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Shelby Cnty Judge of Probate, AL
09/23/2009 12:24:40 PM FILED/CERT

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

COLLATERAL ASSIGNMENT OF LEASE

This Collateral Assignment of Lease (this "Assignment") is made and entered into this 18th day of September, 2009, by and among **FOWL PLAY HOLDINGS, LLC**, an Alabama limited liability company ("Landlord"), **CHICKEN SCRATCH AT CALERA, INC.**, an Alabama corporation ("Assignor"), and **ZAXBY'S FRANCHISING, INC.**, a Georgia corporation ("ZFI"); and

In consideration of the mutual promises and covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties agree as follows:

1. The Assignor hereby assigns, transfers and sets over unto ZFI all of Assignor's right, title and interest as tenant in, to and under that certain lease agreement dated August 1, 2009 and Rider to Lease Agreement dated September 18, 2009 between Landlord and Assignor (collectively, the "Lease"), for certain real property located in Shelby County, Alabama, and more particularly described on the attached **Exhibit A** (the "Premises"). This Assignment is for collateral purposes only and except as specified herein, ZFI shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment unless ZFI shall exercise its rights by providing the ZFI Notice (as defined herein).

2. Assignor represents and warrants to ZFI that it has full power and authority to so assign the Lease and its interest therein and Assignor has not previously assigned or transferred, and is not obligated to assign or transfer, the Lease or any of its interest in the Lease or the Premises.

3. In the event (i) of any default by Assignor under the Lease which remains uncured after expiration of any applicable cure period; or (ii) that certain License Agreement dated September 18, 2009, between ZFI and Assignor, including all amendments and renewals thereof (the "License Agreement"), for a Zaxby's® restaurant to be located at Premises should, for any reason, be terminated or expire, ZFI shall have the right for a period of thirty (30) days after the event in (i) or (ii) herein to exercise its rights pursuant to this Assignment by providing written notice to Landlord and Assignor ("ZFI Notice"). If ZFI exercises its rights by providing the ZFI Notice: (a) ZFI shall thereupon become tenant under the Lease with all rights and obligations of tenant commencing upon, first accruing and effective from and after the date of the ZFI Notice; (b) ZFI shall have the right to take possession of

the Premises, expel Assignor therefrom without being guilty of trespass, forcible entry or detainer, or other tort; (c) Assignor shall have no further right, title or interest in the Lease or the Premises; and (d) Assignor shall peaceably and promptly vacate the Premises and (subject to ZFI's right to acquire any such property pursuant to the License Agreement) remove its personal property therefrom and any property not removed or otherwise disposed of by the Assignor shall be deemed abandoned. Nothing in this Assignment shall restrict, limit, terminate, waive or otherwise affect Landlord's rights against Assignor.

4. In no event shall ZFI be or become liable for any liability or obligation of Assignor accruing or applicable to the period prior to the date of the ZFI Notice. All rents and other obligations under the Lease shall be prorated as of the date of the ZFI Notice. ZFI shall have no liability or obligation to the Landlord under the Lease unless and until it exercises its right by providing the ZFI Notice.

5. Assignor agrees it will not allow or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of ZFI. Through the term of the License Agreement and any renewals thereof, Assignor agrees that it shall elect and exercise all options to extend the term of or renew the Lease not less than thirty (30) days prior to the last day that such option must be exercised, unless ZFI otherwise agrees in writing. Upon failure of ZFI to otherwise agree in writing, and upon failure of Assignor to so extend or renew the Lease as stated herein, Assignor hereby appoints ZFI as its true and lawful attorney-in fact to exercise such extension or renewal options in the name, place and stead of Assignor for the sole purpose of effecting such extension or renewal.

6. Anything herein to the contrary notwithstanding, and without waiving any rights ZFI may have under the License Agreement, in the event Assignor acquires fee simple title to the Premises during the term or any extension of the Lease, Assignor shall enter into an option agreement with ZFI (utilizing ZFI's then current form) granting ZFI the right to lease the Premises on the same terms as the Lease in the event Assignor ceases to own the Premises or the License Agreement should for any reason be terminated or expire.

7. Landlord consents to this Assignment and agrees to recognize ZFI as tenant under the Lease upon exercising the rights in favor of ZFI as set forth in this Assignment and in the Lease.

8. All notices (including the ZFI Notice) shall be deemed sufficient and properly given in writing (except as otherwise expressly provided herein) if delivered by one of the following methods: (i) by personal delivery or by a reputable delivery service at the street address specified below, or (ii) by first-class, registered or certified mail, postage prepaid, to the post office box specified below or to the street address if no post office box is given. The hand delivery address and mailing address for receipt of notice or other documents by such parties are as follows:

If to Landlord:	Fowl Play Holdings, LLC P.O. Box 381208 Birmingham, Alabama 35238 Attention: Members
If to Assignor:	Chicken Scratch at Calera, Inc. 3335 Indian Crest Drive Indian Springs, Alabama 35124 Attention: President
If to ZFI:	Zaxby's Franchising, Inc. 1040 Founder's Boulevard, Suite 100 Athens, Georgia 30606 Attention: President

Any of the above-mentioned parties may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. Any notice hereunder signed on behalf of the notifying party by its identified attorney at law shall be valid and effective to the same extent as if signed by such party. Any notice or other communications shall be deemed delivered when actually delivered to the address of the party to whom

directed or, if sent by mail, three (3) days after such notice or document is deposited in the United States mail, as provided above.

9. Time is of the essence.

10. This Assignment shall inure to the benefit of and be binding upon their respective heirs, successors, representatives and permitted assigns.

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

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed under seal the day and year written above.

Signed, sealed and delivered
in the presence of:

LANDLORD:
FOWL PLAY HOLDINGS, LLC

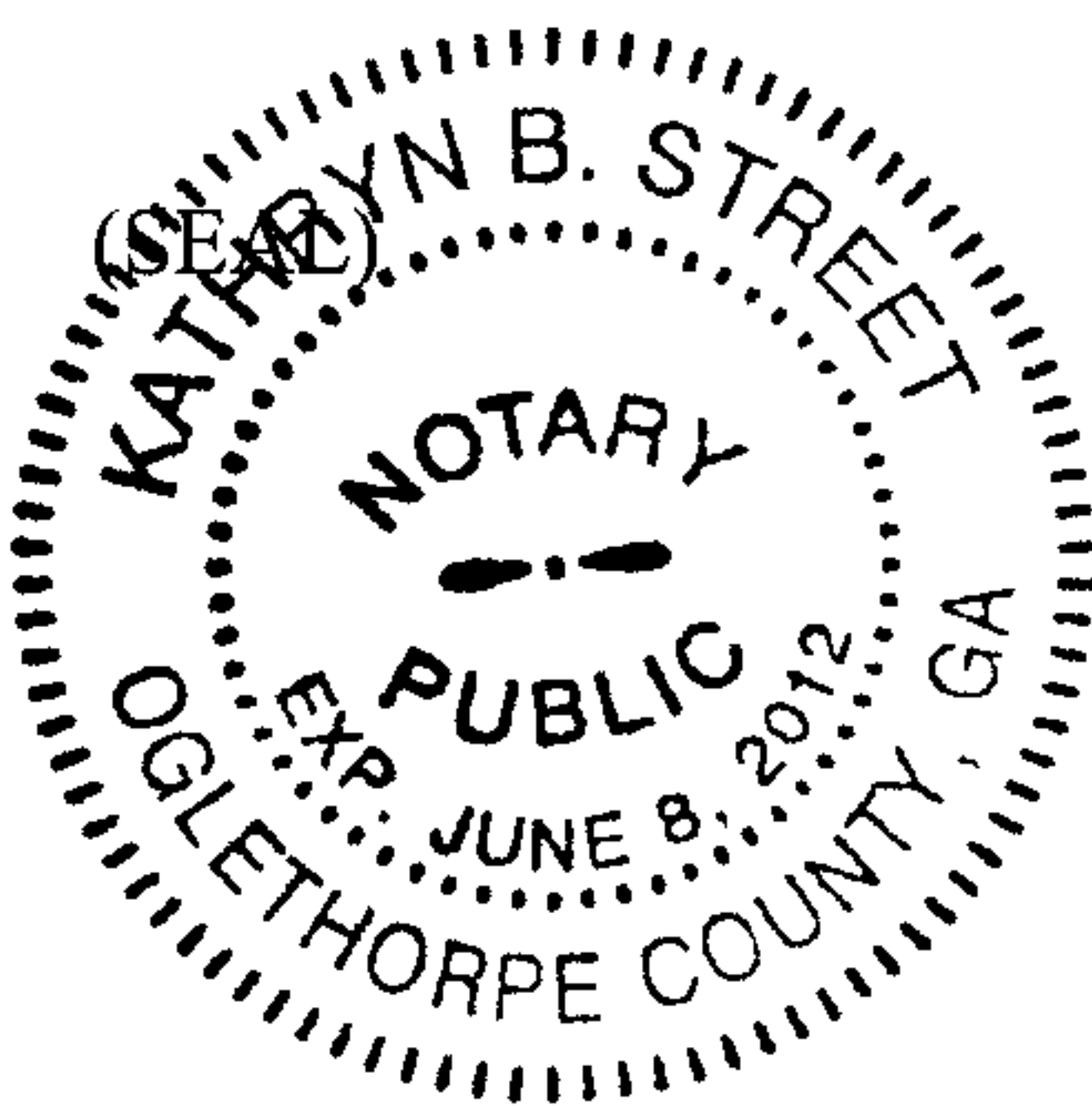
[Signature]
Witness
[Signature]
Witness

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

State of GA
County of Oconee

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 Fowl Play Holdings, LLC, an Alabama limited liability company, and that he, as a Member, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the 18th day of September, 2009.



[Signature]
Notary Public
My commission expires: 6-8-12

[signatures continued on following page]

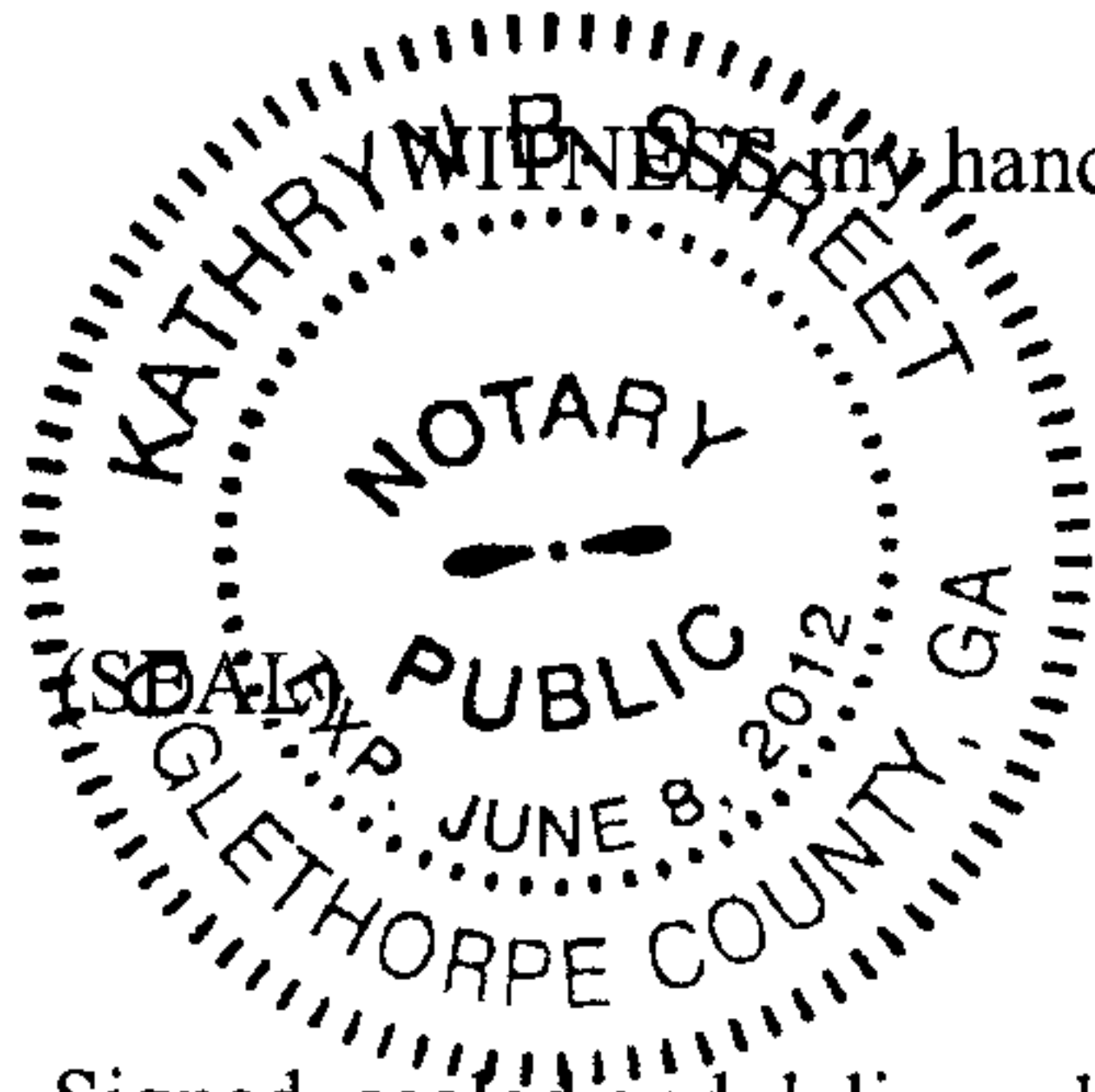
Signed, sealed and delivered
in the presence of:

[Signature]
Witness
Maurine Epps
Witness

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

State of GA
County of Oconee

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 Fowl Play Holdings, LLC, an Alabama limited liability company, and that he, as a Member, being authorized to do so, executed the foregoing on behalf of the company.



Witness my hand and official seal, this the 18th day of September, 2009.

[Signature]
Notary Public
My commission expires: 6-8-12

Signed, sealed and delivered
in the presence of:

[Signature]
Witness
Maurine Epps
Witness

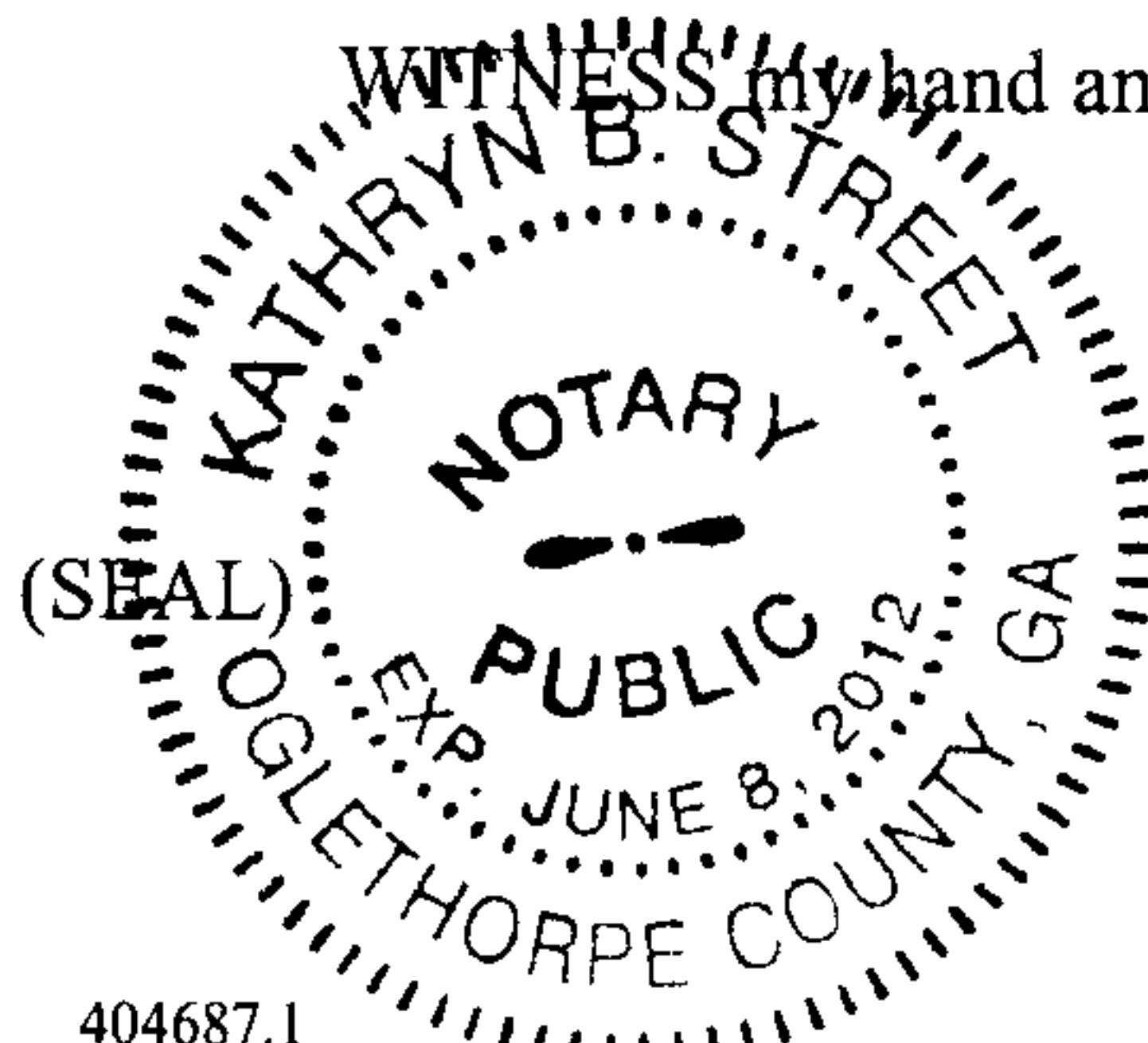
ASSIGNOR:
CHICKEN SCRATCH AT CALERA, INC.

By: [Signature]
Name: Courtney H. Mason, Jr.
Title: President

[CORPORATE SEAL]

State of GA
County of Oconee

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 Calera, Inc., an Alabama corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.



404687.1
007927-0925

[Signature]
Notary Public
My commission expires: 6-8-12



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Signed, sealed and delivered
in the presence of:

Maurine Epps
Witness

[Signature]
Witness

ZFI:
ZAXBY'S FRANCHISING, INC.

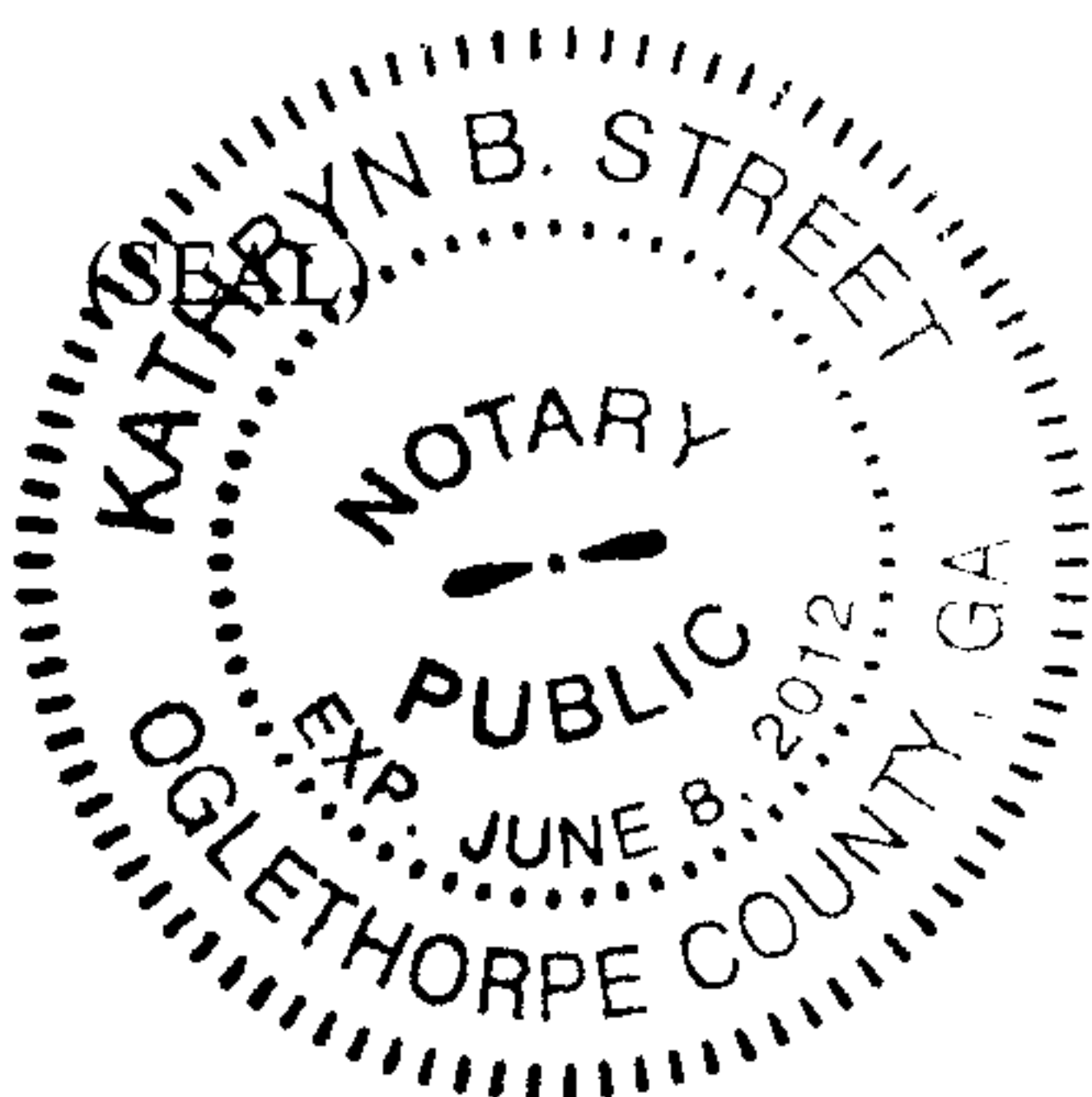
By: [Signature]
Name: Amy C. Pritchett
Title: Vice President of Franchise Administration

[CORPORATE SEAL]

State of Georgia
County of Oconee

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 of Zaxby's Franchising, Inc., a Georgia corporation, and that she, as Vice President of Franchise Administration, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the 18th day of September, 2009.




Kathryn B. Street
Notary Public
My commission expires: 12-8-12

EXHIBIT A
LEGAL DESCRIPTION OF THE PREMISES

Lot 2-A according to a Resurvey of Lot 2 and Lot 6 of a Resurvey of Lot 2, Limestone Marketplace Subdivision, recorded in Map Book 41, Page 57 in the Office of the Judge of Probate Office of Shelby County, Alabama.

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