
20150114000014470 1/5 \$26.00
Shelby Cnty Judge of Probate, AL
01/14/2015 12:07:59 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
(706) 548-1151

OPTION ASSIGNMENT OF LEASE

This Option Assignment of Lease (this "Assignment") is made and entered into this 19th day of December, 2014, by and among **FOWL PLAY INVESTMENTS, LLC**, an Alabama limited liability company ("Landlord"), **CHICKEN SCRATCH, 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 by and between Carter Mason Investments, L.L.C., an Alabama limited liability company, as landlord, and Assignor dated June 18, 2004 for certain real property located in Shelby County, Alabama, and more particularly described on the attached **Exhibit A** (the "Premises"), which Premises were subsequently conveyed to Landlord by Limited Warranty Deed dated August 12, 2010 and recorded as Instrument Number 20100818000264180 in the Office of the Shelby County, Alabama Judge of Probate, subject to such lease agreement, whereby Carter Mason Investments, L.L.C. merged with and into Landlord on August 17, 2010 and Landlord and Assignor entered into an Addendum to Lease dated December 11, 2014 and Rider to Lease Agreement dated December 19, 2014 (collectively, the "Lease"). 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 December 19, 2014, as amended by First Amendment to License Agreement dated December 19, 2014, between ZFI and Assignor, including all amendments and renewals thereof (collectively 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.

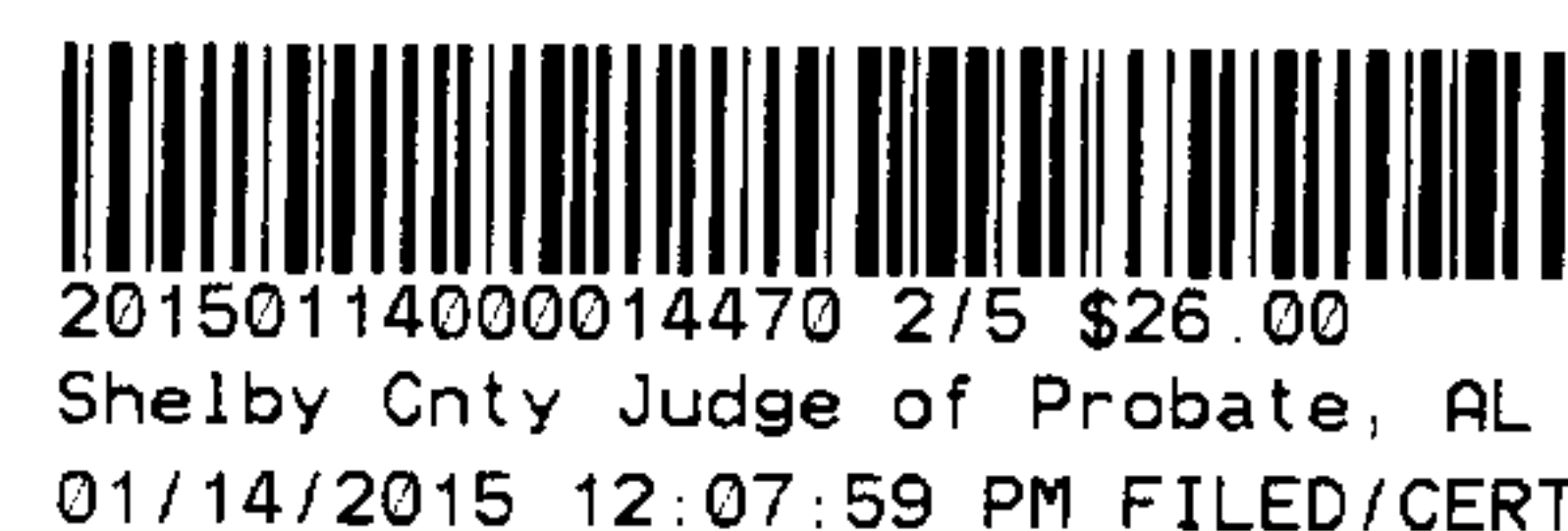
7. Landlord consents to this Assignment and agrees to recognize ZFI as tenant under the Lease upon exercising the rights in favor of ZFI as set forth in this Assignment and in the Lease.

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 Investments, LLC
5254 Cahaba Valley Cove
Birmingham, Alabama 35242
Attention: Members

If to Assignor: Chicken Scratch, Inc.
5254 Cahaba Valley Cove
Birmingham, Alabama 35242
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.

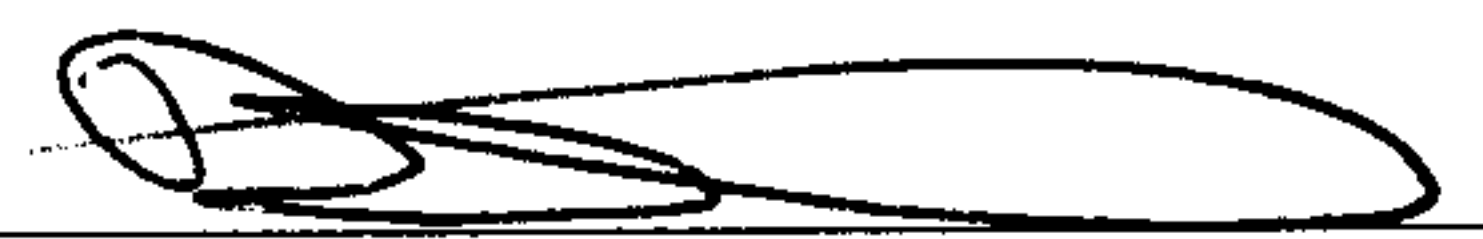

9. Time is of the essence.

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:


Witness

Witness

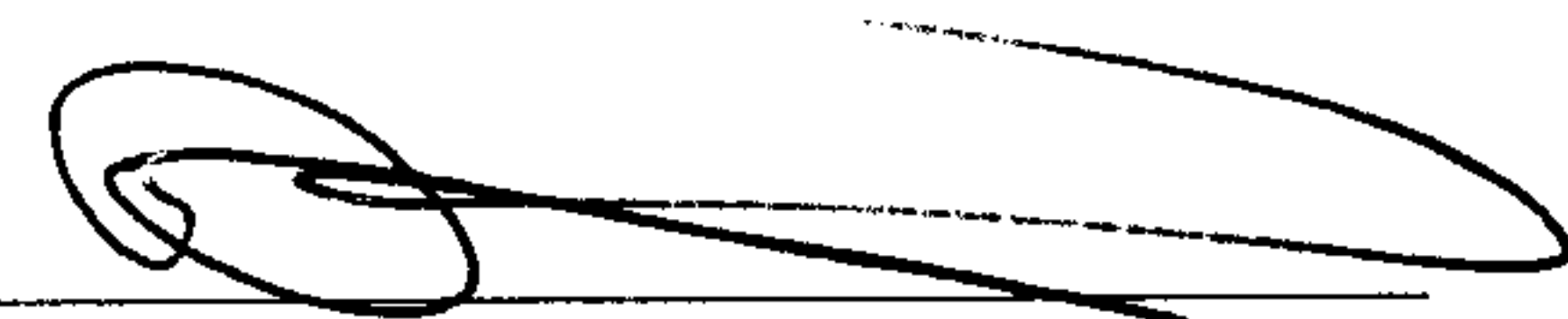
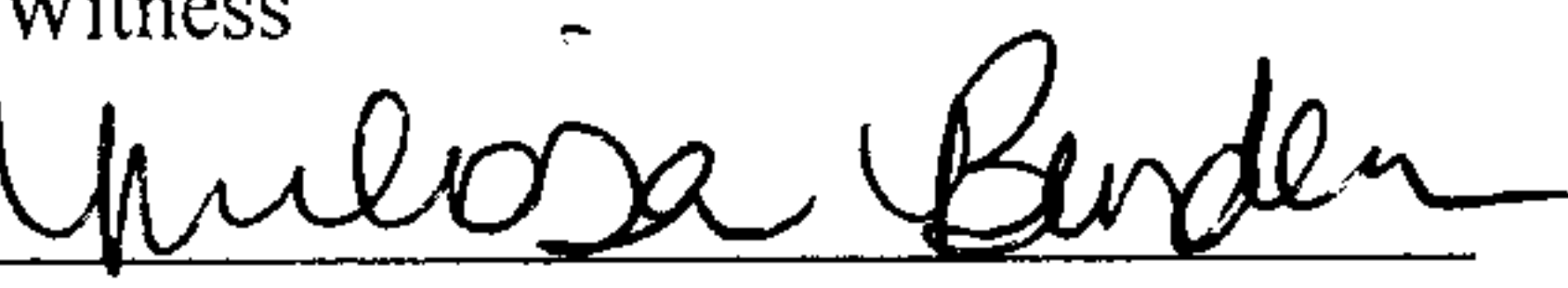
State of ALABAMA
County of Shelby

LANDLORD:
FOWL PLAY INVESTMENTS, LLC

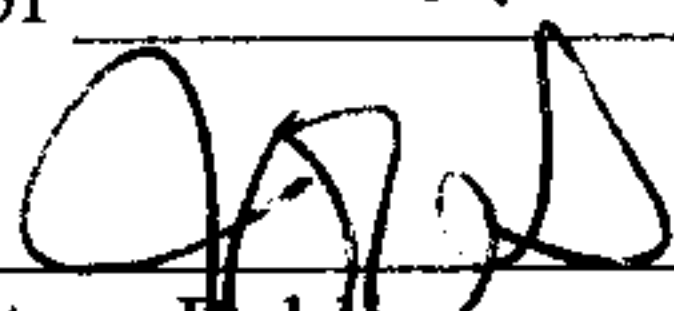
By:  [SEAL]
Name: Courtney H. Mason, Jr.
Title: Member

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Courtney H. Mason, Jr., whose name as Member of Fowl Play Investments, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Member, and with full authority, executed the same voluntarily, as an act of said company, acting in his capacity aforesaid.

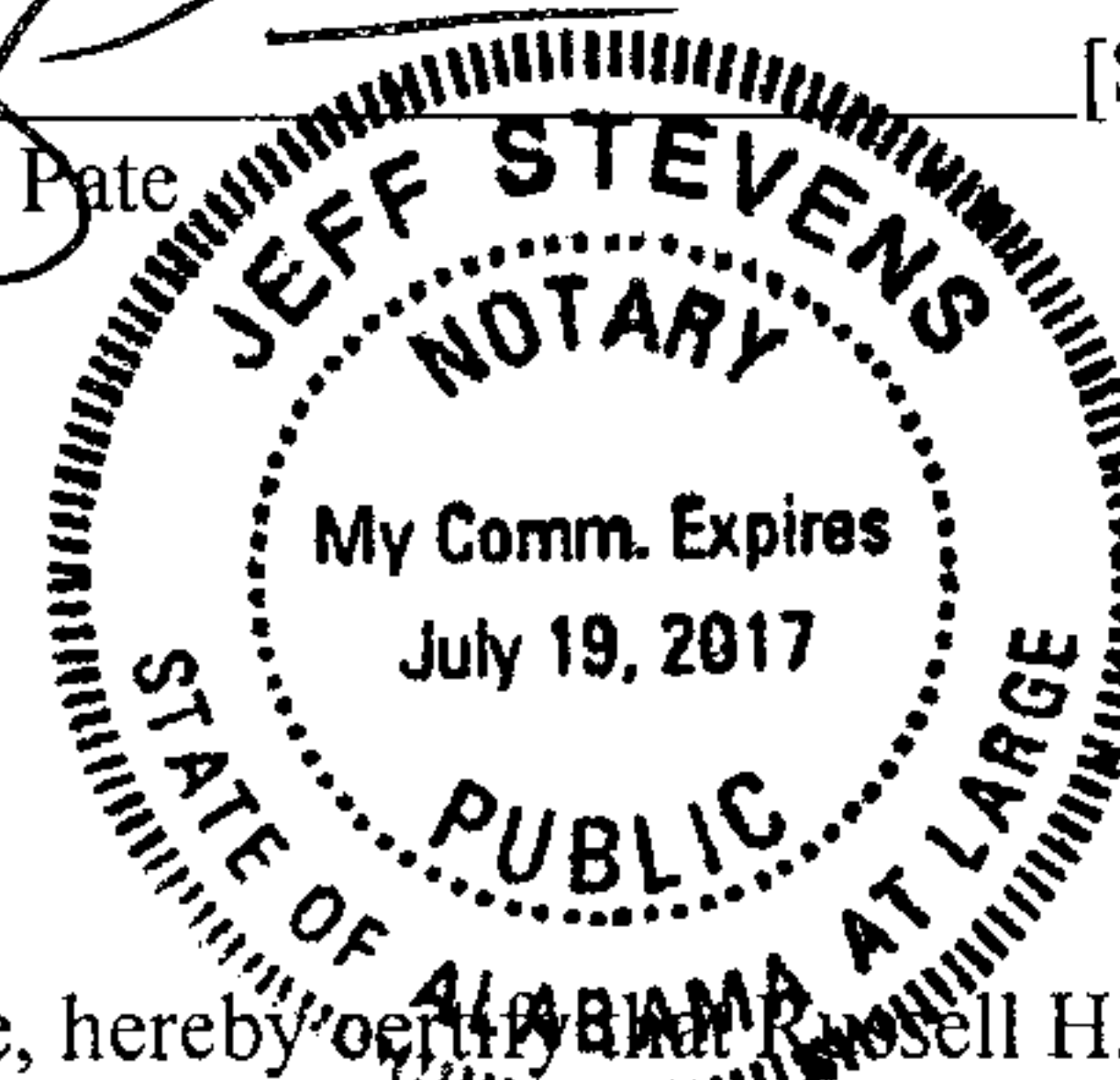
Given under my hand and official seal, this the 19th day of December, 2014.


Witness

Witness

State of ALABAMA
County of Shelby

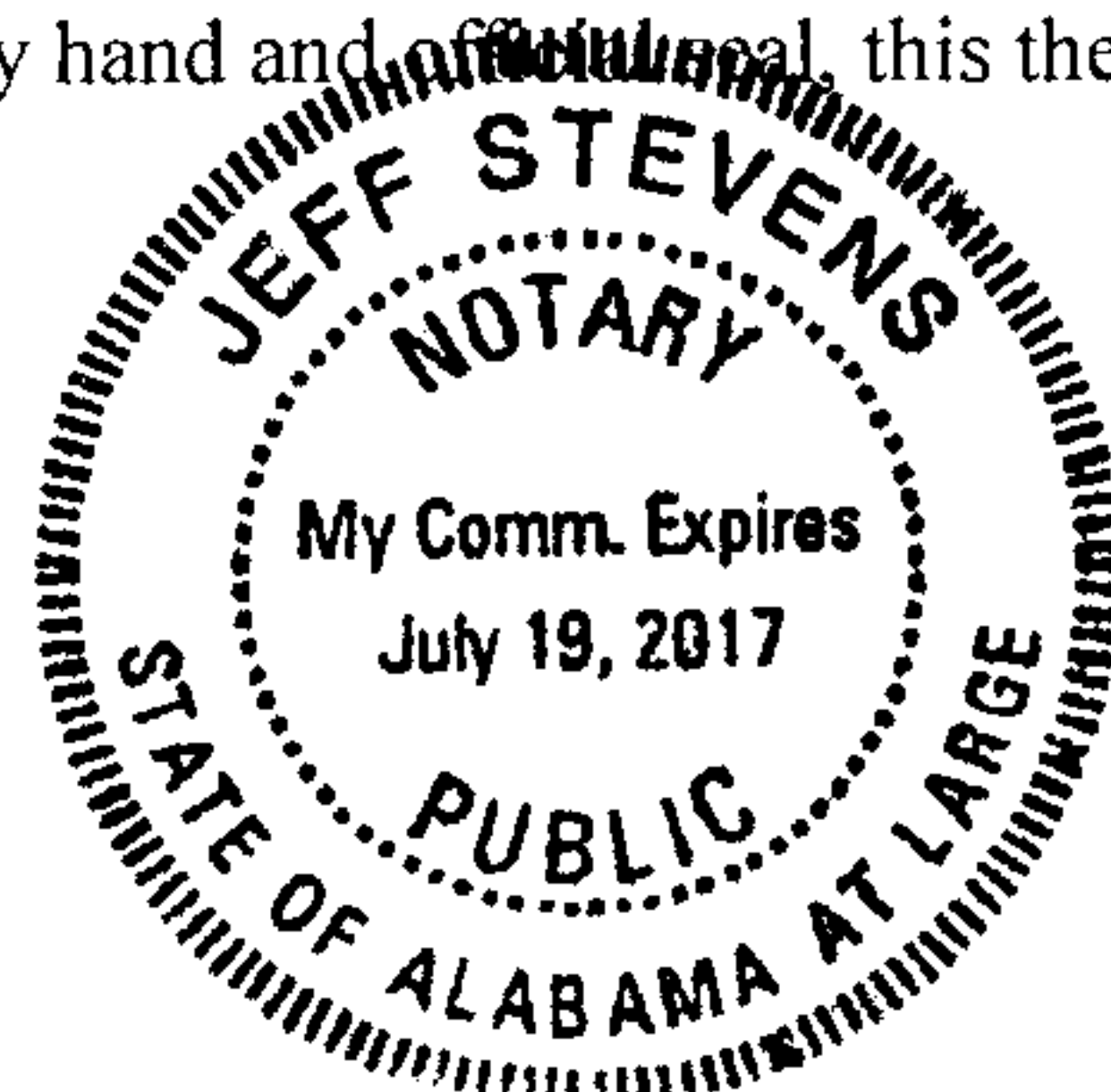

Notary Public
My Commission Expires: 7/19/2017


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



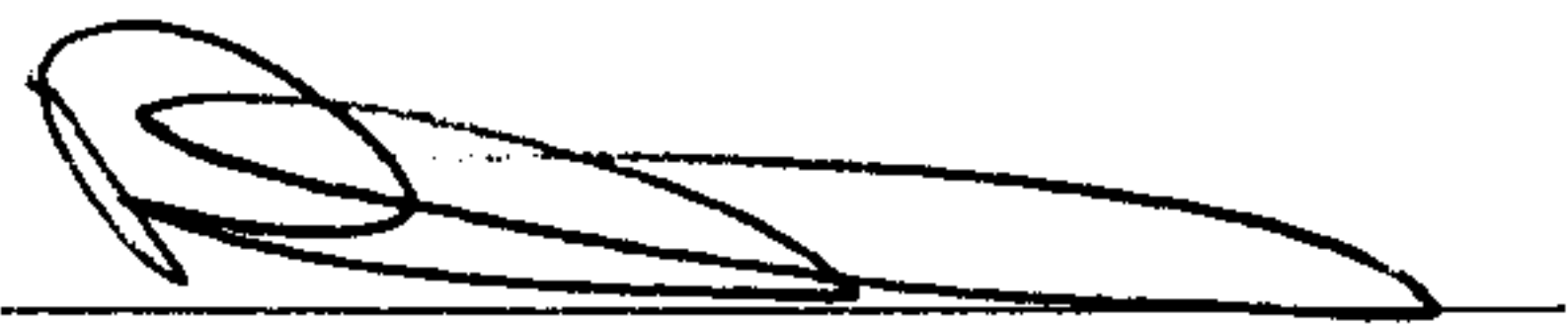
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Russell H. Pate, whose name as Member of Fowl Play Investments, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Member, and with full authority, executed the same voluntarily, as an act of said company, acting in his capacity aforesaid.

Given under my hand and official seal, this the 19th day of December, 2014.




Notary Public
My Commission Expires: 7/19/2017

Signed, sealed and delivered
in the presence of:




Witness



Witness

State of ALABAMA
County of Shelby

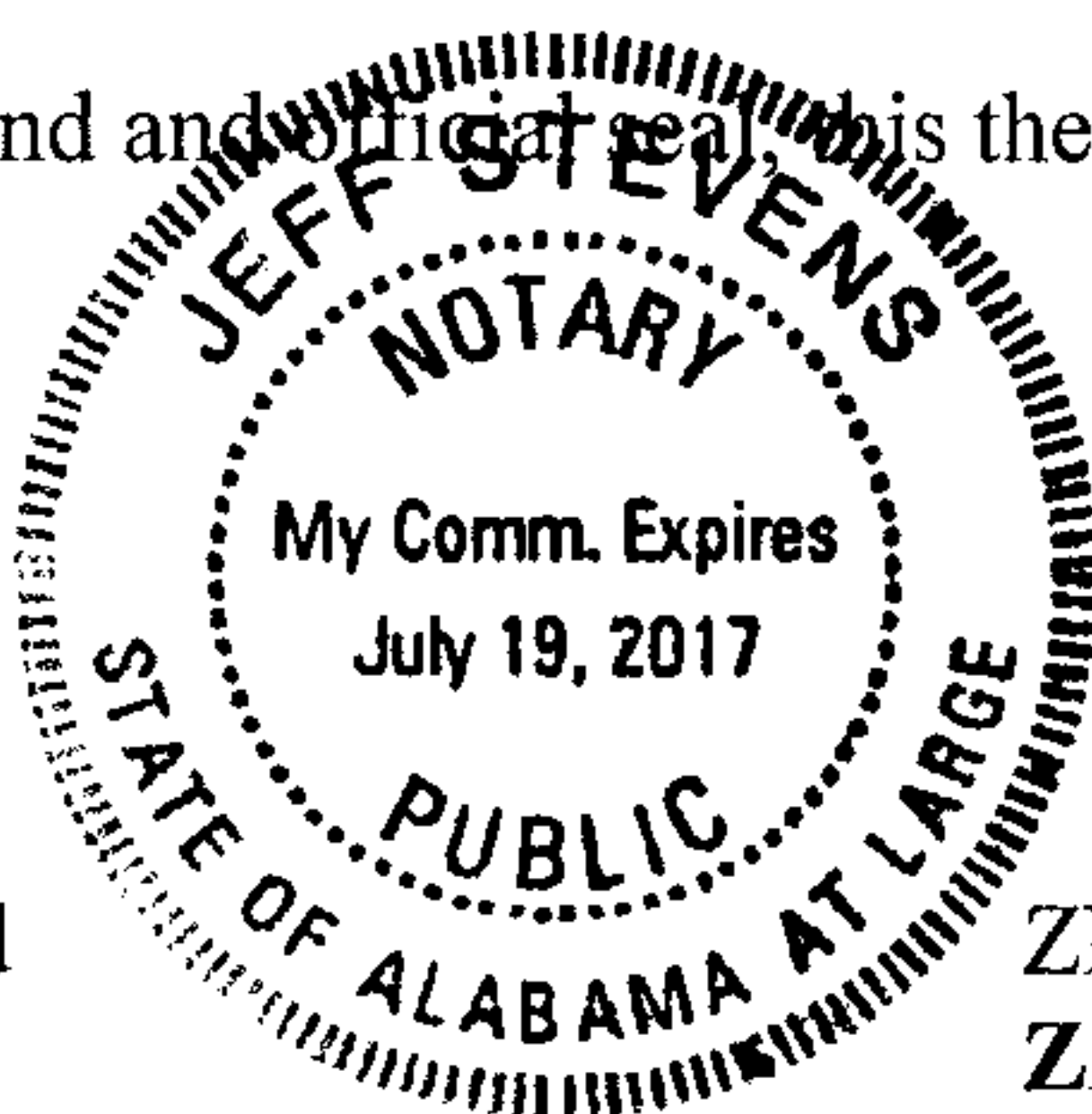
ASSIGNOR:
CHICKEN SCRATCH, INC

By: 
Name: Courtney H. Mason, Jr.
Title: President

[CORPORATE SEAL]

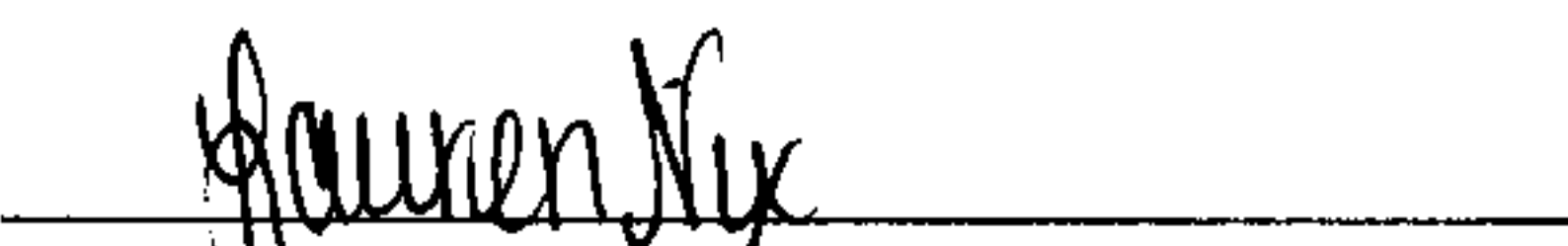
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Courtney H. Mason, Jr., whose name as President of Chicken Scratch, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such President, and with full authority, executed the same voluntarily, as an act of said company, acting in his capacity aforesaid.

Given under my hand and official seal, this the 19th day of December, 2014




Notary Public
My Commission Expires: 7/19/2017

Signed, sealed and delivered
in the presence of:

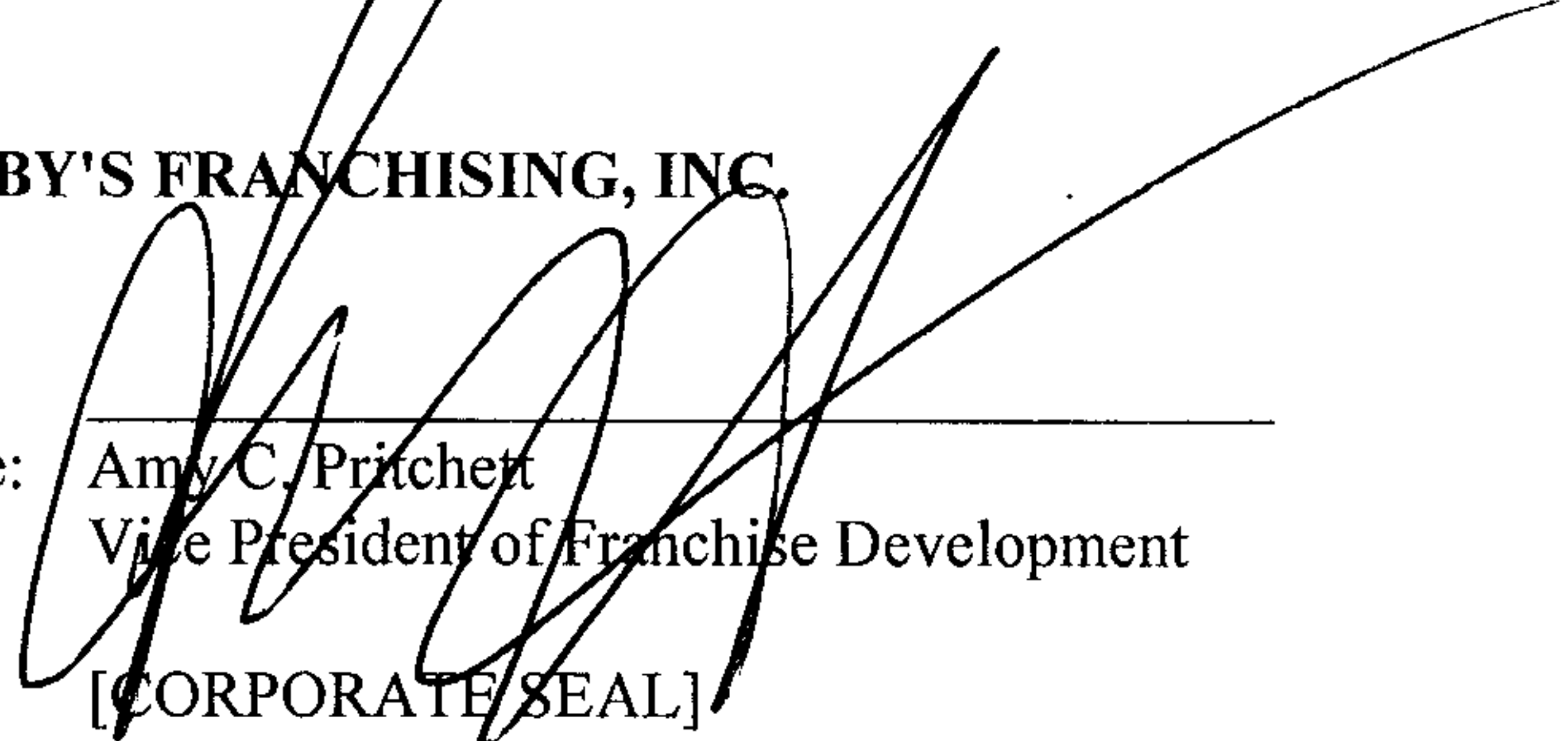


Witness



Witness

ZFI:
ZAXBY'S FRANCHISING, INC.

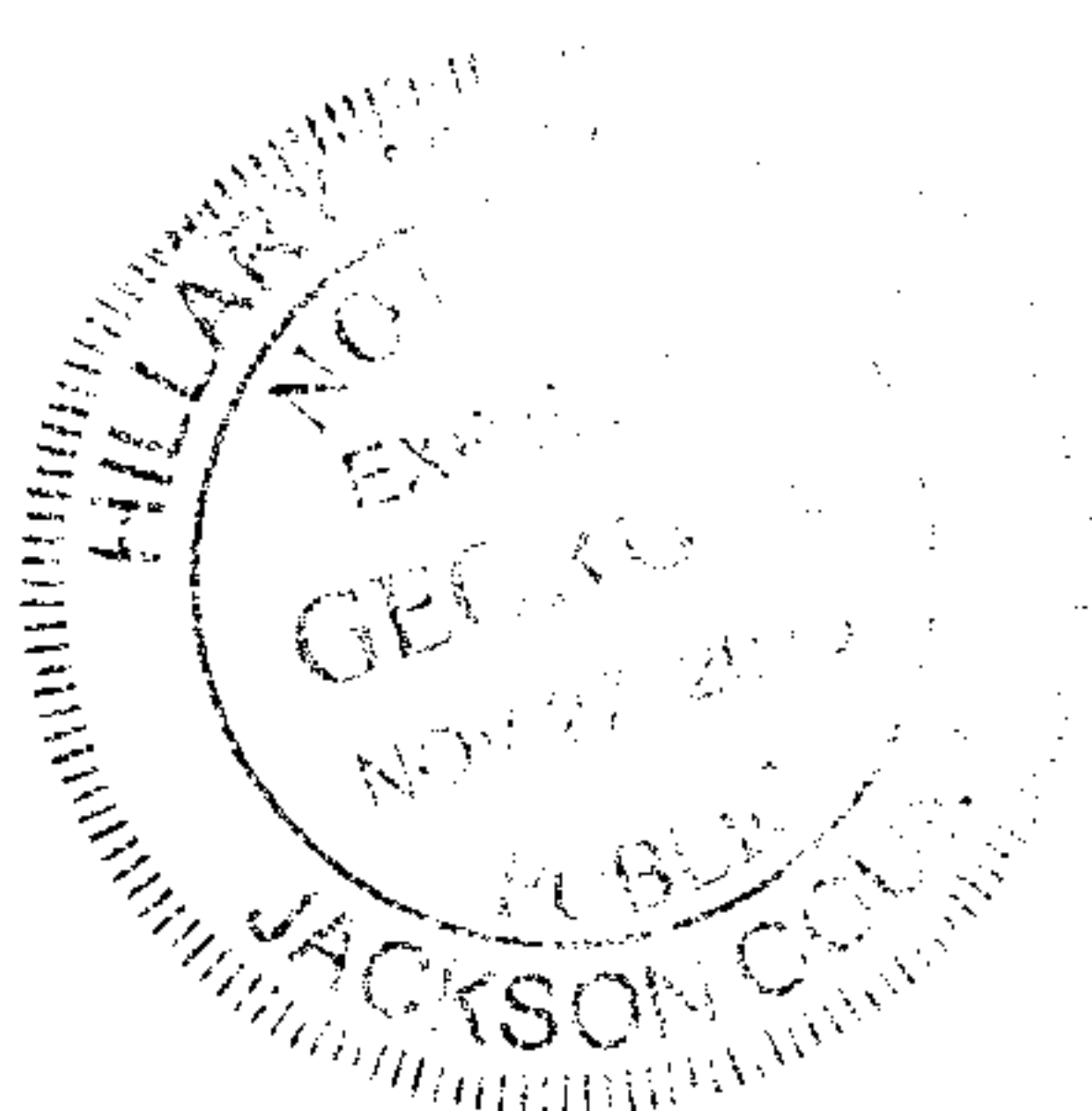
By: 
Name: Amy C. Pritchett
Title: Vice President of Franchise Development

[CORPORATE SEAL]

State of Georgia
County of Oconee

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Amy C. Pritchett, whose name as Vice President of Franchise Development of Zaxby's Franchising, Inc., a Georgia corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such Vice President of Franchise Development, and with full authority, executed the same voluntarily, as an act of said company, acting in her capacity aforesaid.

Given under my hand and official seal, this the 19th day of December, 2014




Notary Public
My Commission Expires: 11/27/15

EXHIBIT A
LEGAL DESCRIPTION OF THE PREMISES

Parcel A, Lot 1, according to the Survey of Zaxby's, as recorded in Map Book 39 page 143, in the Probate Office of Shelby County, Alabama.

