

PREPARED BY:

Wendy H. Davis  
ENGEL, HAIRSTON & JOHANSON, P.C.  
109 North 20th Street, Fourth Floor  
P.O. Box 11405,  
Birmingham, Alabama, 35202  
(205) 328-4600

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SUBAGREM 1/8

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**THIS AGREEMENT**, made and entered into as of the <sup>August</sup> ~~3rd~~ day of ~~July~~, 2015, is by and among **ZOE'S RESTAURANTS, LLC** ("Tenant"), **BROOK HIGHLAND LIMITED PARTNERSHIP**, a Georgia limited partnership ("Landlord"), and **USAMERIBANK** ("Lender").

Tenant is the present tenant or is to become the tenant under that certain Lease Agreement (hereinafter "Lease") with respect to a portion of the property described on Exhibit "A" attached hereto. The premises demised to Tenant under the Lease, as more particularly described therein, are referred to herein as the "Premises". Landlord, as the present landlord under the Lease, has obtained or will obtain financing from Lender which is secured by a first-priority mortgage and by an assignment of all leases relating thereto, including the Lease covering the property upon which the Premises are located. Said *Mortgage, Assignment of Rents and Leases and Security Agreement*, as the same may hereafter be amended, extended, modified or renewed (the consent of Tenant to which shall not be required), is referred to herein as the "Security Instrument." As a condition to making such loan, Lender has required that Landlord and Tenant execute this instrument.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants hereinafter set forth, and as an inducement to Lender to extend financing to the Landlord and for Landlord to purchase the property described on Exhibit "A" attached hereto, the parties hereto do mutually covenant and agree as follows:

1. Subject to the terms and conditions of this agreement, the Lease shall at all times be subject and subordinate in all respects to the lien of the Security Instrument and to all renewals, modifications and extensions thereof.
2. The Lease is in full force and effect and represents the entire agreement of the Tenant as to the Premises and Tenant's occupancy thereof.
3. The Lease, as of this date, is not in default and Tenant is current with all rental payments due under the Lease and has not pre-paid any rental payments. Further there are no security deposit under the Lease.
4. As of the date hereof, no event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, will constitute a default by Landlord or Tenant under the Lease; and

to the best knowledge of Tenant, other than the Tenant Improvement Allowance payable as set forth in the Lease, Tenant has no existing defenses or offsets against the enforcement of the Lease by Landlord (or Lender).

5. Tenant shall give prompt written notice to Lender of all material defaults by Landlord under the Lease which are of such a nature as to give Tenant a right to terminate the Lease, to reduce rent, or to credit or offset any amounts against future rents, and Lender shall have the time period as set forth in the Lease, but shall not be required, to cure the same.

6. So long as Tenant is not in default beyond the expiration of any applicable grace or cure period in the payment of rent or the performance of other charges or conditions of the Lease, Tenant shall not be disturbed by Lender in Tenant's possession, enjoyment, use and occupancy of the Premises during the original or any renewal term of the Lease or any extension or modification thereof, and Lender will not join Tenant in any foreclosure action or other proceeding brought to enforce the Security Instrument (other than any joinder required as a matter of technical procedure only which does not seek to terminate Tenant's rights under the Lease, such joinder shall not result in a termination of the Lease or disturb the Tenant's possession, quiet enjoyment or use of the Premises).

7. Upon Lender's written request, and without regard to contrary instructions from Landlord, Tenant agrees that it shall make the payments to be made by Tenant under the Lease directly to Lender. Landlord agrees that all such payments made by Tenant to Lender shall be fully credited against the obligations of Tenant under the Lease, as though the same had been made directly to Landlord. Receipt of such payments by Lender shall not relieve Landlord of its obligations under the Lease, nor operate to make Lender responsible for the performance thereof, and Tenant shall continue to look solely to Landlord for performance of such obligations. In the event that Lender directs Tenant (upon written direction to Tenant by Lender) to pay rent and all other sums due under the Lease directly to the Lender, Landlord agrees to hold Tenant harmless for any monies paid to Lender.

8. If the interest of Landlord in the Premises shall be acquired by Lender through foreclosure, deed in lieu of foreclosure or by any other method, and Lender shall succeed to the interest of Landlord under the Lease, then the Lease shall continue in full force and effect and shall not be terminated or disturbed except in accordance with the terms thereof. Tenant does hereby attorn to Lender as its landlord, said attornment to be effective and self-operative immediately upon Lender's succeeding to the interest of Landlord under the Lease, and without the execution of any additional documents by the parties hereto. Nothing contained herein shall in any manner limit or restrict the right of Lender to have a receiver appointed or to seek any other appropriate relief or remedy under the Security Instrument provided that the rights of the Tenant are not affected. The respective rights and obligations of the Tenant and the Lender upon such attornment and their relationship shall be as Tenant and landlord respectively, for the remaining term of the Lease, including any renewal periods set forth in said Lease.

9. Tenant hereby agrees that, except for defaults of which Lender has been notified pursuant to the terms hereof, but has failed to cure, Lender shall not be responsible or liable in any way for, or subject to any offsets or defenses related to, any default in the Landlord's obligations under the Lease that occurred prior to the date the Lender obtains title or takes possession of the Premises, except as specifically applicable to Lender under the Lease. Tenant further agrees that, except for

defaults of which Lender has been notified pursuant to the terms hereof, Lender shall not be:

- (a) liable for any act or omission of any prior landlord (including Landlord) except as specifically applicable to Lender under the Lease; or
- (b) bound by any rent or additional rent which Tenant might have paid for more than thirty (30) days in advance to any prior landlord (including Landlord) unless required to be paid under the Lease; or
- (c) bound by any amendment, modification or termination of the Lease made without Lender's consent that materially reduces the economic return under the Lease, which consent shall not be unreasonably withheld; or
- (d) in any way responsible for any deposit or security which was delivered to any prior landlord (including Landlord) but which was not subsequently delivered to Lender.

10. All notices, demands, or requests, and responses thereto, required or permitted to be given pursuant to this agreement shall be in writing, shall be sent by overnight courier or United States mail, postage prepaid and registered or certified with return receipt requested, shall be deemed to have been properly given or served and shall be deemed effective as of the date of receipt or refusal indicated on such return receipt, and shall be addressed as follows:

If to Tenant: Brook Highland Limited Partnership  
Attn: Alex D. Baker  
700 Montgomery Highway, Suite 186  
Birmingham, Alabama 35216

If to Landlord: Zoe's Restaurants, LLC  
Attn: Allyn Taylor  
5760 State Highway 121, Suite 250  
Plano, TX 75024

And

Zoe's Kitchen  
Attn: Mike Todd  
5760 State Highway 121, Suite 250  
Plano, TX 75024

And

Zoe's Kitchen  
c/o E Smith Realty Partners  
16000 North Dallas Parkway, Suite 550N  
Dallas, TX 75248  
Attn: Tera Burns



If to Lender: USAmeriBank  
Attn: Daryl Spears or SVP Commercial Lending  
1100 Corporate Parkway  
Birmingham, Alabama 35242

or at such other single address in the United States as either party may by notice in writing designate.

11. This instrument shall survive any foreclosure of the Premises, or any other succession by Lender to the interest of the Landlord with respect to the Premises, and shall remain in full force and effect until the end of the Lease term and all exercised optional extension periods, or upon satisfaction of the Security Instrument and all renewals, modifications, consolidations, replacements, and extensions thereof whichever shall first occur. Upon payment in full of all obligations due Lender secured by the Security Instrument, and the satisfaction and termination of such Security Instrument, then this agreement shall terminate.

12. This agreement shall not be modified, assigned or terminated except by an instrument in writing executed by the parties hereto. This agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors and assigns. This agreement may be executed in any number of counterparts, each of which shall constitute an original for all purposes, but all of which, taken together, shall evidence but one and the same agreement.

*[Signature Lines on Following Pages]*

IN WITNESS WHEREOF, the parties hereto have executed this agreement, or have caused this agreement to be duly executed, as of the day and year first above written.

TENANT:

ZOE'S RESTAURANTS, LLC

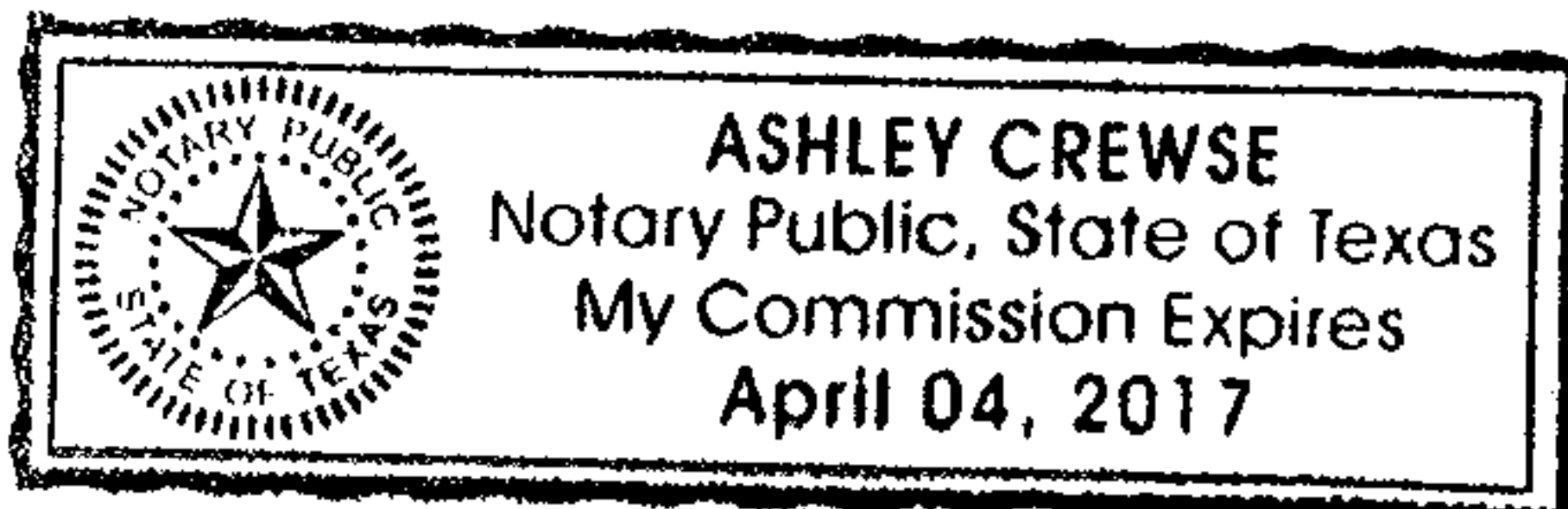
By: [Signature]  
Print Name: Kevin Miles  
Title: CEO

STATE OF TEXAS  
COUNTY OF COLLIN

ACKNOWLEDGEMENT OF TENANT

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Kevin Miles, whose name as CEO of ZOE'S RESTAURANTS, LLC, 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/she, as such member/manager/authorized agent, and with full authority, executed the same voluntarily, as an act of said company, acting in his/her capacity as aforesaid.

Given under my hand and official seal, this the 30 day of July, 2015.



Ashley Crewse  
NOTARY PUBLIC  
My Commission Expires: 4/4/2017

**LANDLORD:**

**BROOK HIGHLAND LIMITED PARTNERSHIP**, a  
Georgia limited partnership

BY **BW 280 LIMITED PARTNERSHIP**, a Georgia  
limited partnership  
(General Partner)

BY **ALEX BAKER, INC.**, an Alabama corporation  
(General Partner)

BY: 

Name: Alex D. Baker

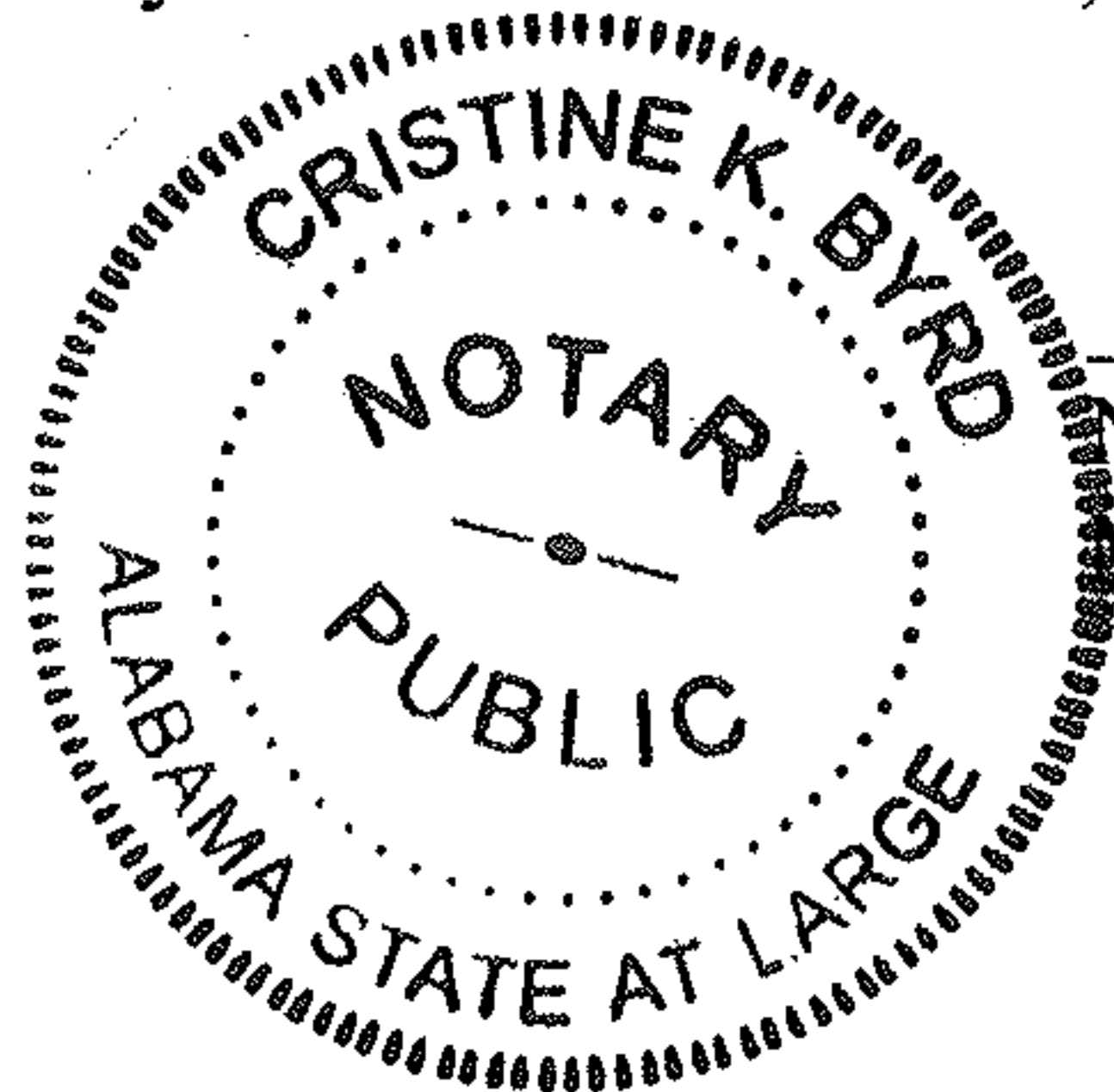
Title: President

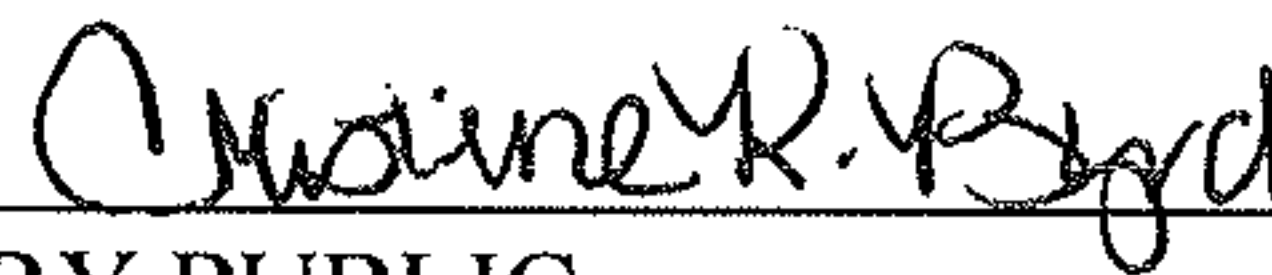
STATE OF ALABAMA  
COUNTY OF JEFFERSON

**ACKNOWLEDGEMENT OF LANDLORD**

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that Alex D. Baker, whose name as President of ALEX BAKER, INC., an Alabama corporation, as General Partner of BW 280 LIMITED PARTNERSHIP, a Georgia limited partnership, as General Partner of BROOK HIGHLAND LIMITED PARTNERSHIP, a Georgia limited partnership 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 corporation, acting in its capacity as aforesaid as General Partner acting in its capacity as aforesaid as General Partner, and with full authority as an act of said partnership acting in its capacity as aforesaid.

Given under my hand and official seal, this 3rd day of August, 2015.





NOTARY PUBLIC

My Commission expires: 6-19-19

LENDER:

USAMERIBANK

By: Daryl Spears  
Print Name: Daryl Spears  
Title: SVP

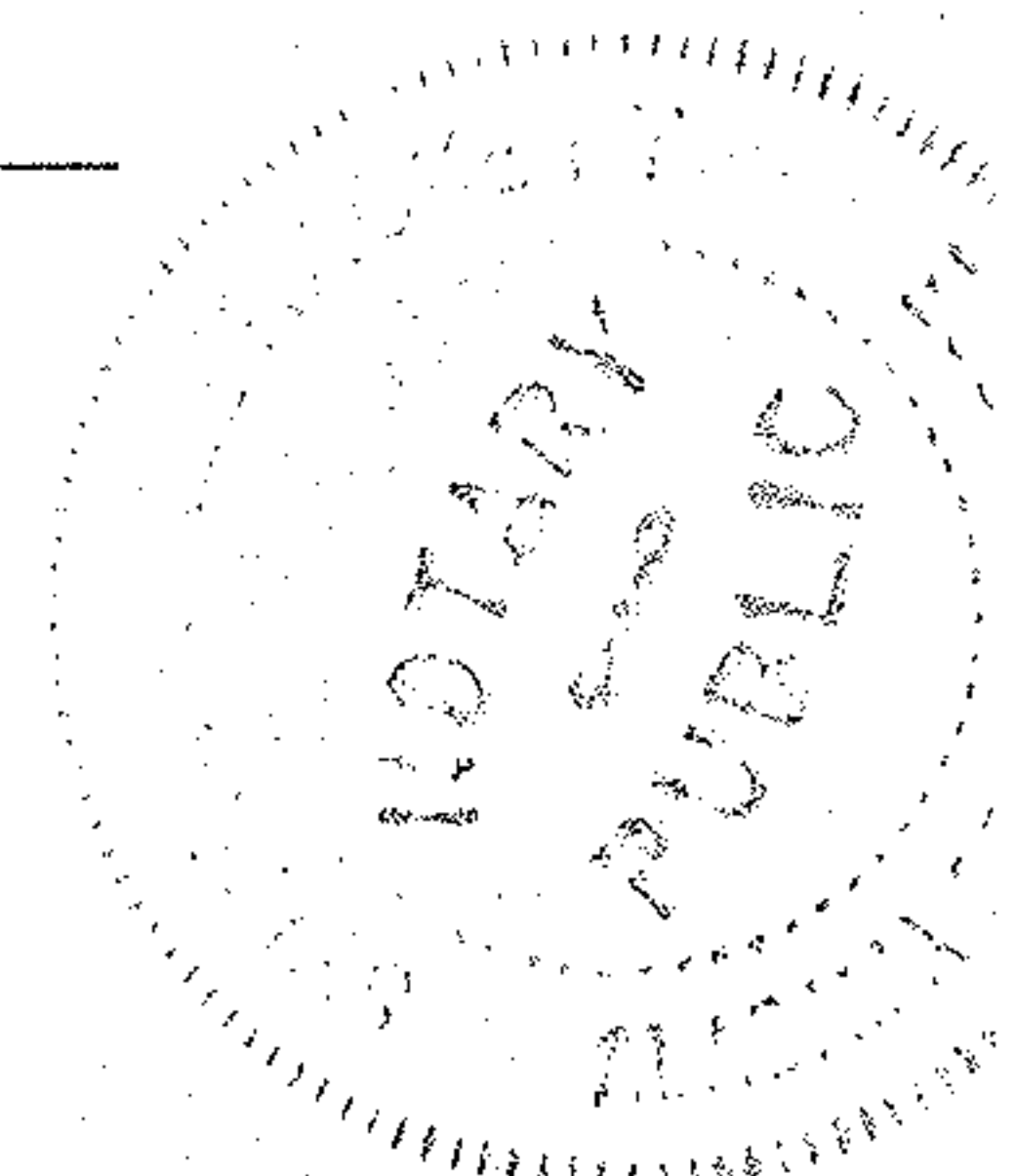
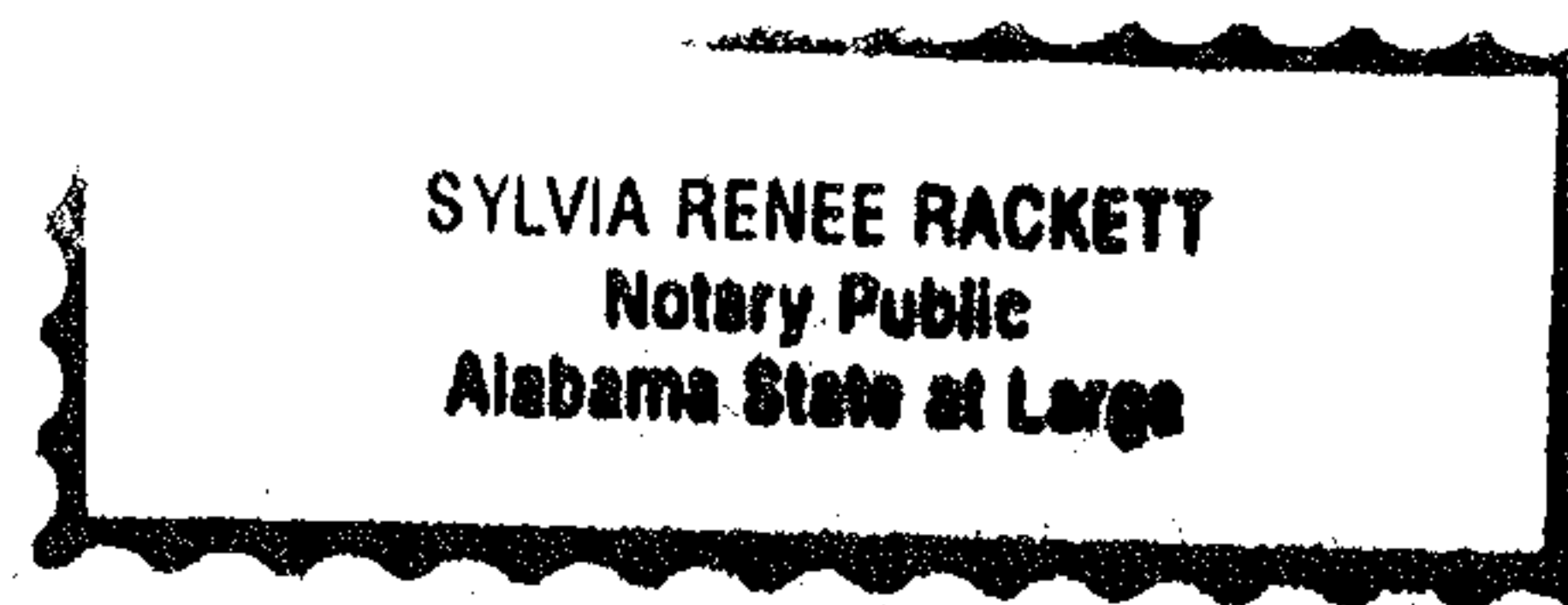
STATE OF ALABAMA  
JEFFERSON COUNTY

ACKNOWLEDGEMENT OF LENDER

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Daryl Spears, whose name as SVP of USAMERIBANK, 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/she, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in his/her capacity as aforesaid.

Given under my hand and official seal, this the 3rd day of August, 2015.

Sylvia Renee Rackett  
NOTARY PUBLIC  
My Commission Expires: 11-30-2018



**EXHIBIT "A"**

Lots 1B and 1E according to the Survey of Brook Highland Plaza Resurvey as recorded in Map Book 18, Page 99 in the Probate Office of Shelby County, Alabama.

Together with Easement rights obtained that constitute an interest in real estate, under that certain easement agreement by and between Brook Highland Limited Partnership and Developers Diversified of Alabama, Inc., dated December 30, 1994, recorded December 30, 1994 and recorded in Instrument # 1994-37773, re-recorded in Instrument # 1995-27233 and agreement relating thereto in Instrument # 1998-46413.



Filed and Recorded  
Official Public Records  
Judge James W. Fuhrmeister, Probate Judge,  
County Clerk  
Shelby County, AL  
08/20/2015 12:09:26 PM  
\$35.00 DEBBIE  
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A handwritten signature in black ink, appearing to be "J. W. Fuhrmeister", is written over the official text.