

This instrument was prepared by
and after recording return to:
Walter W. Hays, Jr.
Fortson, Bentley and Griffin, P.A.
2500 Daniell's Bridge Road
Building 200, Suite 3A
Athens, Georgia 30606
(706) 548-1151

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

PREMISES LOCATION: 2636 Valleydale Road, Birmingham, Shelby County, Alabama

THIS AGREEMENT is made and entered into as of this 22nd day of May, 2008, by and among **VALLEYDALE LAND CO., LLC**, an Alabama limited liability company, whose principal address is 1904 Indian Lake Drive, Birmingham, Alabama 35244 (the "**Landlord**"), **CHICKEN SCRATCH AT VALLEYDALE, INC.**, an Alabama corporation, whose principal address is 1904 Indian Lake Drive, Birmingham, Alabama 35244 (the "**Tenant**"), **ZAXBY'S FRANCHISING, INC.**, a Georgia corporation, whose principal address is 1040 Founder's Boulevard, Suite 100, Athens, Georgia 30606 ("**ZFI**"), and **RENASANT BANK**, whose principal address is P.O. Box 709, Tupelo, Mississippi 38802 (the "**Lender**").

W I T N E S S E T H:

THAT WHEREAS, Landlord has entered into and delivered that certain Mortgage and Security Agreement dated June 21, 2007 in favor of Lender, recorded in the Office of Judge of Probate of Shelby County, Alabama, as document number 20070706000320930 (the "Mortgage"), conveying certain property therein described located at 2636 Valleydale Road, Birmingham, Shelby County, Alabama (the "Premises"); and

WHEREAS, Carter Mason Investments, LLC and Chicken Scratch, Inc. entered into that certain lease agreement dated December 9, 2005, as assigned to Landlord and Tenant by Assignment of Lease effective June 8, 2006, and as amended by Rider to Lease Agreement dated May 22, 2008 (collectively, the "Lease"), for the Premises for use by Tenant as a Zaxby's® restaurant to be operated pursuant to a written License Agreement dated May 22, 2008 and as amended by First Amendment to License Agreement dated May 22, 2008 by and between ZFI and Tenant (including any and all amendments and renewals and extensions thereof) (collectively, the "License Agreement"); and

WHEREAS, it is a condition to ZFI's confirmation of the Lease, as required under the License Agreement, that this Agreement be fully executed and delivered by the parties hereto;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do mutually covenant and agree as follows:

1. Lender hereby consents to the Lease.
2. Tenant covenants and agrees with the Lender that the Lease is hereby made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage (as same may be modified and extended) subject to the provisions of this Agreement.
3. Tenant certifies that the Lease is presently in full force and effect.
4. Lender agrees that so long as the Lease shall be in full force and effect and Tenant is not in default thereunder beyond any applicable cure period:
 - (a) Except as required by applicable law governing foreclosures and/or sales pursuant to power of sale, Tenant shall not be named or joined as a party defendant or otherwise in any suit, action, or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby.
 - (b) The possession by Tenant of the Premises and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage or any other documents held by the Lender, or (ii) any judicial sale or execution or other sale of the Premises, or by any deed given to Lender by any other documents or as a matter of law, or (iii) any default under the Mortgage or the bond or note or other obligation secured thereby.
5. If Lender shall become the owner of the Premises by reason of foreclosure of the Mortgage or otherwise, or if the Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage or by a deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, and the then owner of the Premises shall own the Premises subject to the Lease, and in such event:
 - (a) Tenant shall be bound to the Lender or to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the option periods if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as Landlord under the Lease; and
 - (b) Lender or any successor or assignee of Lender shall not (i) be bound by any prepayment of rent or additional rent, unless received and receipted for by Lender or its successor or assignee; (ii) be personally liable under the Lease, and Lender's or its successor's or assignee's liability under the Lease shall be limited to the interest of the Lender or its successor or assignee in the Premises; (iii) be liable for any act or omission of any prior landlord under the Lease, including, without limitation, the Landlord; (iv) be subject to any offsets or defenses which Tenant may have against any prior landlord under the Lease, including, Landlord; (v) except as provided in Section 8. below, be bound by any amendment, modification or termination of the Lease (other than a termination of the Lease by Tenant pursuant to the express terms of the Lease) made without Lender's prior written consent; and (vi) be liable to provide Tenant with any rights in or be bound by or be responsible for any restrictions on any property other than the Premises during the remainder of the term of the Lease.
6. Tenant, Landlord, and Lender acknowledge and agree that upon written instruction to Tenant from the Landlord or Lender instructing Tenant to make all rent and other payments due and to become due to Landlord under the Lease directly to Lender, the Tenant agrees to follow such direction until further written notice from the Lender, and Landlord and Lender hereby expressly agree that any such payment shall discharge any obligation of Tenant to Landlord under the Lease to the extent of such payment; provided, however, that the foregoing shall have no effect on Tenant's rights to any offsets nor any effect on Landlord's obligations.

7. Tenant shall give Lender written notice of any default by Landlord under the Lease. Lender shall have the same period of time provided Landlord under the Lease within which to cure such default.

8. Landlord and Tenant may, from time to time, modify or amend the Lease without Lender's consent, provided such modifications or amendments do not result in a change in the Lease Term, the reduction of the Rent payable thereunder or make Landlord's obligations thereunder more onerous; any such modifications having such result and made without Lender's written consent shall be void and of no force and effect as between Lender and Tenant.

9. Tenant shall not pay an installment of rent more than thirty (30) days prior to the due date.

10. Tenant and ZFI have entered into, or are about to enter into, a certain Option Assignment of Lease whereby ZFI is granted the right to become the tenant of the Premises and continue the operation of a Zaxby's® restaurant (now or to be located thereon) in the event Tenant should fail to cure any default in the Lease within any applicable cure period or in the event the License Agreement should ever, for any reason, be terminated or expire. Accordingly, this Agreement shall inure to the benefit of ZFI, its successors and assigns, in the event ZFI should ever become tenant of the Premises.

11. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Lender, at the address of Lender hereinabove set forth or at such other address as Lender may designate by notice, (b) if to Tenant, at the address of Tenant hereinabove set forth, or at such other address as Tenant may designate by notice, (c) if to Landlord, at the address of Landlord hereinabove set forth or at such other address as Landlord may designate by notice, or (d) if to ZFI, at the address of ZFI hereinabove set forth or at such other address as ZFI may designate by notice.

This Agreement may be executed in one or more counterparts, or by the parties executing separate counterpart signature pages, including facsimiles transmitted by telecopier, all of which shall be deemed to be original counterparts of this Agreement.

This Agreement shall be governed by, and construed in accordance with, the laws of the state in which the Premises are located.

This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.

This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

This Agreement and the covenants contained are intended to run with and bind all lands affected thereby.

(Continued on following page)

IN WITNESS WHEREOF, the parties hereby have set their hands and seals as of the day and year first above written.

Signed, sealed and delivered in
in the presence of:

Witness

Witness

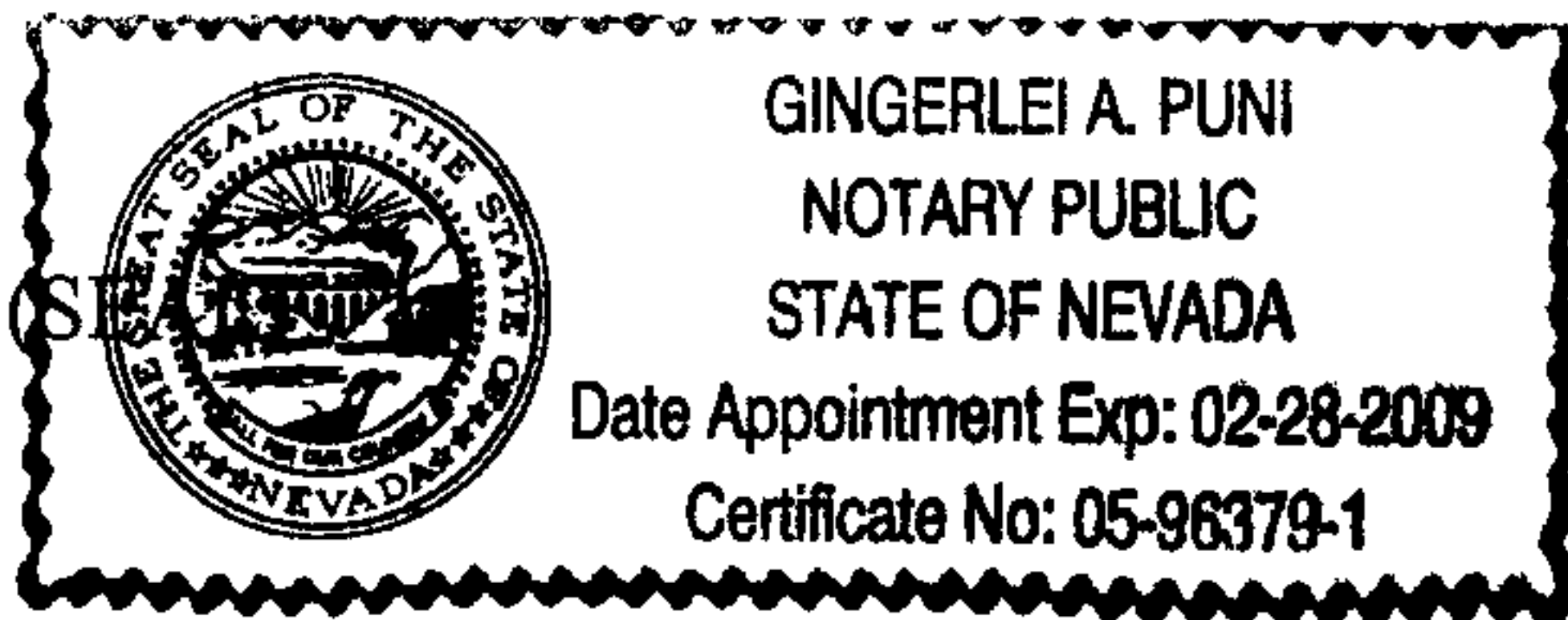
LANDLORD:
VALLEYDALE LAND CO., LLC

By: _____ [SEAL]
Name: Courtney H. Mason, Jr.
Title: Member

State of Nevada
County of Clark

I, a Notary Public of said County and State, certify that Courtney H. Mason, Jr. personally came before me this day and acknowledged that he is a Member of Valleydale Land Co., LLC, and that he, as Member, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the 20th day of May, 2008.



Gingerlei A. Puni
Notary Public
My Commission Expires: 02-28-2009

Witness

Witness

By: _____ [SEAL]
Name: Russell H. Pate
Title: Member

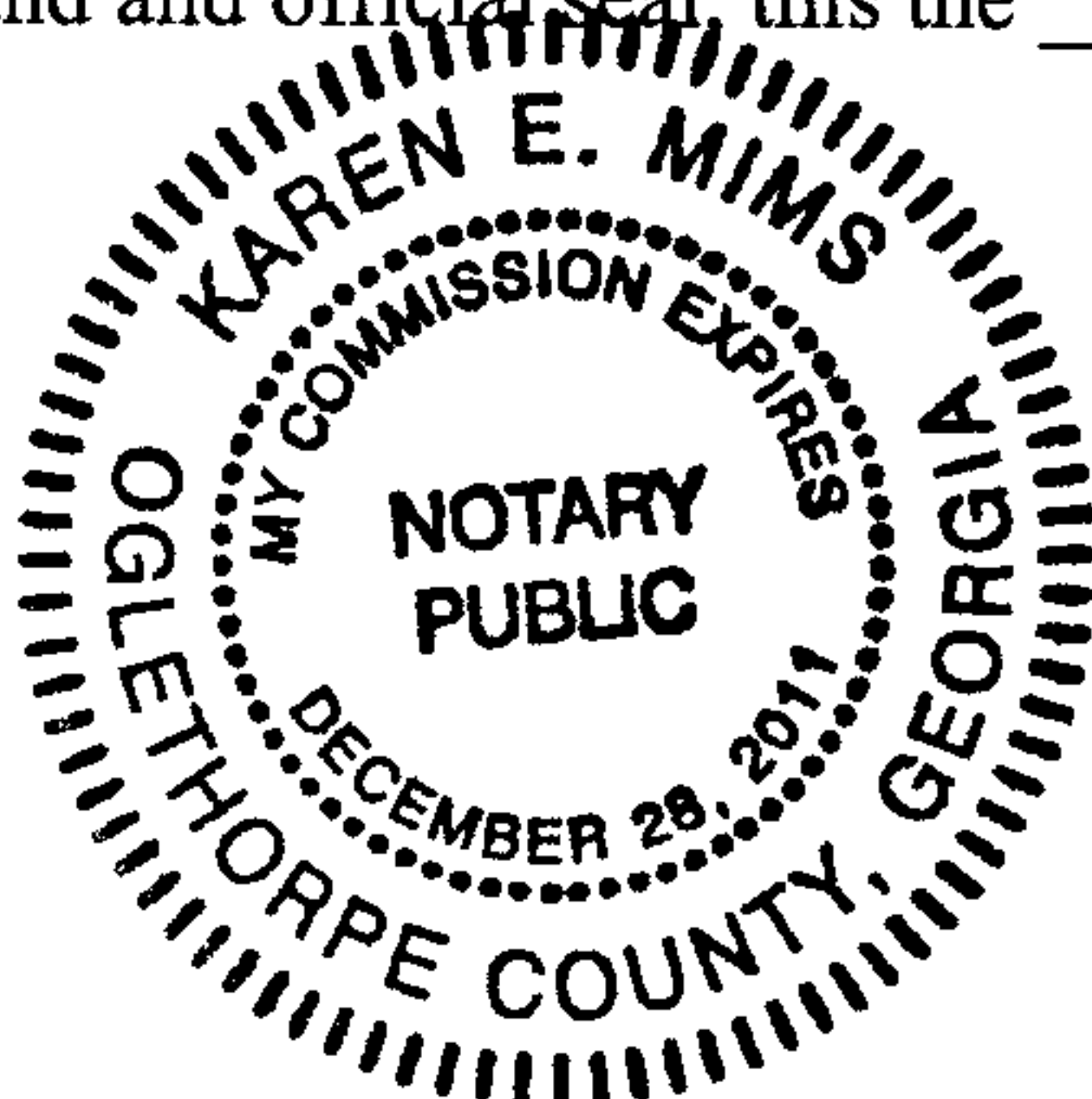
State of Georgia
County of Oglethorpe

I, a Notary Public of said County and State, certify that Russell H. Pate. personally came before me this day and acknowledged that he is a Member of Valleydale Land Co., LLC, and that he, as Member, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the 22 day of May, 2008.

(SEAL)

377144.2
007927-0630



Karen E. Mims
Notary Public
My Commission Expires: _____

20080603000224360 4/9 \$35.00
Shelby Cnty Judge of Probate, AL
06/03/2008 01:17:55PM FILED/CERT

Robert A. Lemaire

Witness

George P. Burke

Witness

By:

Name: Kerry Carter

Title: Member

[SEAL]

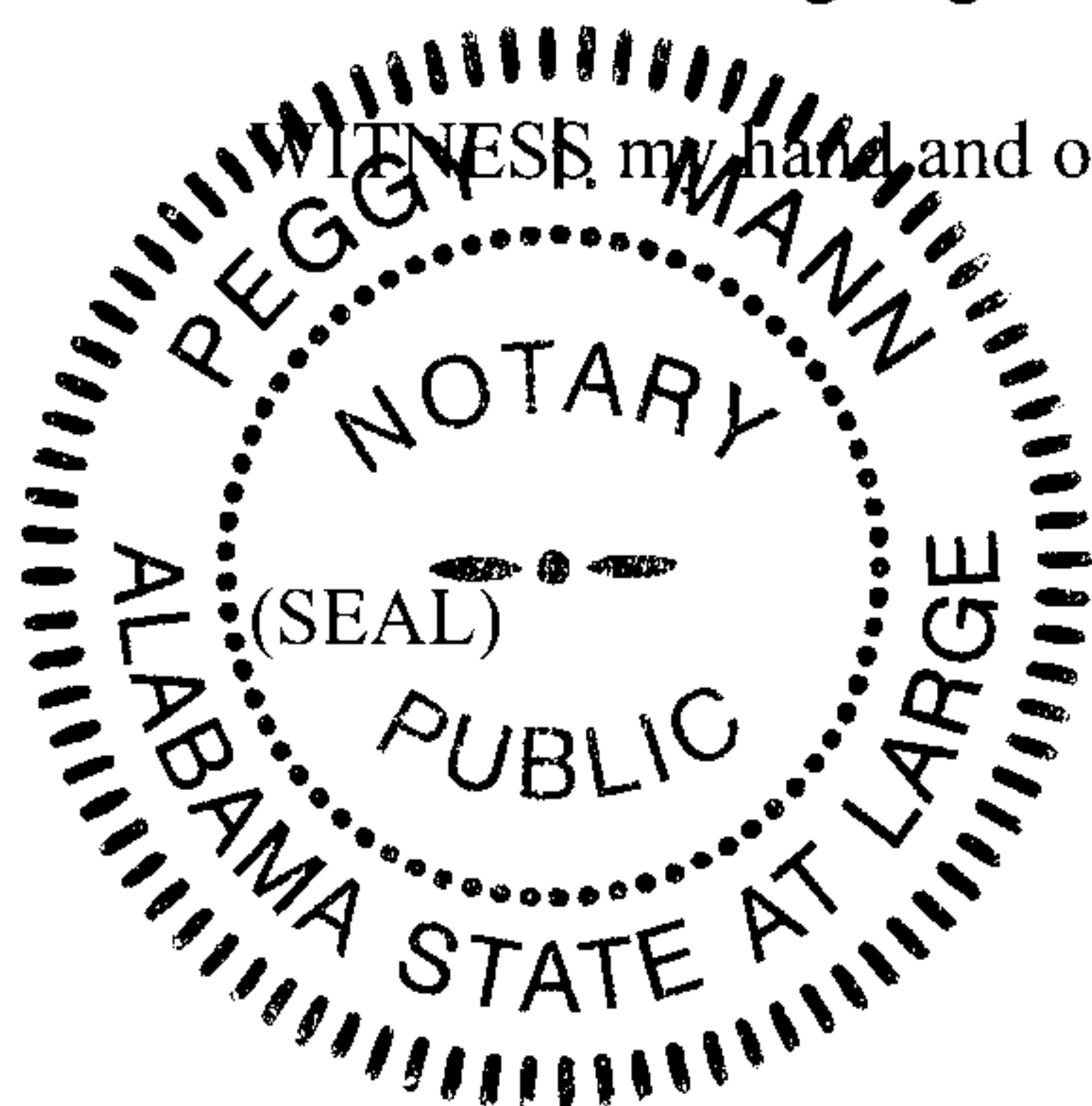
State of ALABAMA

County of SHELBY

I, a Notary Public of said County and State, certify that Kerry Carter personally came before me this day and acknowledged that he is a Member of Valleydale Land Co., LLC, and that he, as Member, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the 16th day of May, 2008.

PEGGY I. MANN
COMMISSION EXPIRES FEB 5, 2011



Notary Public

My Commission Expires: 2-5-11

Signed, sealed and delivered in
in the presence of:

Robert A. Lemaire

Witness

George P. Burke

Witness

LICENSEE:

CHICKEN SCRATCH AT VALLEYDALE, INC.

By:

Name: Courtney H. Mason, Jr.

Title: President

[CORPORATE SEAL]

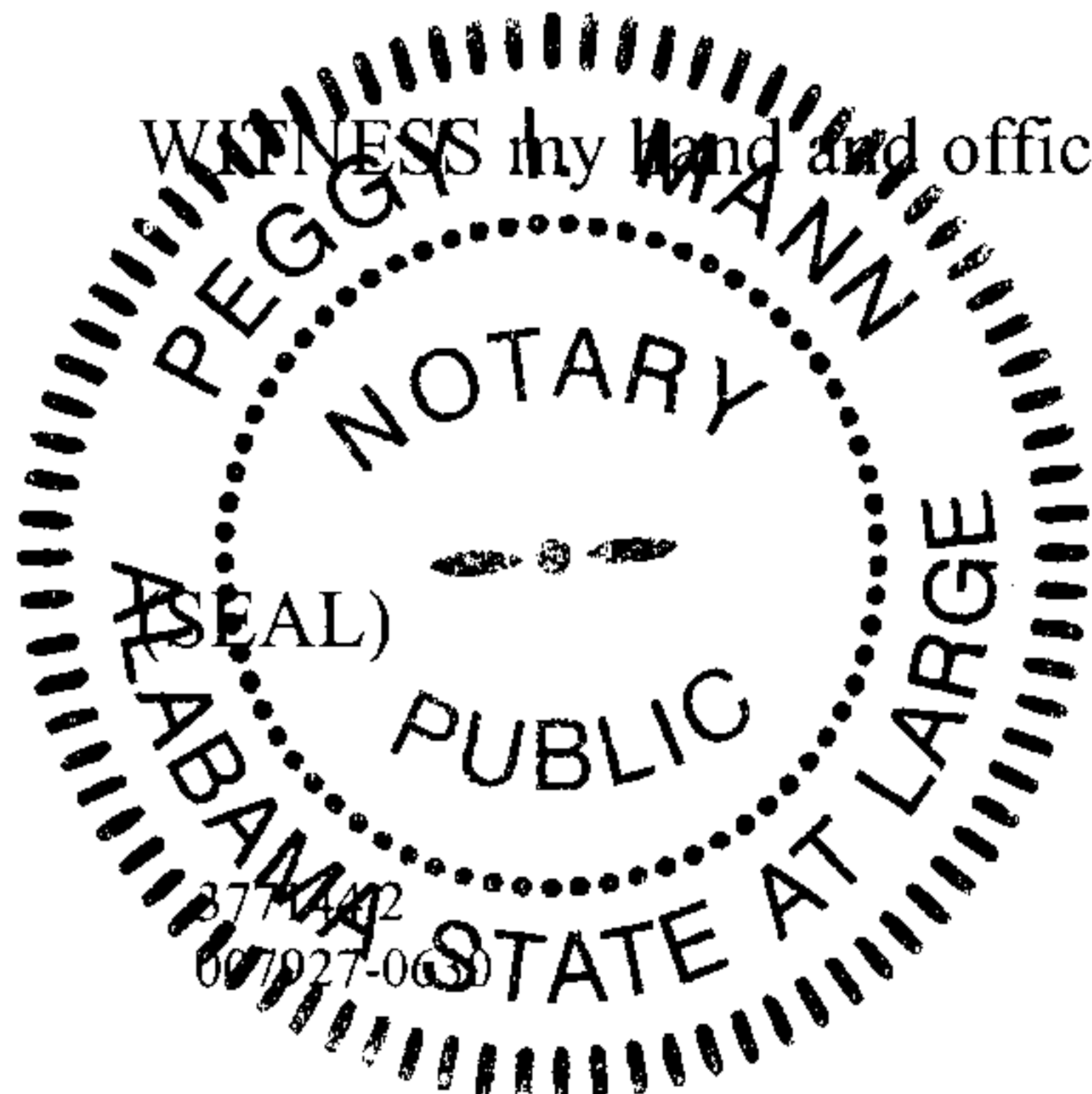
State of ALABAMA

County of SHELBY

I, a Notary Public of said County and State, certify that Courtney H. Mason, Jr. personally came before me this day and acknowledged that he is President of Chicken Scratch at Valleydale, Inc. and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the 16th day of May, 2008.

PEGGY I. MANN
COMMISSION EXPIRES FEB 5, 2011



Notary Public

My Commission Expires: 2-5-11



20080603000224360 5/9 \$35.00
Shelby Cnty Judge of Probate, AL
06/03/2008 01:17:55PM FILED/CERT

Witness

By: _____ [SEAL]

Name: Kerry Carter

Title: Member

Witness

State of _____
County of _____

I, a Notary Public of said County and State, certify that Kerry Carter personally came before me this day and acknowledged that he is a Member of Valleydale Land Co., LLC, and that he, as Member, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the _____ day of May, 2008.

(SEAL)

Notary Public

My Commission Expires: _____

Signed, sealed and delivered in
in the presence of:

Witness

Witness

LICENSEE:

CHICKEN SCRATCH AT VALLEYDALE, INC.

By: _____

Name: Courtney H. Mason, Jr.

Title: President

[CORPORATE SEAL]

State of Nevada
County of Clark

I, a Notary Public of said County and State, certify that Courtney H. Mason, Jr. personally came before me this day and acknowledged that he is President of Chicken Scratch at Valleydale, Inc. and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the 20th day of May, 2008.



Notary Public

My Commission Expires: 02-28-2009

Signed, sealed and delivered in
in the presence of:

Marianne Epps
Witness
[Signature]
Witness

ZFI:
ZAXBY'S FRANCHISING, INC.

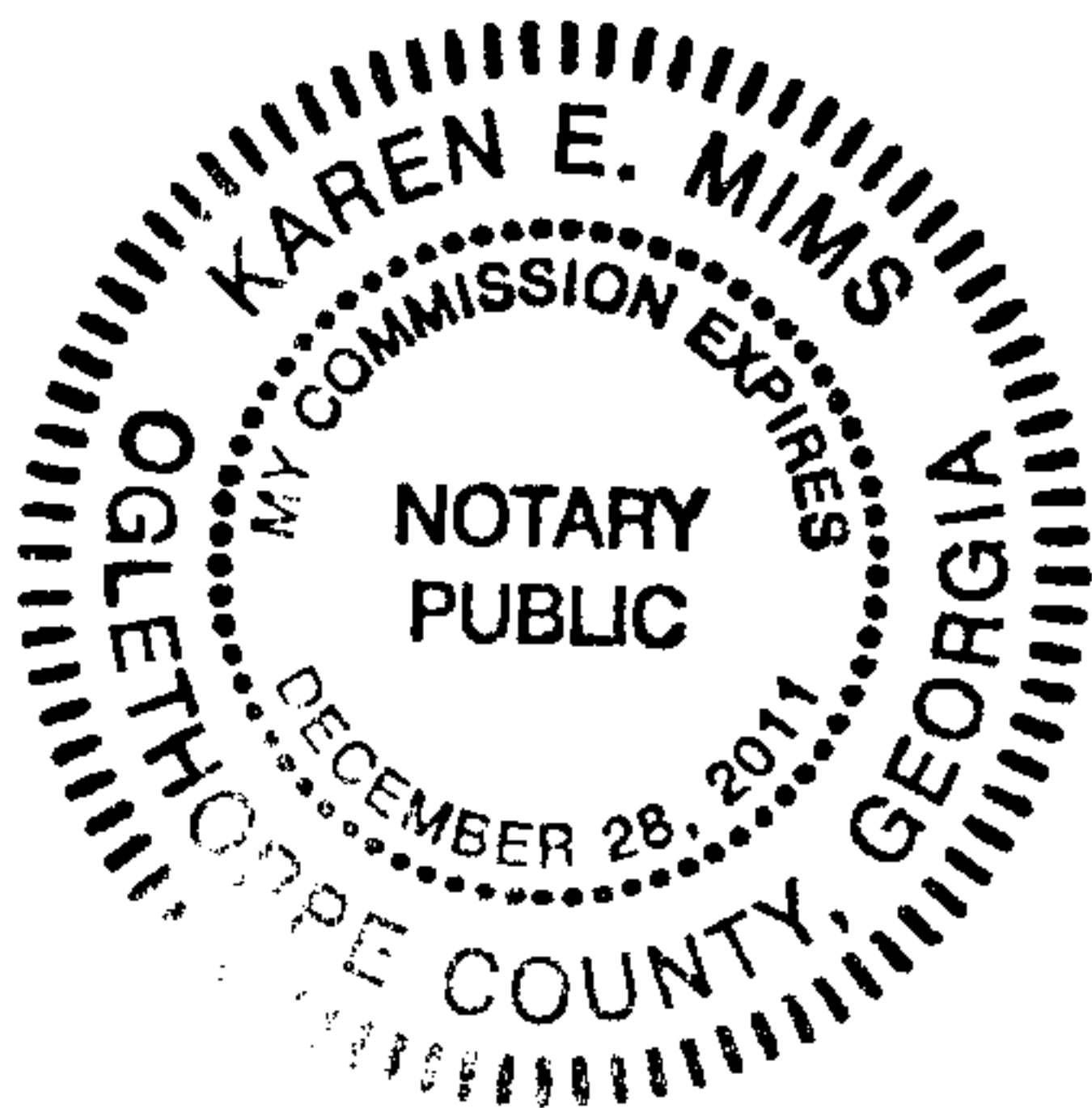
By: [Signature]
Name: Amy C. Pritchett
Title: Vice President of Franchise Administration
[CORPORATE SEAL]

State of Georgia
County of Oglethorpe

I, a Notary Public of said County and State, certify that Amy C. Pritchett personally came before me this day and acknowledged that she is Vice President of Franchise Administration for Zaxby's Franchising, Inc., and that she, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the 22 day of May, 2008.

(SEAL)



Karen E Mims
Notary Public
My Commission Expires: _____

Signed, sealed and delivered in
in the presence of:

Witness

Witness

LENDER:
RENASANT BANK

By:

Name:

Title:

[CORPORATE SEAL]

State of Alabama
County of Jefferson

I, a Notary Public of said County and State, certify that Raymond Scott personally came before me this day and acknowledged that he/she is Senior Vice President for Renasant Bank and that he/she, as Senior Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the 16th day of May, 2008.

(SEAL)

Notary Public

My Commission Expires: 1/4/2009

ACKNOWLEDGMENT AND CONFIRMATION OF GUARANTOR

The undersigned guarantor(s) of Tenant's obligations under the Lease hereby acknowledge(s) that the undersigned has been informed that Landlord has entered into the Mortgage and Security Agreement to secure certain obligations of Landlord and its affiliates to the Lender. The undersigned hereby confirms that said guarantor's guarantee of the Lease runs to the benefit of Landlord and its successors and assigns, including the Lender upon any assignment of the Lease to the Lender and that if the interests of the Landlord are transferred to and owned by the Lender by reason of foreclosure or other proceedings brought by it or any other manner, and the Lender succeeds to the interest of the Landlord under the Lease, the undersigned shall be bound to the Lender under all of the terms, covenants and conditions of the guarantee of the Lease for the balance of the term remaining and any extensions or renewals thereof, with the same force and effect as if the Lender were the original Landlord under the Lease.

Signed, sealed and delivered in the presence of:

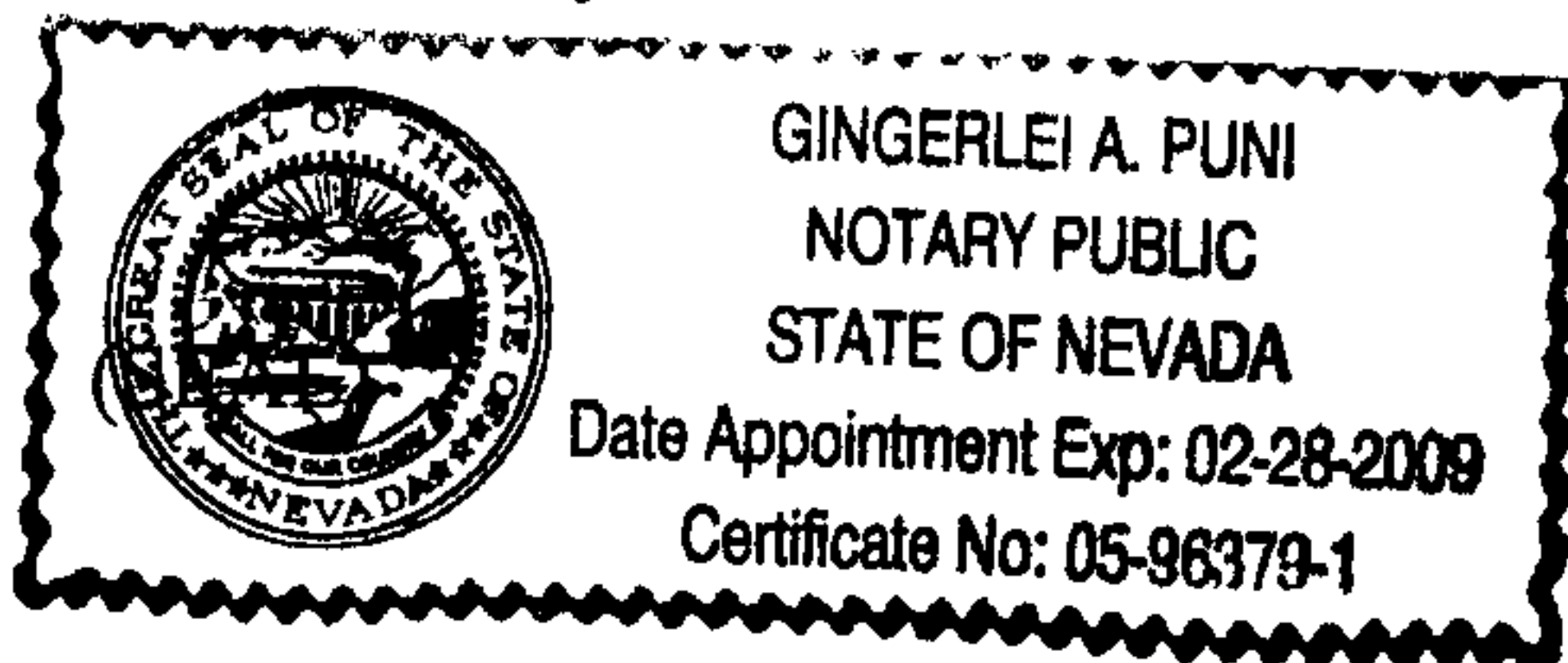
Witness

Witness

State of Nevada
County of Clark

I, a Notary Public of said County and State, certify that Courtney H. Mason, Jr. personally came before me this day and acknowledged that he executed the foregoing.

WITNESS my hand and official seal, this the 20th day of May, 2008.



GUARANTOR:

Name: Courtney H. Mason, Jr.

[SEAL]

Notary Public

My Commission Expires: 02-28-2009

Signed, sealed and delivered in the presence of:

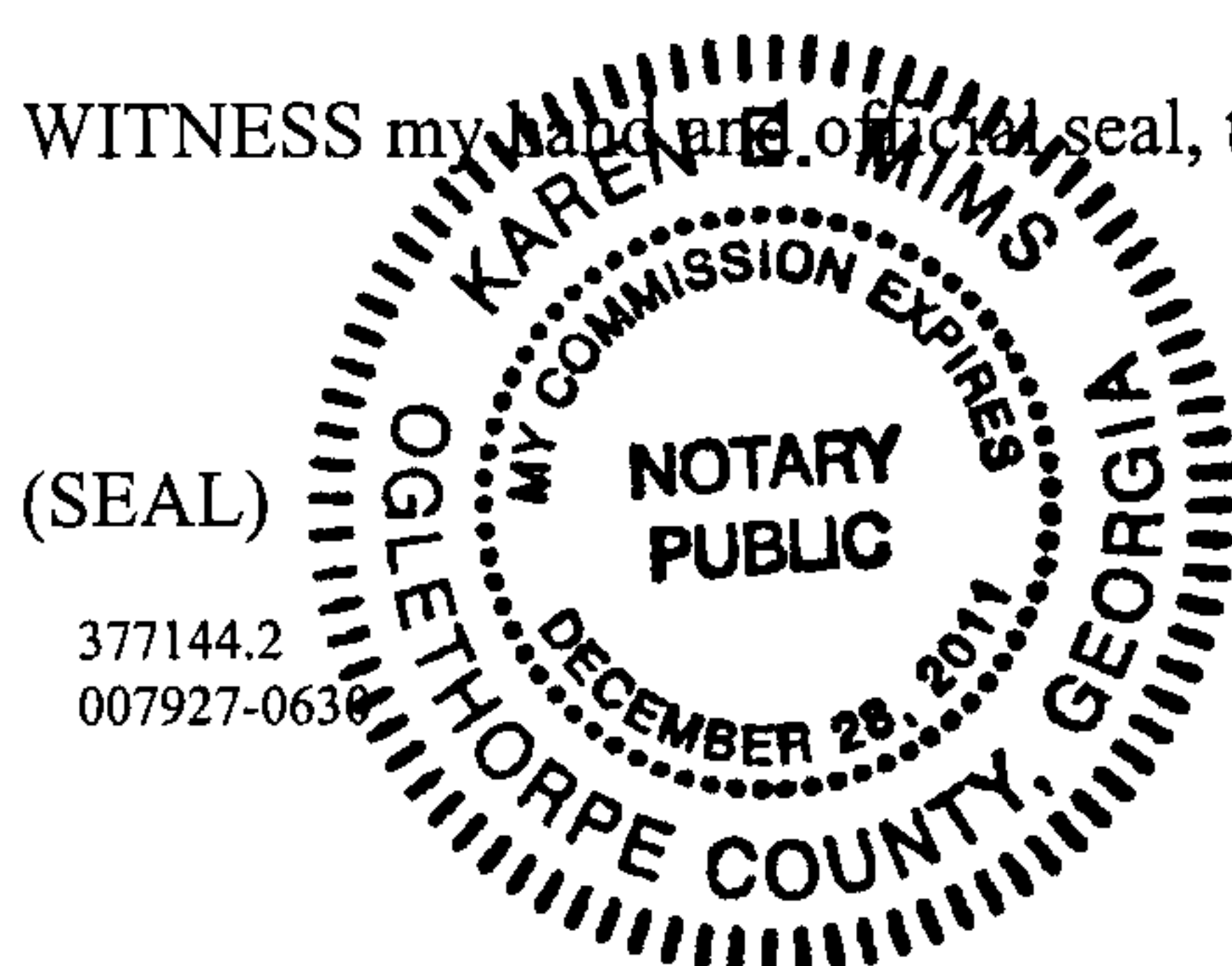
Witness

Witness

State of Georgia
County of Oglethorpe

I, a Notary Public of said County and State, certify that Russell H. Pate personally came before me this day and acknowledged that executed the foregoing.

WITNESS my hand and official seal, this the 22 day of May, 2008.



GUARANTOR:

Name: Russell H. Pate

[SEAL]

Notary Public

My Commission Expires: _____

