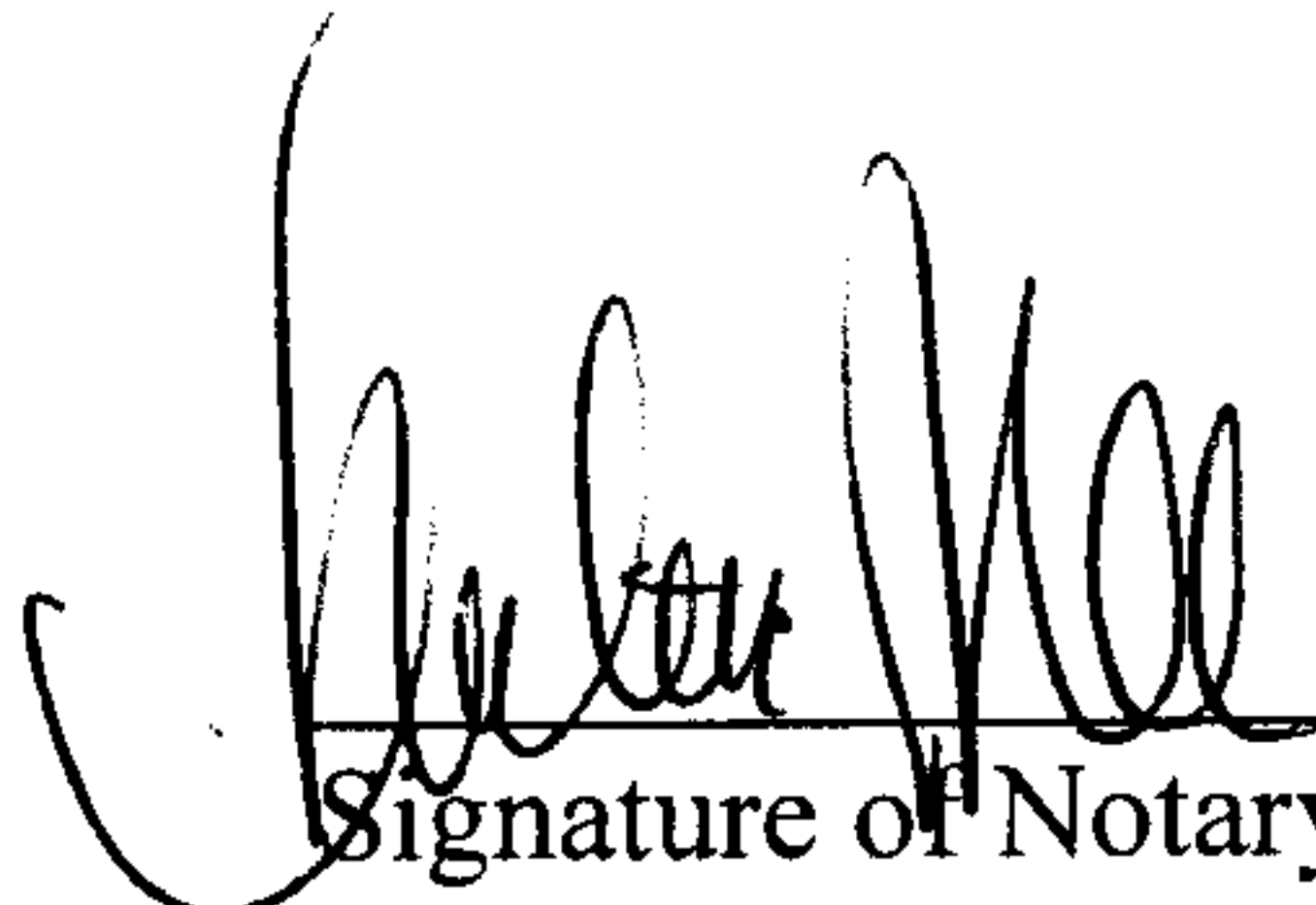
STATE OF CALIFORNIA

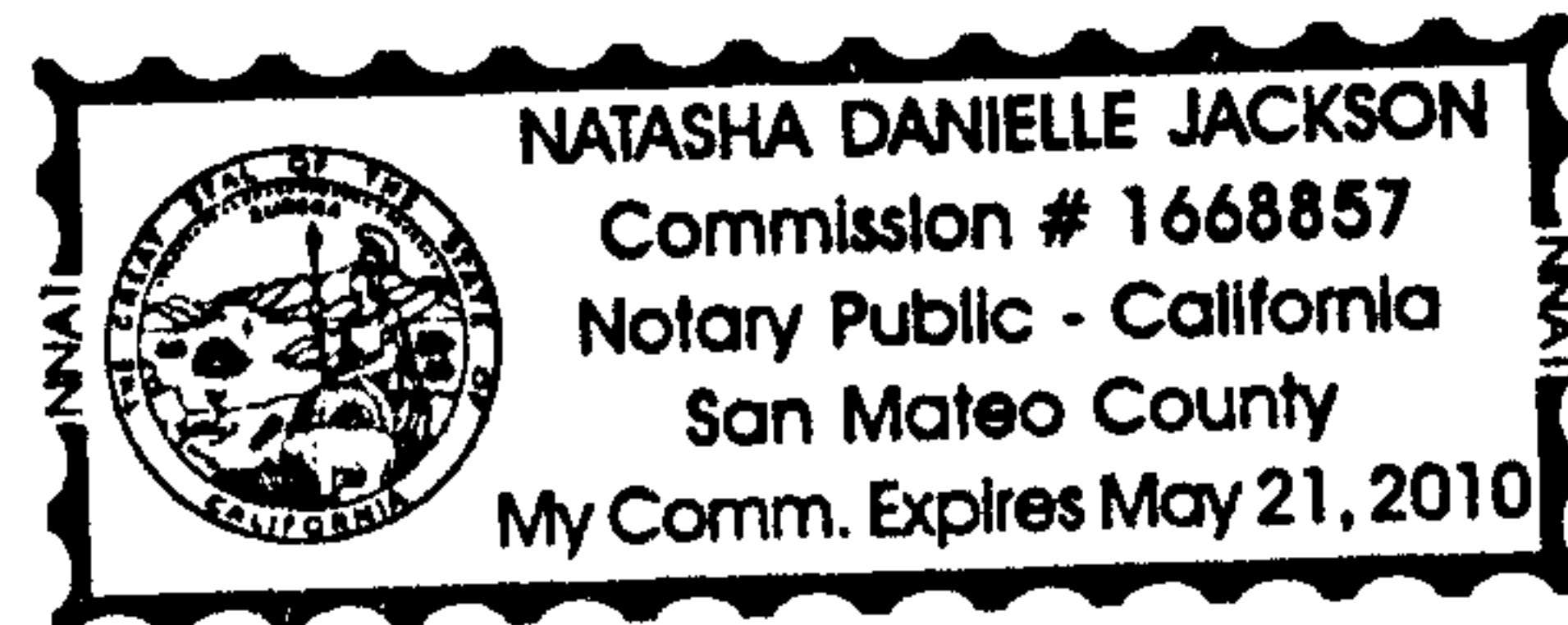
COUNTY OF Santa Clara

On June 5<sup>th</sup>, 2008, before me, Natasha Danielle Jackson, a Notary Public, personally appeared Cindy H. Hansen, an individual, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Signature of Notary Public



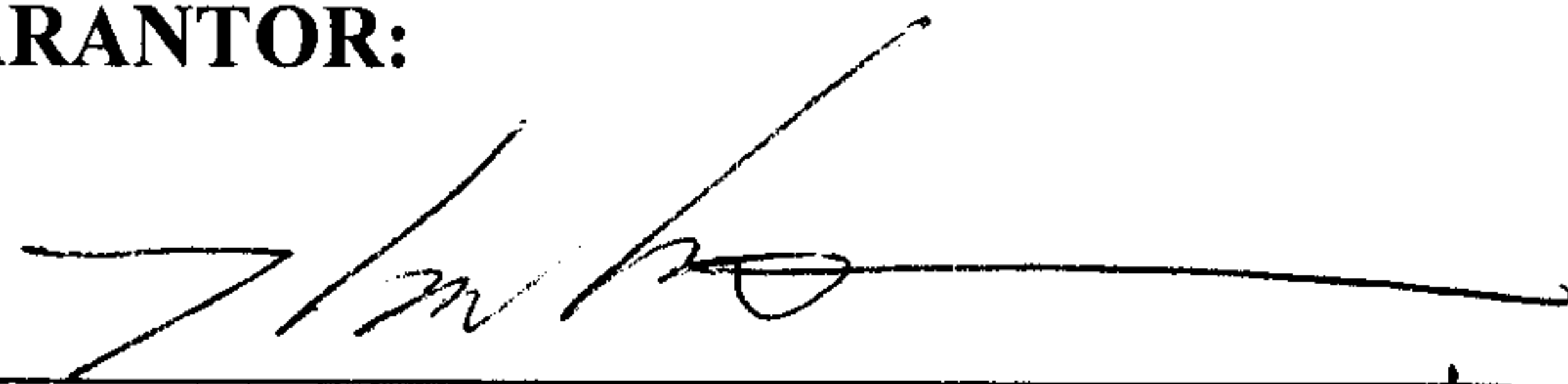
(Place Notary Seal Above)

[SIGNATURES CONTINUE ON NEXT PAGE]



[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

GUARANTOR:



THOMAS KUO, an individual

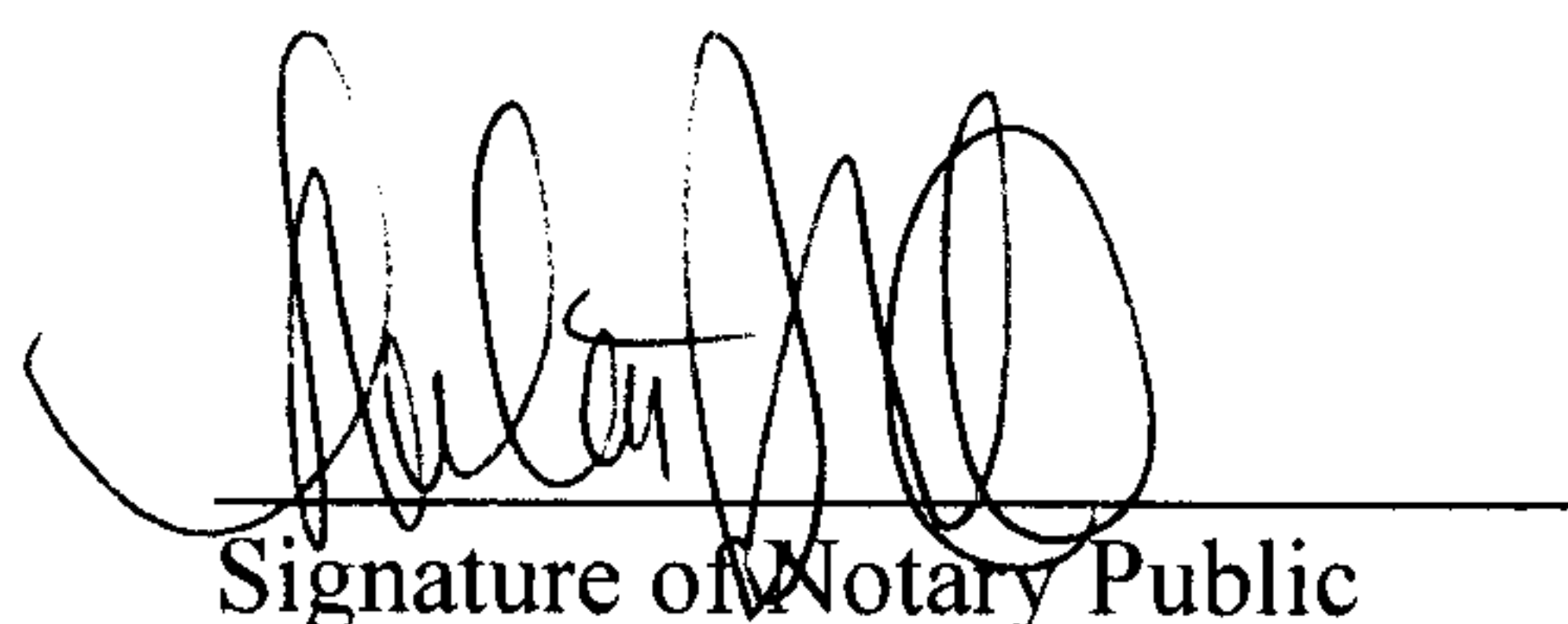
STATE OF CALIFORNIA

COUNTY OF Santa Clara

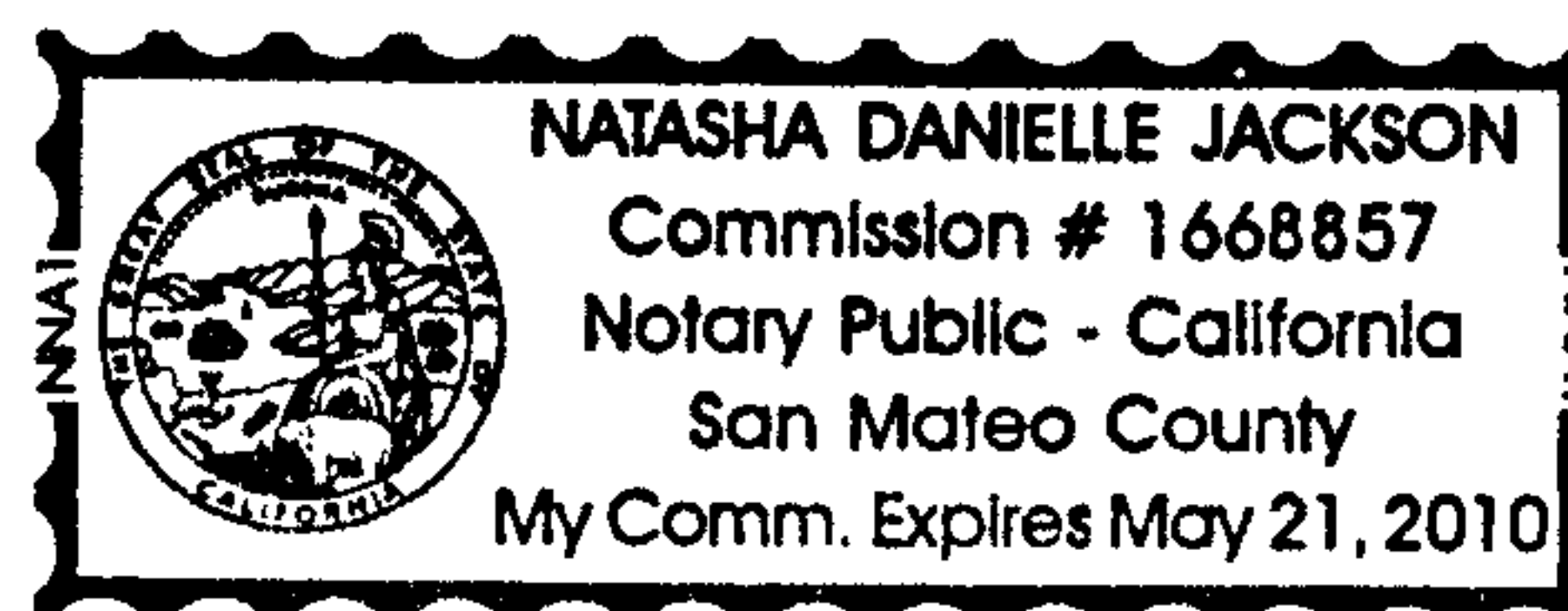
On June 5<sup>th</sup>, 2008, before me, Natasha Danielle Jackson, a Notary Public, personally appeared Thomas Kuo, an individual, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

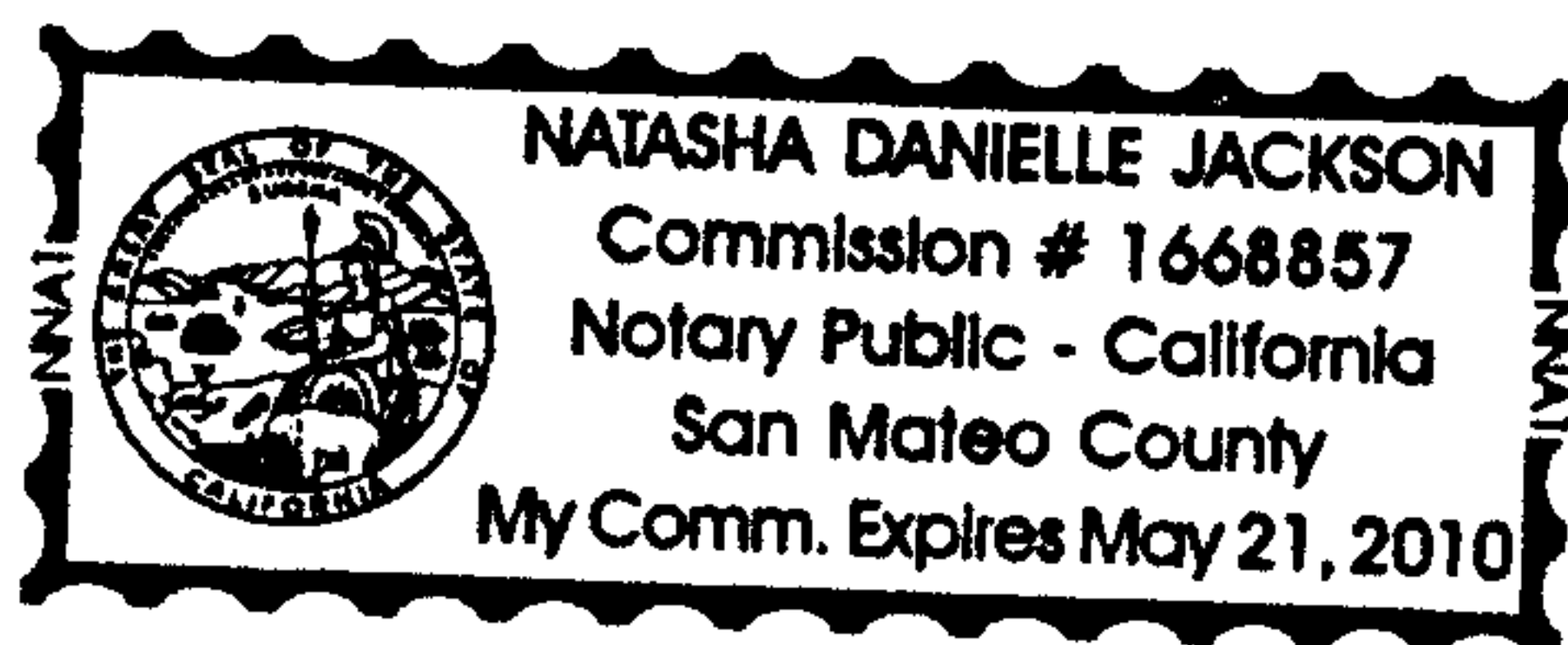
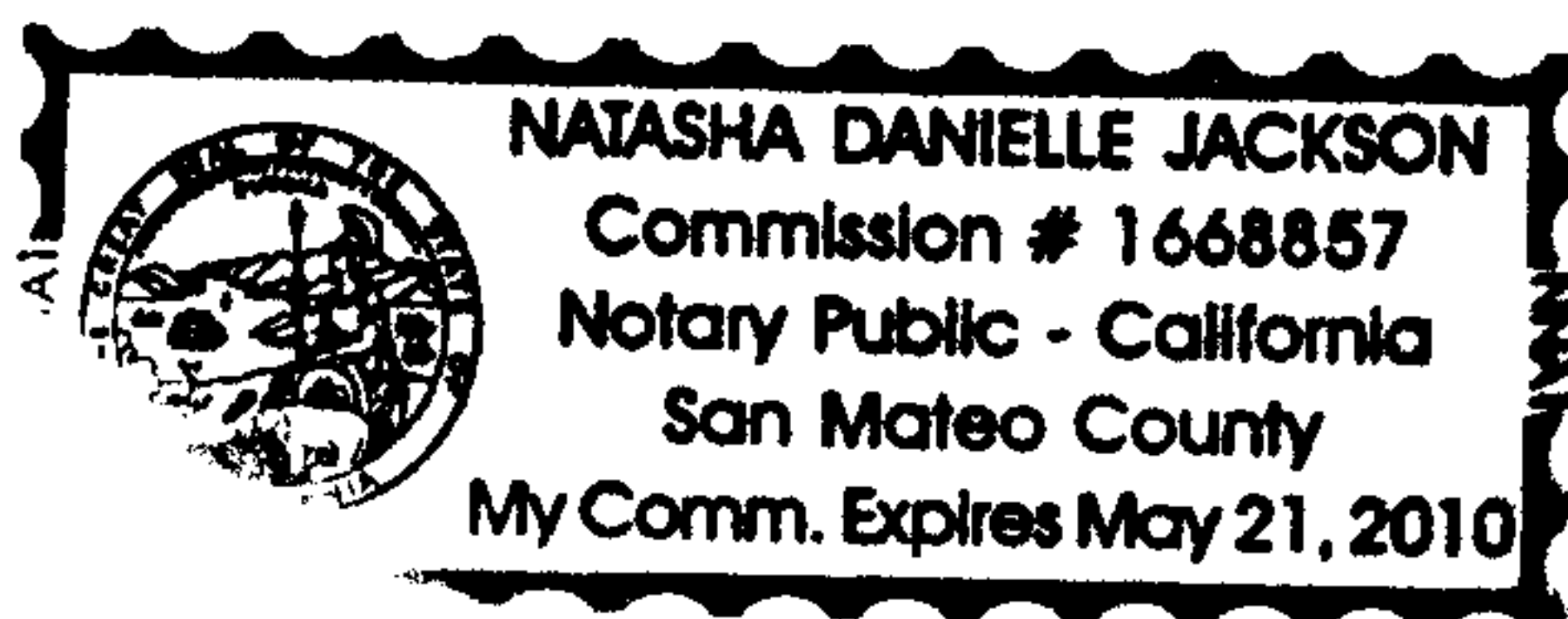


Signature of Notary Public



(Place Notary Seal Above)


[SIGNATURES CONTINUE ON NEXT PAGE]





[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

GUARANTOR:

  
\_\_\_\_\_  
DIANA KUO, an individual

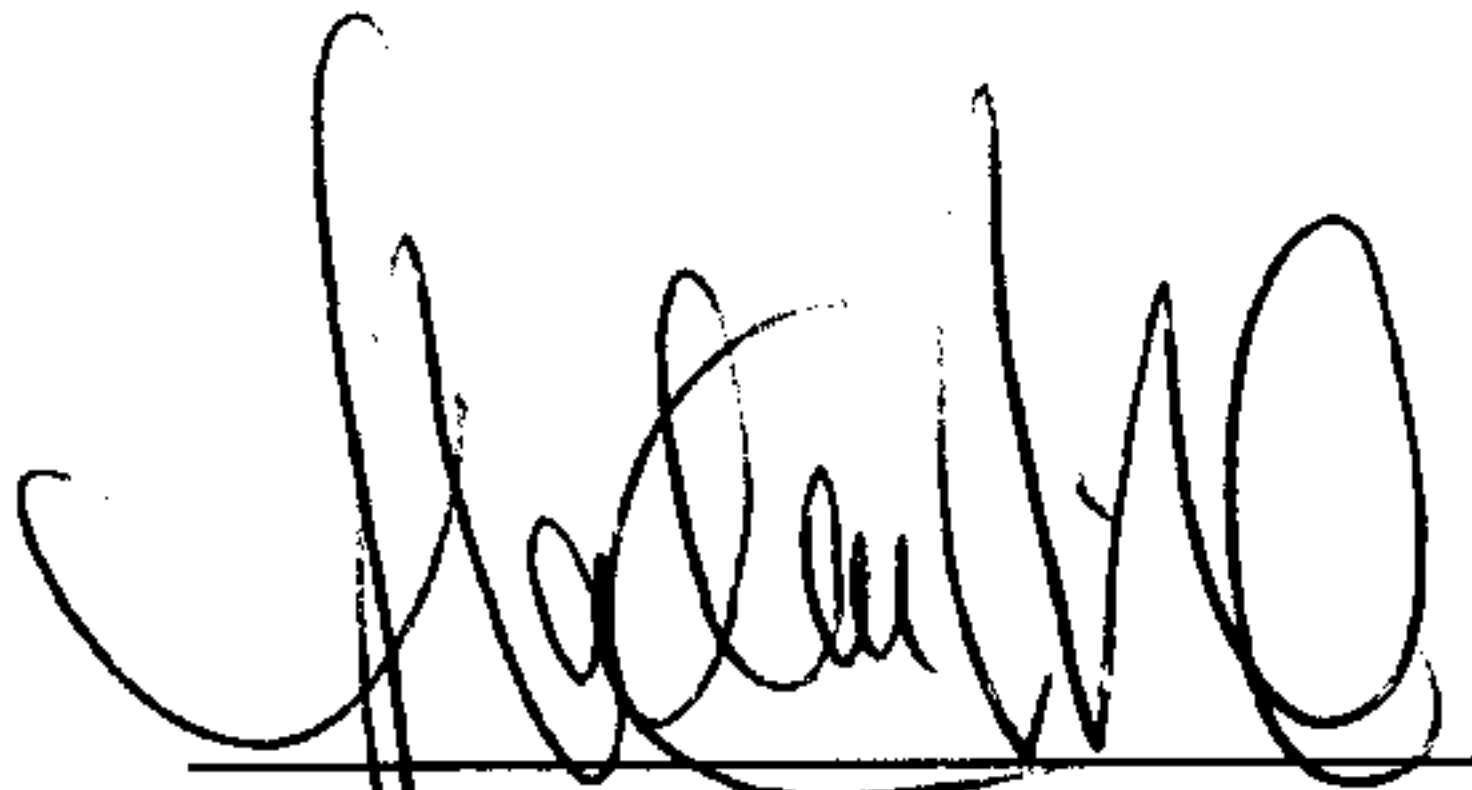
STATE OF CALIFORNIA

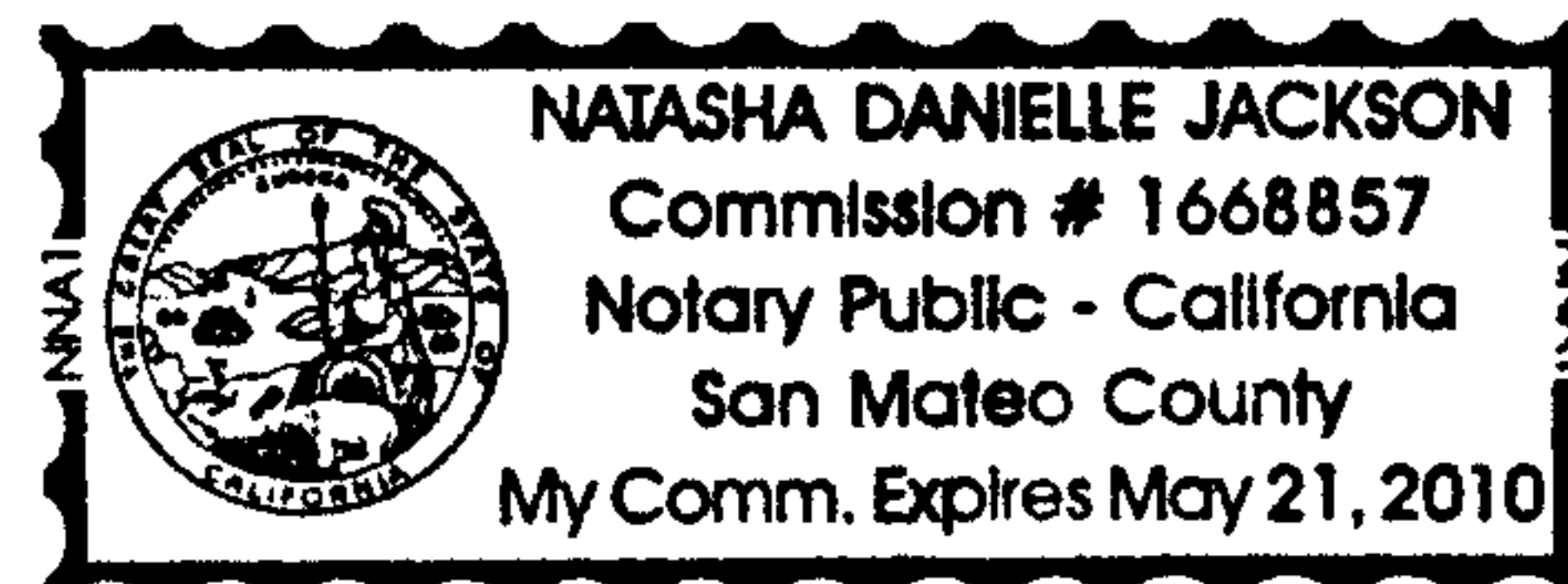
COUNTY OF Santa Clara

On June 5<sup>m</sup>, 2008, before me, Natasha Danielle Jackson, a Notary Public, personally appeared Diana Kuo, an individual, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary Public



(Place Notary Seal Above)

[SIGNATURES CONTINUE ON NEXT PAGE]



[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

GUARANTOR:

*Alex Shu-Jei Chen*  
ALEX SHU-JEI CHEN, an individual

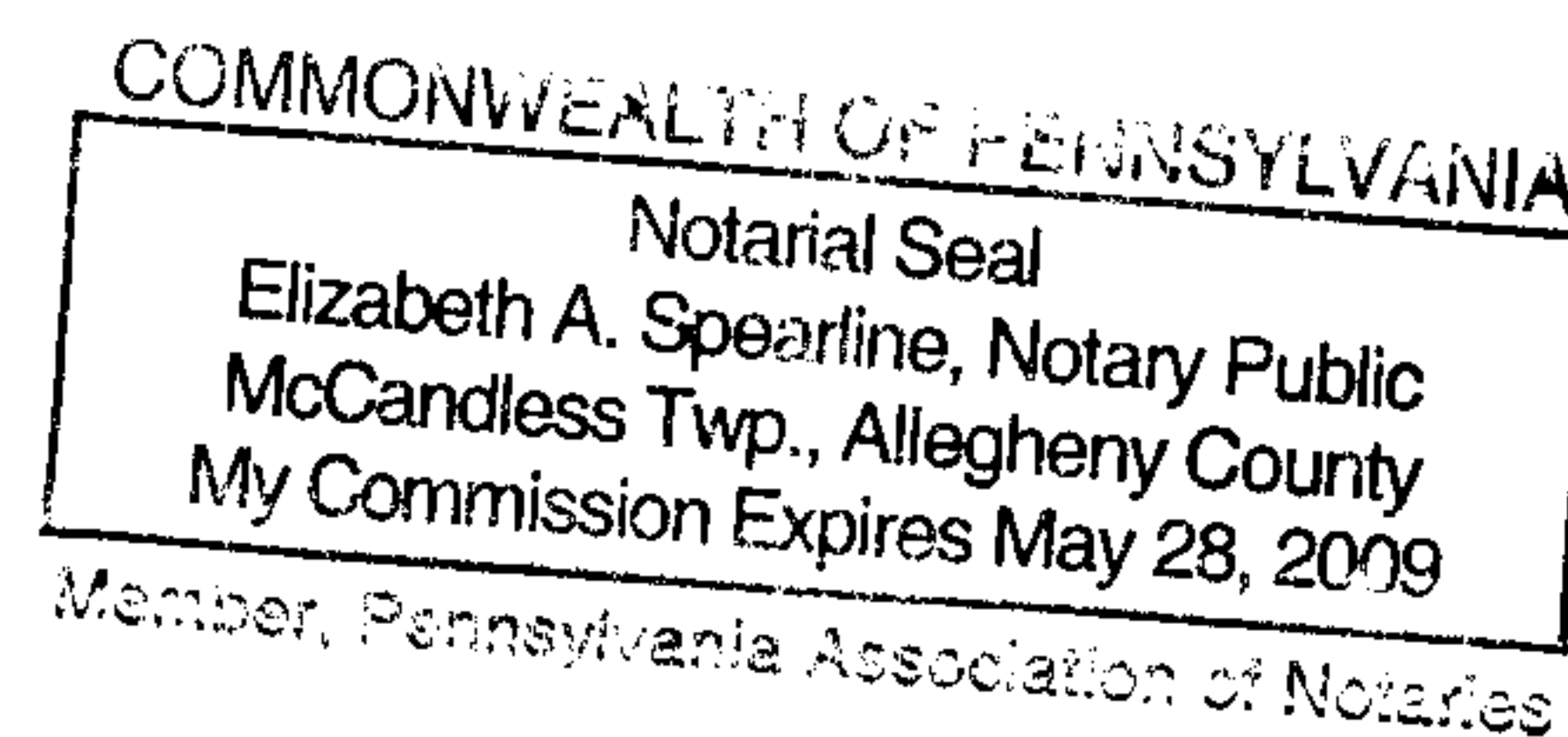
STATE OF *Pa*

COUNTY OF *Allegheny*

On *June 6*, 20*08* before me, the undersigned, a Notary Public in and for said State, personally appeared Alex Shu-Jei Chen, an individual, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his individual capacity, and that by his signature on the instrument the person executed the instrument.

WITNESS my hand and official seal.

*Elizabeth A. Spearline*  
Notary Public  
(SEAL)



[SIGNATURES CONTINUE ON NEXT PAGE]





20080617000247210 20/24 \$87.00  
Shelby Cnty Judge of Probate, AL  
06/17/2008 02:33:42PM FILED/CERT

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

GUARANTOR:

*Liu Lin Li Chen*  
LIU LIN LI CHEN, an individual

STATE OF *Pa*

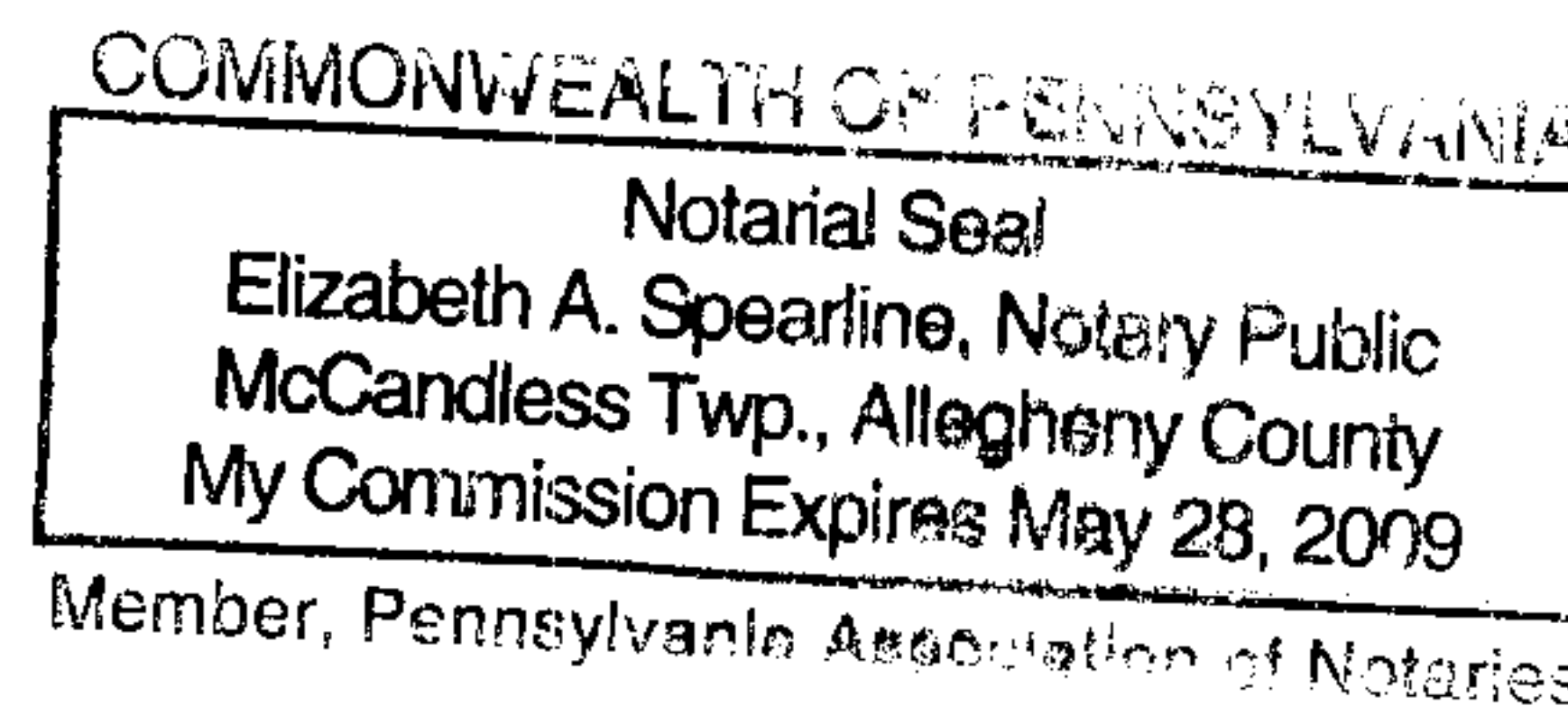
COUNTY OF *Allegheny*

On *June 6*, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Liu Lin Li Chen, an individual, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her individual capacity, and that by her signature on the instrument the person executed the instrument.

WITNESS my hand and official seal.

*Elizabeth A. Spearline*  
Notary Public

(SEAL)



[SIGNATURES CONTINUE ON NEXT PAGE]



**[SIGNATURES CONTINUED FROM PREVIOUS PAGE]**

**ORIGINAL BORROWER:**

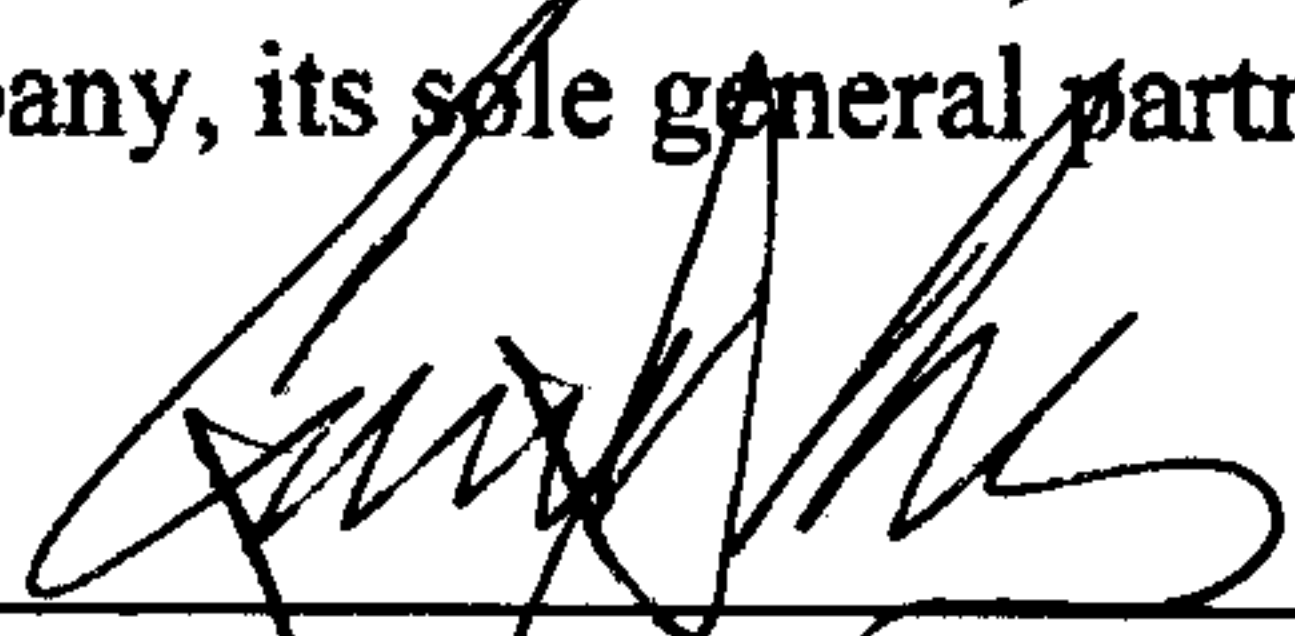
**HELENA I, LLC**, a Delaware limited liability company

By: Mason Plaza, L.P., a Texas limited partnership, its  
sole member

By: Houston-Mason, LLC, a Texas limited liability  
company, its sole general partner

By: Felicita Associates LP, a California limited  
partnership, its sole member

By: Felicita Retail LLC, a California limited liability  
company, its sole general partner

By:   
Name: Cory D. Boss  
Title: Vice President

STATE OF NEW JERSEY )

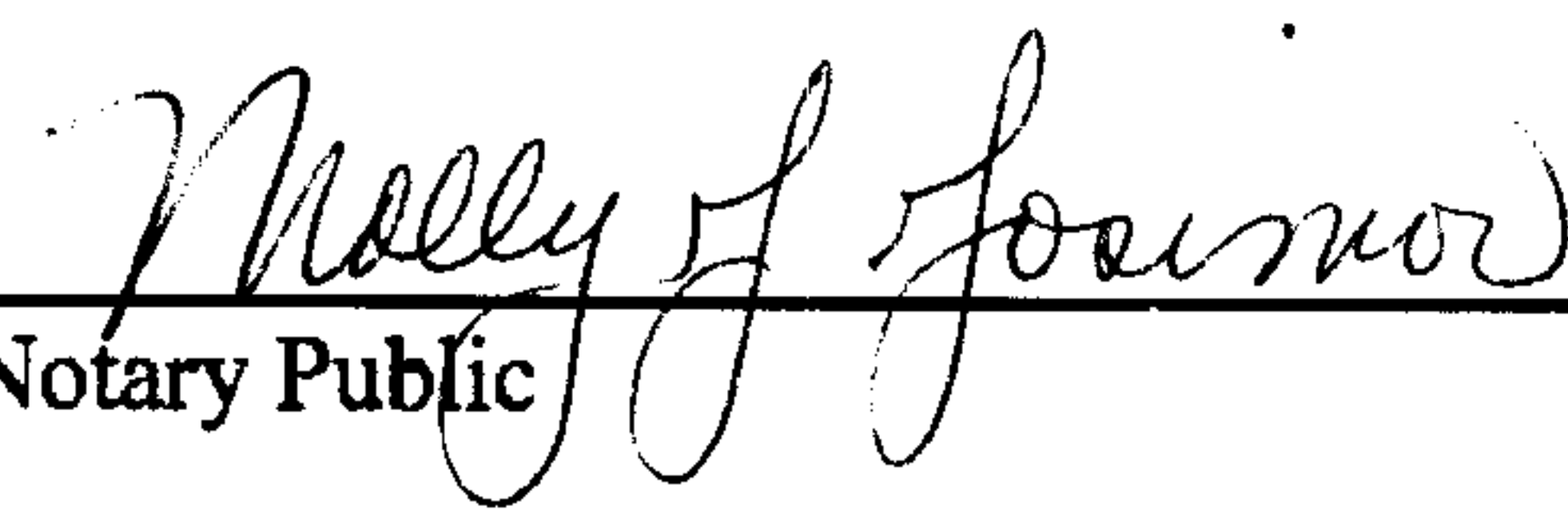
) ss:

COUNTY OF MORRIS )

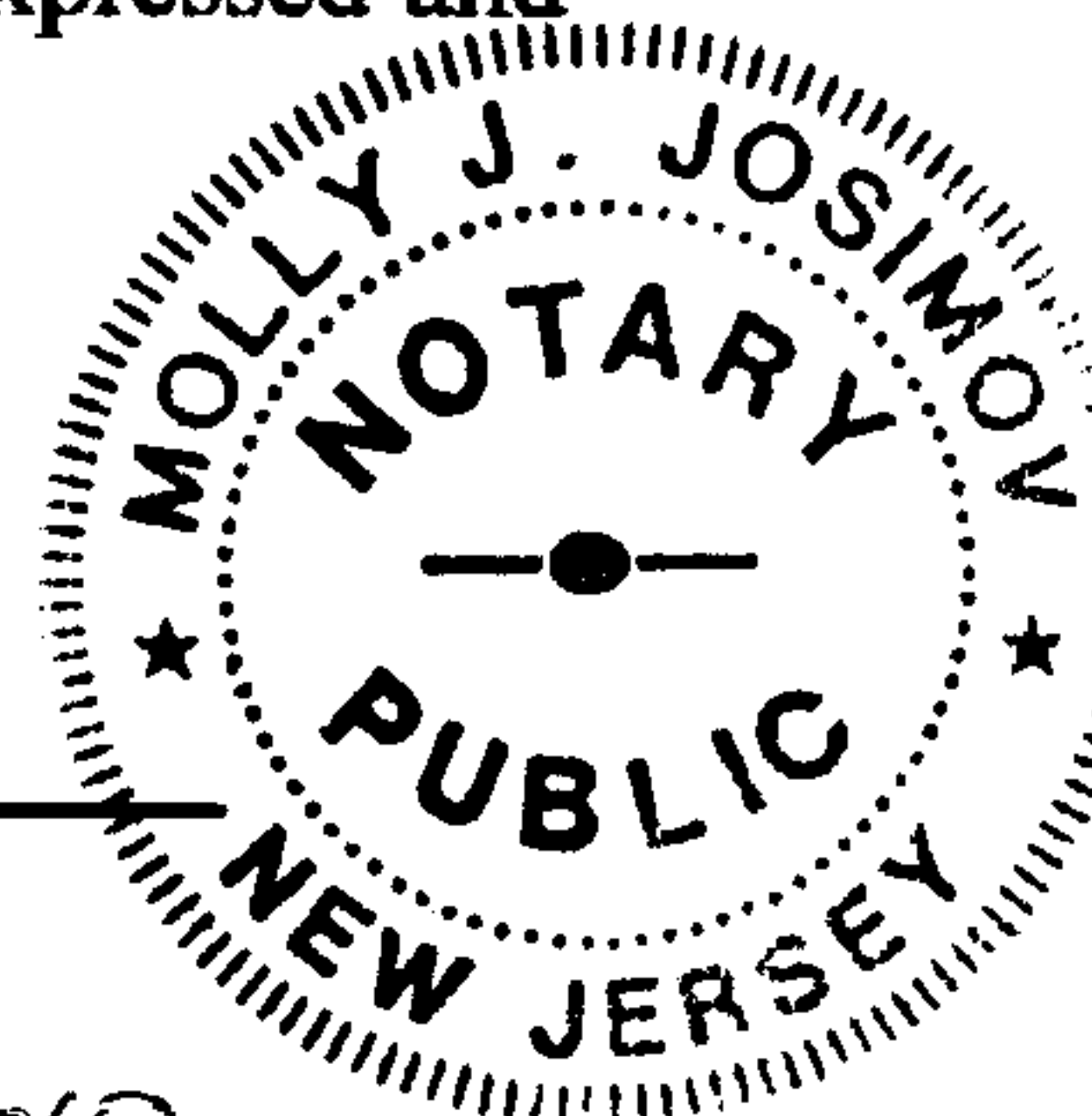
On this, the 12<sup>th</sup> day of June, 2008, before me, the undersigned officer, personally appeared Cory D. Boss, who acknowledged himself to be a Vice President of Felicita Retail LLC, a California limited liability company, the sole general partner of Felicita Associates LP, a California limited partnership, the sole member of Houston-Mason, LLC, a Texas limited liability company, the sole general partner of Mason Plaza, L.P., a Texas limited partnership, the sole member of Helena I, LLC, a Delaware limited liability company, and that such officer, being authorized to do so, executed the within instrument for the purposes therein expressed and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

**MOLLY J. JOSIMOV**  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 6/3/2010

  
Notary Public

My Commission Expires: 6/3/2010



**[SIGNATURES CONTINUE ON NEXT PAGE]**



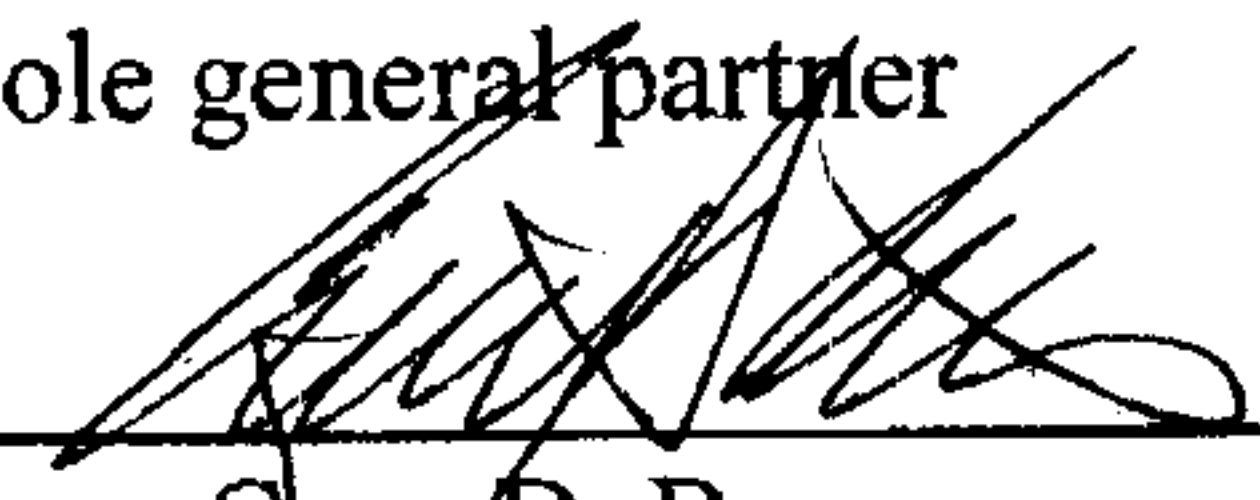
20080617000247210 22/24 \$87.00  
Shelby Cnty Judge of Probate, AL  
06/17/2008 02:33:42PM FILED/CERT

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

**ORIGINAL BORROWER PRINCIPAL:**

**LAMAR WESTERN L.P.**, a Delaware limited partnership

By: Lamar Ventures Inc., a Colorado corporation,  
its sole general partner

By:   
Name: Cory D. Boss  
Title: Vice President

STATE OF NEW JERSEY )

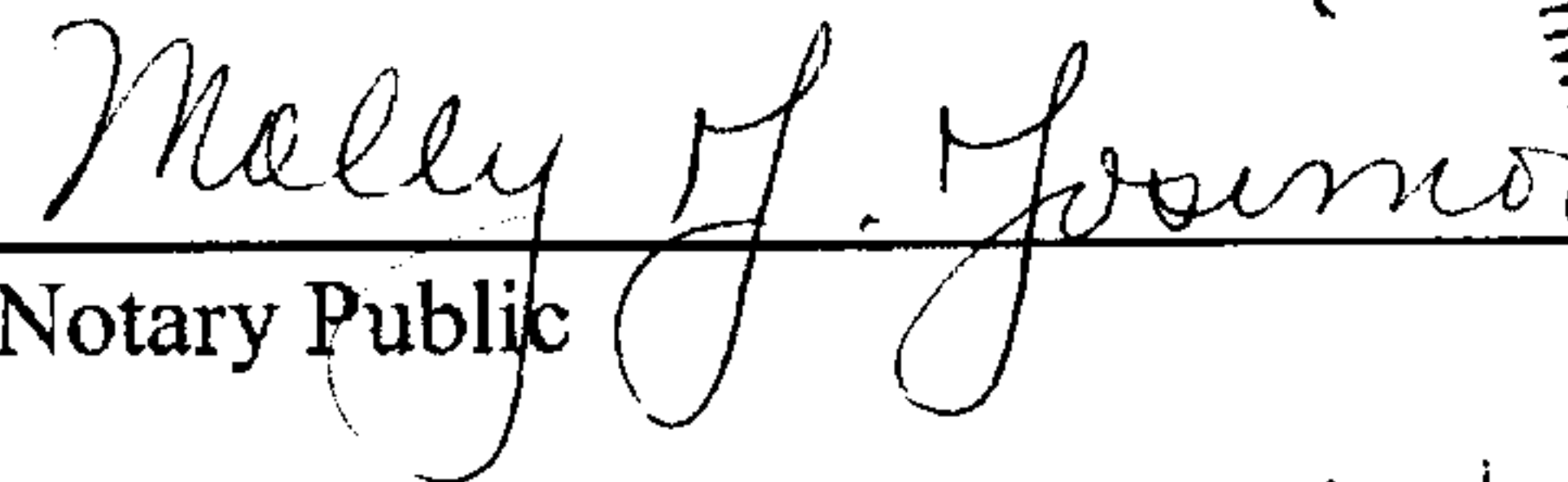
) ss:

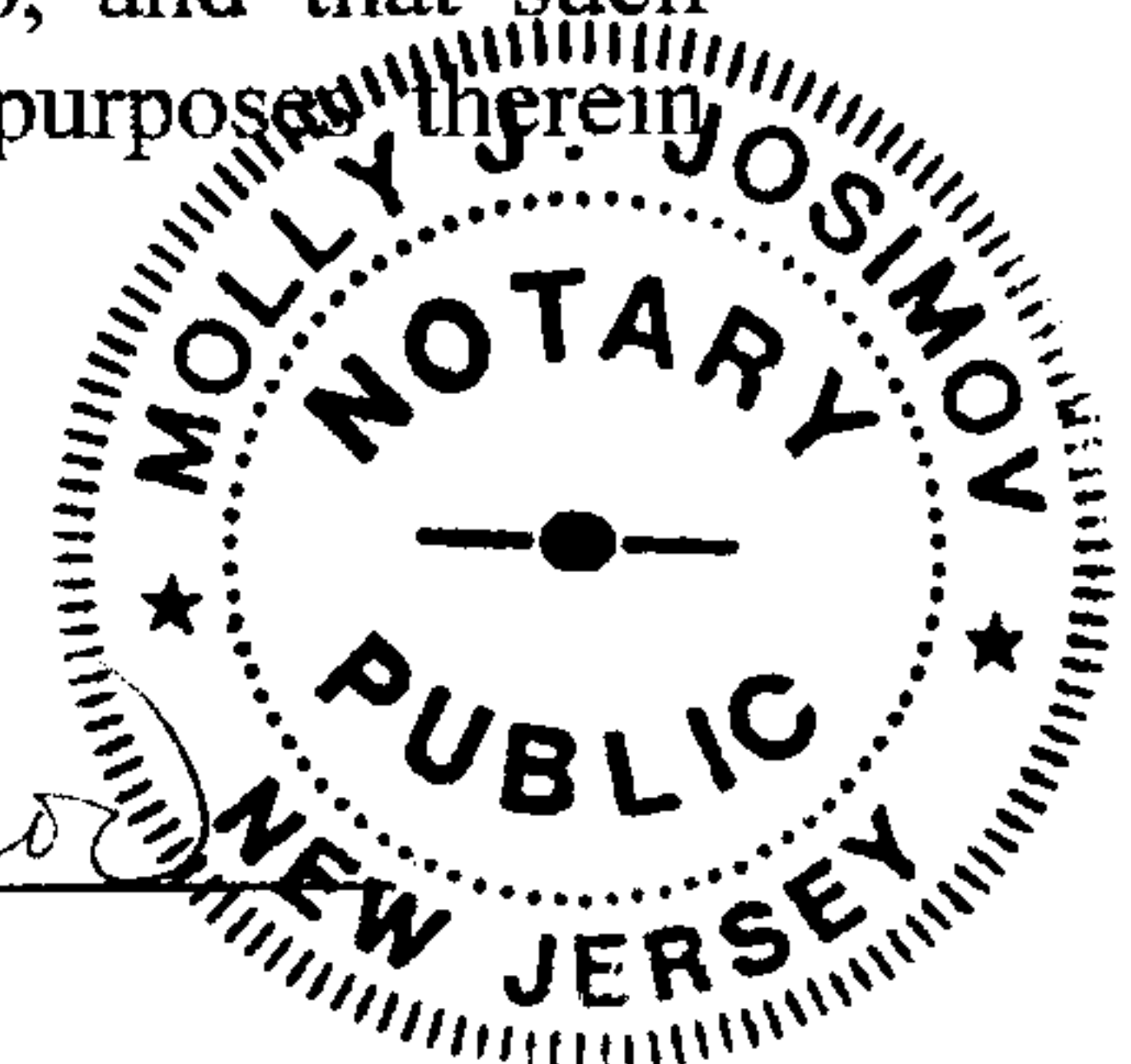
COUNTY OF MORRIS )

On this, the \_\_\_\_\_ day of June, 2008, before me, the undersigned officer, personally appeared Cory D. Boss, as a Vice President of Lamar Ventures Inc., a Colorado corporation, as sole general partner of Lamar Western L.P., a Delaware limited partnership, and that such officer, being authorized to do so, executed the within instrument for the purposes therein expressed and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

**MOLLY J. JOSIMOV**  
**NOTARY PUBLIC OF NEW JERSEY**  
Commission Expires 6/3/2010

  
Notary Public  
My Commission Expires: 6/3/2010



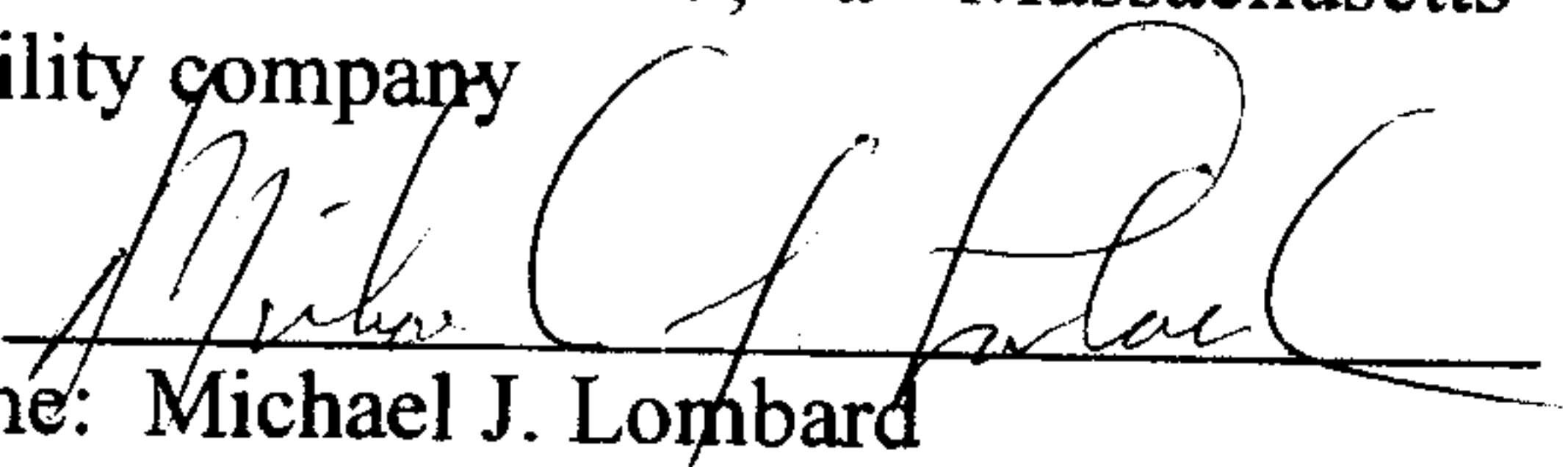
[SIGNATURES CONTINUE ON NEXT PAGE]



[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

LENDER:

CWCAPITAL LLC, a Massachusetts limited liability company

By:   
Name: Michael J. Lombard  
Title: Vice President

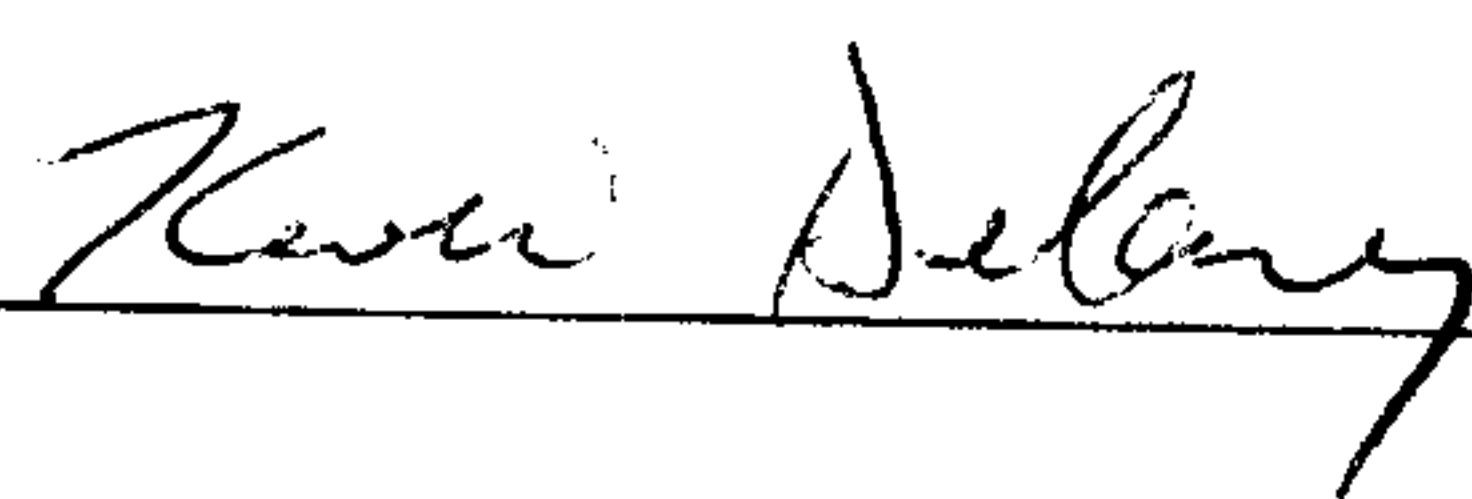
COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

On June 5, 2008, before me, the undersigned notary public, personally appeared Michael J. Lombard, who proved to me through satisfactory evidence of identification which was: ☒ a signatory personally known to me, or ☐ a driver's license, to be the person whose name is subscribed to the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose, as Vice President of CWCapital LLC.




Witness my hand and official seal.

Notary: 

(Seal)

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PREMISES**

  
20080617000247210 24/24 \$87.00  
Shelby Cnty Judge of Probate, AL  
06/17/2008 02:33:42PM FILED/CERT

Lot 1, Helena Marketplace, as recorded in Map Book 24, Page 141, in the Probate Office of Shelby County, Alabama.

Together with any beneficial rights that constitute an interest in real estate obtained under that certain Declaration of Covenants and Easements recorded in Instrument #19971113000371510, amended in Instrument #20010403000123310 and Declaration of Easements in Instrument #1998121500049933.