


After recording return to:
FORTSON, BENTLEY & GRIFFIN, P.A.
P.O. Box 1744
Athens, GA 30603-17444


20040729000420560 Pg 1/5 23.00
Shelby Cnty Judge of Probate, AL
07/29/2004 10:17:00 FILED/CERTIFIED

PROPERTY ADDRESS:
3437 Highway 31 South
Pelham, Alabama

MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT (this "Memorandum"), made and entered into this 26th day of July, 2004, by and among **CHICKEN SCRATCH, INC.**, an Alabama corporation, as "Licensee," **ZAXBY'S FRANCHISING, INC.**, a Georgia corporation, as "ZFI," and **CARTER MASON INVESTMENTS, L.L.C.**, an Alabama limited liability company, as "Landlord";

W I T N E S S E T H:

THAT WHEREAS, Licensee, ZFI and Landlord have entered into that certain Option Agreement dated July 26, 2004 (said Option Agreement and any and all amendments thereto and renewals and extensions thereof being collectively referred to herein as the "Option Agreement") with respect to the real property described on Exhibit "A" attached hereto and by reference made a part hereof (the "Premises"); and

WHEREAS, pursuant to the Option Agreement, ZFI has an exclusive right and option to become the tenant of the Premises in place of Licensee, and Landlord is obligated to recognize ZFI as tenant in said event; and

WHEREAS, Licensee, ZFI and Landlord are desirous of restating certain of the terms and conditions of the Option Agreement;

NOW, THEREFORE, for and in consideration of the premises and Ten Dollars (\$10.00) and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged, Landlord and Licensee hereby agree that ZFI shall, and does hereby, have an exclusive and irrevocable right and option to become tenant of the Premises in the event Licensee should, for any reason, cease to be the tenant of the Premises, or in the event the License Agreement between Licensee and ZFI should ever, for any reason, be terminated or expire.

All the terms, conditions, provisions and covenants of the Option Agreement are incorporated herein by reference as though written out at length herein, and both the Option Agreement and this Memorandum shall be deemed to constitute a single instrument or document. This Memorandum is not intended to amend, modify, supplement or supersede any of the

provisions of the Option Agreement, and to the extent there may be any conflict or inconsistency between the Option Agreement and this Memorandum, the Option Agreement shall control.

IN WITNESS WHEREOF, the parties have hereunto set their hands, affixed their seals and delivered these presents as of the day and year first above written.

LICENSEE:

CHICKEN SCRATCH, INC.


By: 

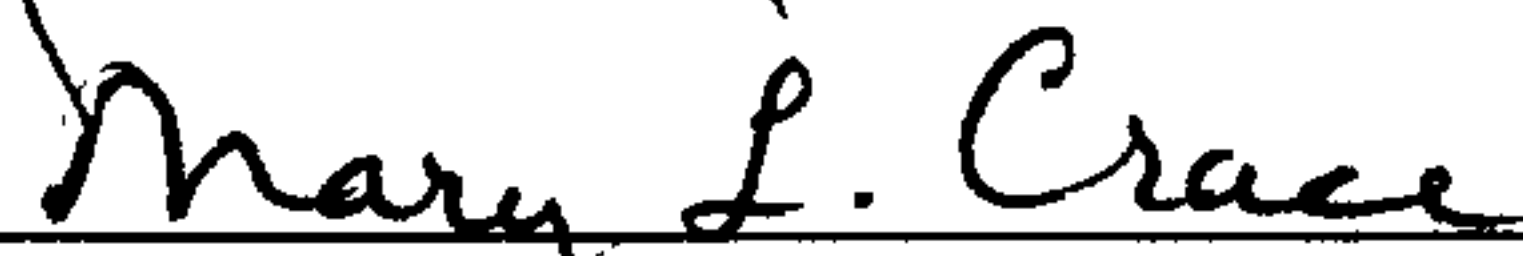
Name: Courtney H. Mason, Jr.

Title: President

[CORPORATE SEAL]

Signed, sealed and delivered
in the presence of:


Witness


Witness

State of Georgia

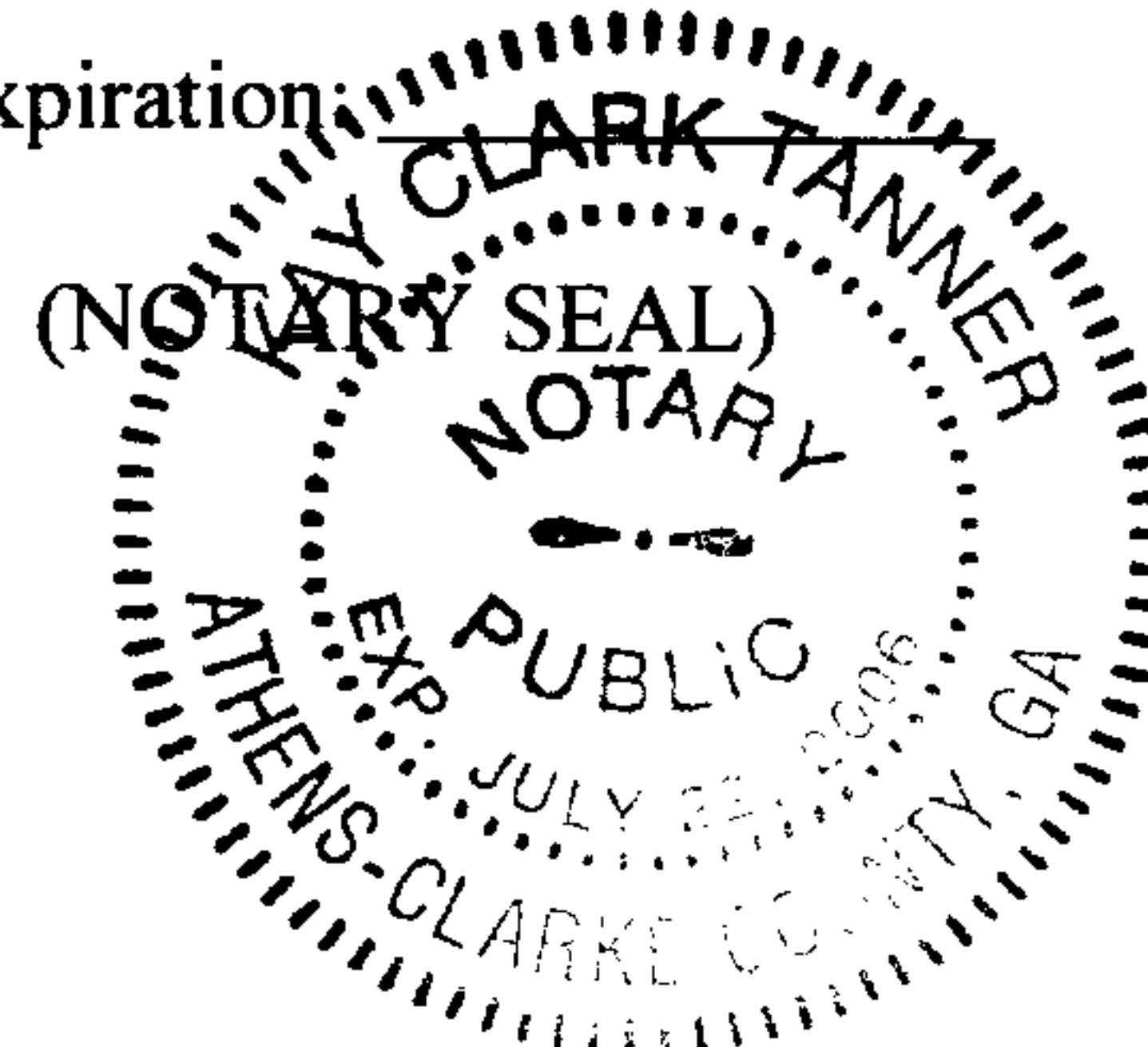
County of Oconee

I, Kay C. Tanner, the undersigned Notary Public in and for said County, in said State, hereby certify that Courtney H. Mason, Jr., whose name as President of Chicken Scratch, Inc., an Alabama corporation, is signed to the foregoing instrument, and who has properly identified himself to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as said officer and with full authority, executed the same voluntarily on behalf of and as the act of said corporation.

Given under my hand and seal this 26th day of July, 2004.


Notary Public

Commission Expiration:



ZFI:

ZAXBY'S FRANCHISING, INC.

By:

Name:

TONY D. TOWNLEY

Title:

VICE PRESIDENT

[CORPORATE SEAL]

Signed, sealed and delivered
in the presence of:

Witness

Witness

State of Georgia

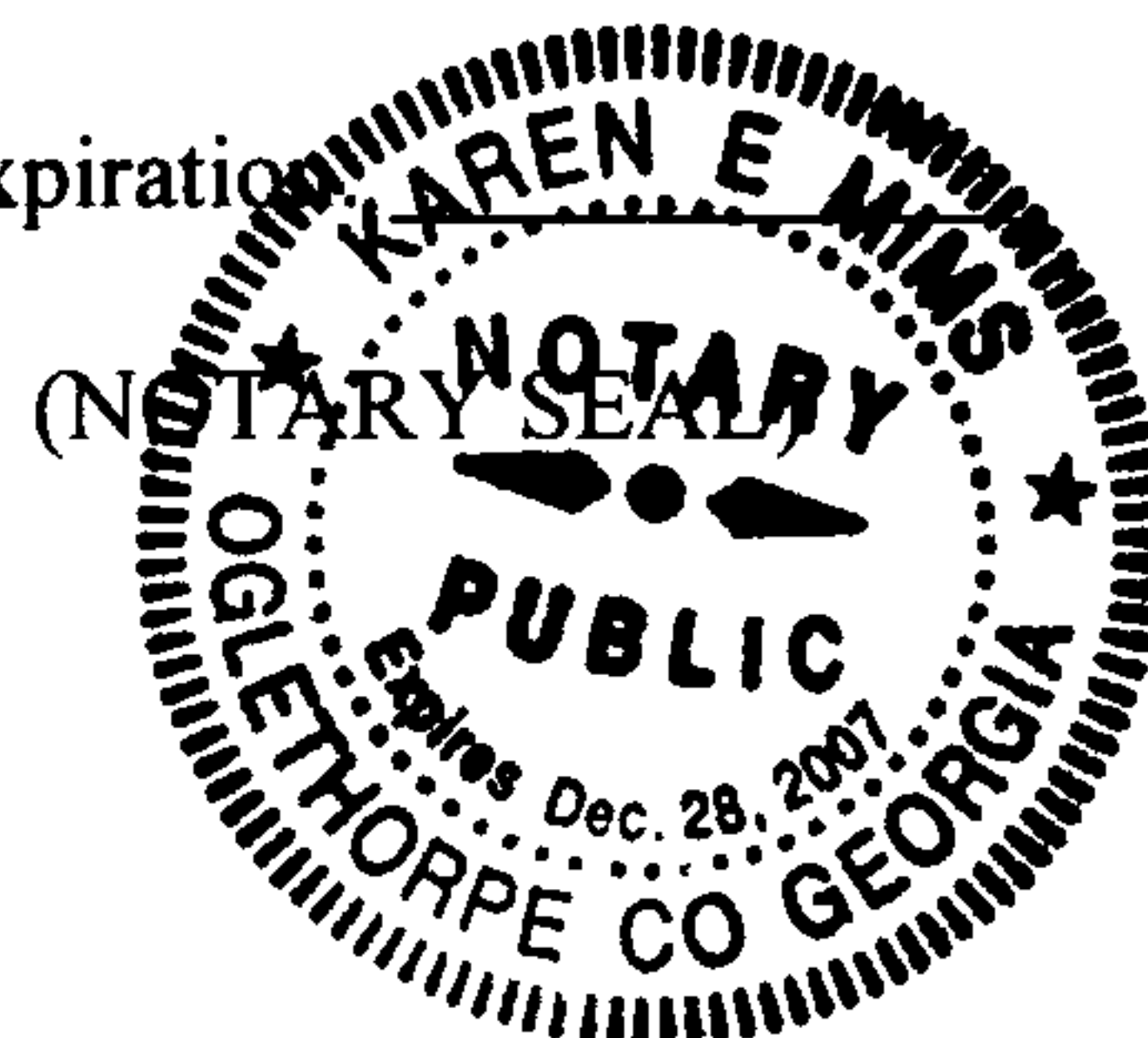
County of Oconee

I, Karen E. Mims, the undersigned Notary Public in and for said County, in said State, hereby certify that Tony D. Townley, whose name as Vice-President of Zaxby's Franchising, Inc., a Georgia corporation, is signed to the foregoing instrument, and who has properly identified himself to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as said officer and with full authority, executed the same voluntarily on behalf of and as the act of said corporation.

Given under my hand and seal this 26th day of July, 2004.

Notary Public

Commission Expiration



LANDLORD:

CARTER MASON INVESTMENTS, L.L.C.

By: _____ (SEAL)

Name: Courtney H. Mason, Jr.

Title: Member

Signed, sealed and delivered
in the presence of:

W. H. H. H. H.
Witness

Mary L. Crace
Witness

State of Georgia

County of Oconee

I, Kay C. Tanner, the undersigned Notary Public in and for said County, in said State, hereby certify that Courtney H. Mason, Jr., whose name as Member of Carter Mason Investments, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who has properly identified himself to me, acknowledged before me on this day that, being informed of the contents of said instrument, he with full authority, executed the same voluntarily on behalf of and as the act of said company.

Given under my hand and seal this 26th day of July, 2004.

Kay C. Tanner
Notary Public
Commission Expiration: _____

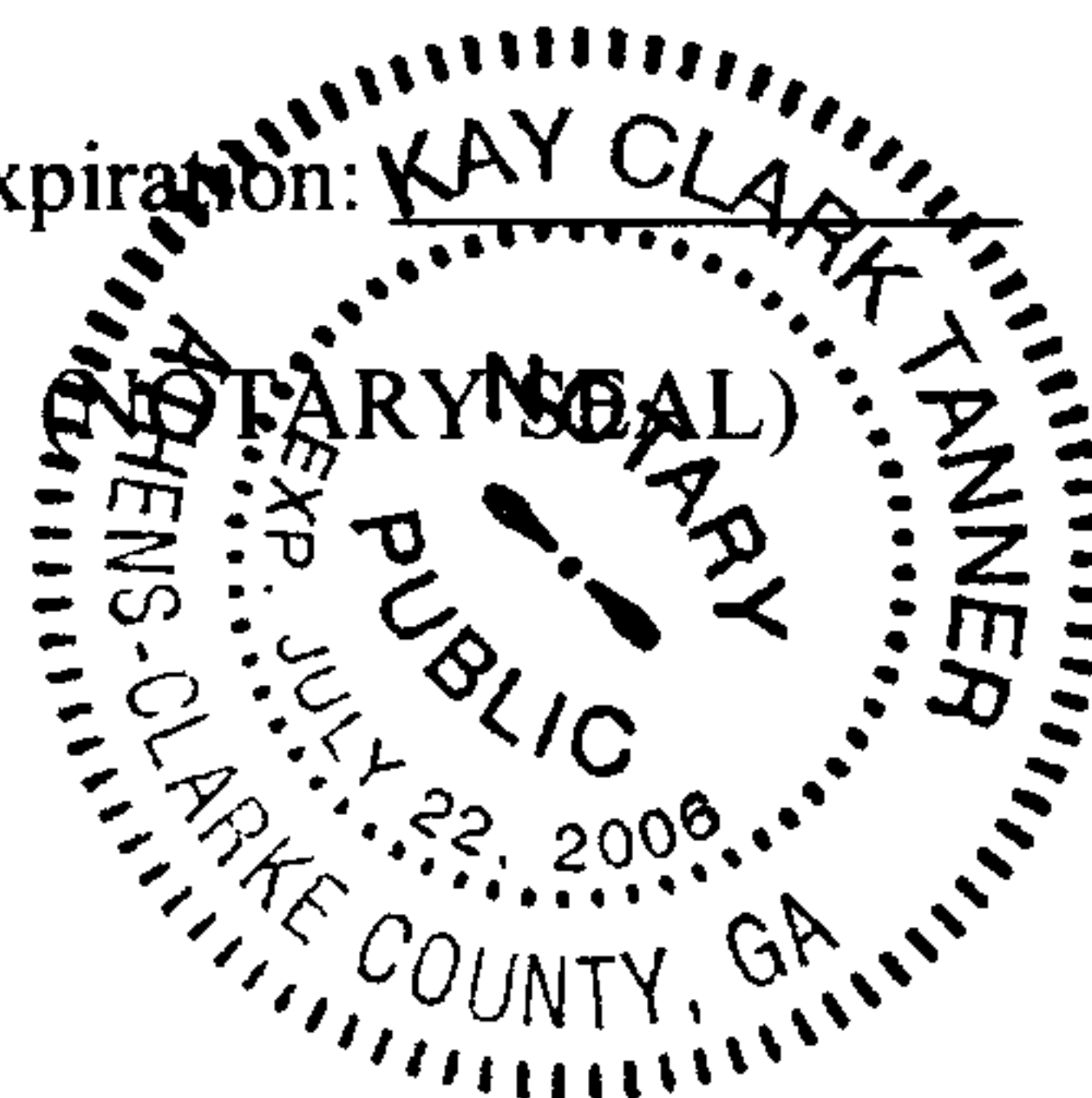


EXHIBIT A
TO
MEMORANDUM OF OPTION AGREEMENT

20040729000420560 Pg 5/5 23.00
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DESCRIPTION OF PREMISES

COMMENCE AT THE N.E. CORNER OF THE N.W. ¼ OF SECTION 25, TOWNSHIP 20 SOUTH, RANGE 3 WEST IN SHELBY CO., AL; THENCE RUN S 05°09'51" E FOR A DISTANCE OF 644.50 FEET; THENCE RUN S 05°09'52" E FOR A DISTANCE OF 229.78 FEET; THENCE RUN S 87°37'52" W FOR A DISTANCE OF 1344.40 FEET; THENCE RUN N 21°52'40" W FOR A DISTANCE OF 53.05 FEET TO THE POINT OF BEGINNING; THENCE RUN N 21°52'40" E FOR A DISTANCE OF 177.39 FEET; THENCE RUN N 87°07'54" E FOR A DISTANCE OF 257.02 FEET; THENCE RUN S 21°52'40" W FOR A DISTANCE OF 179.77 FEET; THENCE RUN S 87°37'52" W FOR A DISTANCE OF 267.80 FEET TO THE POINT OF BEGINNING; SAID PROPERTY CONTAINING 1.00 ACRES +/-.