

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: 3437 Pelham Parkway, Pelham, Shelby County, Alabama

THIS AGREEMENT is made and entered into as of this 15th day of December, 2015, by and among **FOWL PLAY HOLDINGS, LLC**, an Alabama limited liability company, whose principal address is P.O. Box 381208, Birmingham, Alabama 35238 (the "**Landlord**"), **CHICKEN SCRATCH, INC.**, an Alabama corporation, whose principal address is P.O. Box 381208, Birmingham, Alabama 35238 (the "**Tenant**"), **ZAXBY'S FRANCHISING, INC.**, a Georgia corporation, whose principal address is 1040 Founder's Boulevard, Suite 100, Athens, Georgia 30606 ("**ZFI**"), and **OAKWORTH CAPITAL BANK**, whose principal address is 2100-A South Bridge Parkway, Suite 445, Birmingham, Alabama 35209, Attention: Reese Kincaid or Sr. Vice President (the "**Lender**").

W I T N E S S E T H:

THAT WHEREAS, Landlord has entered into and delivered that certain Mortgage, Assignment of Rents and Leases, and Security Agreement dated May 31, 2013, in favor of Lender, recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument Number 20130605000230530 (the "Mortgage") conveying certain property therein described located at 3437 Pelham Parkway, Pelham, Shelby County, Alabama (the "Premises"); and

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated December 31, 2014, as amended by Addendum to Lease dated December 31, 2014, and Rider to Lease Agreement dated _____, 2015 (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 December 19, 2014 and First Amendment to License Agreement dated December 19, 2014 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 or otherwise adversely affected 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, as a direct lease between Tenant, as Tenant thereunder, and the then owner of the Premises, as Landlord thereunder, upon all of the same terms, covenants and provisions contained in 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 shall hereby attorn to such new owner and to recognize such new owner as Landlord under the Lease, 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; and
 - (b) If Tenant is not in default under the Lease beyond any applicable cure period, such new owner shall be bound to Tenant 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) which terms, covenants and provisions such new owner hereby

agrees to assume and perform, provided, however, that 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, except for any continuing act or omission of which Lender had notice and failed to cure; (iv) be subject to any offsets or defenses which Tenant may have against any prior landlord under the Lease, including, Landlord, except for any offsets or defenses related to any continuing act or omission of which Lender has had notice and failed to cure; (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; and (vii) be 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.

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, but 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; 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. Landlord, 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.

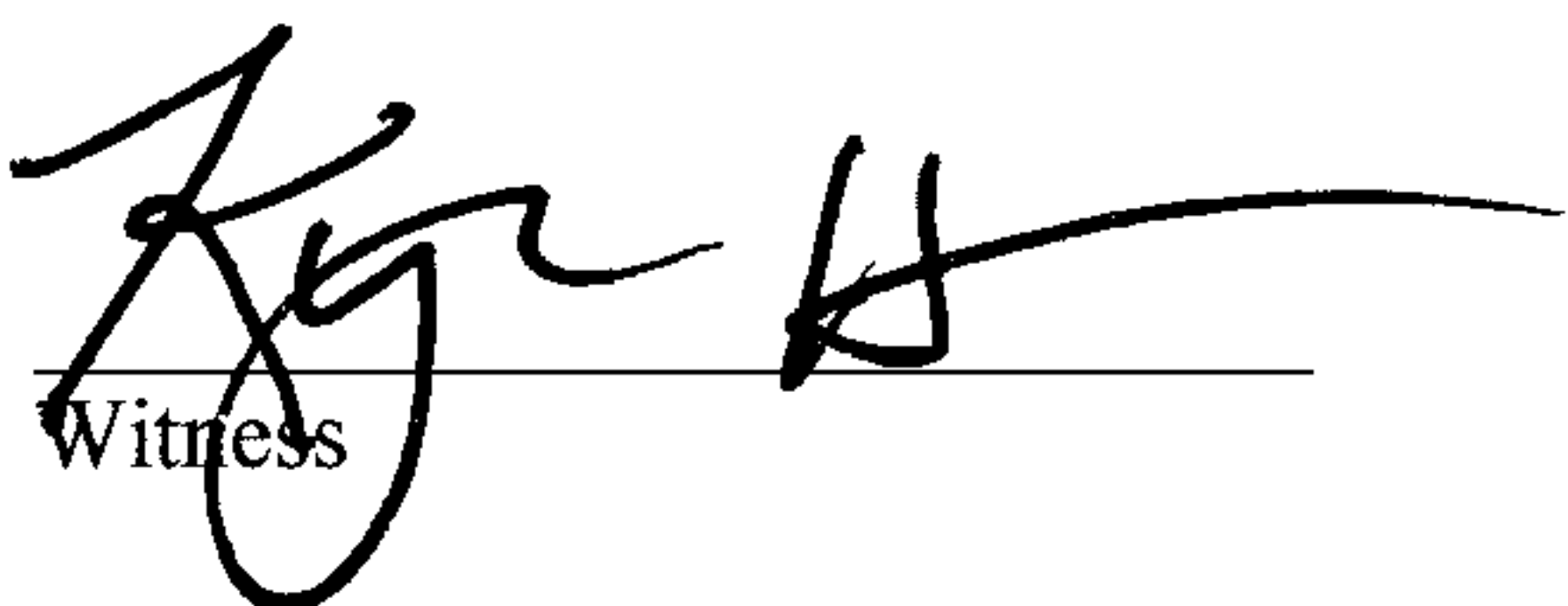
This Agreement shall survive any foreclosure of the Premises, or any other succession by Lender to the interest of the Landlord with respect to the Premises, and shall remain in full force and effect until the end of the Lease term and all exercised optional extension periods, or upon satisfaction of the Mortgage 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 Mortgage, and the satisfaction and termination of such Mortgage, then this Agreement shall terminate.

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.


IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Agreement on the day and year first above written.



Witness

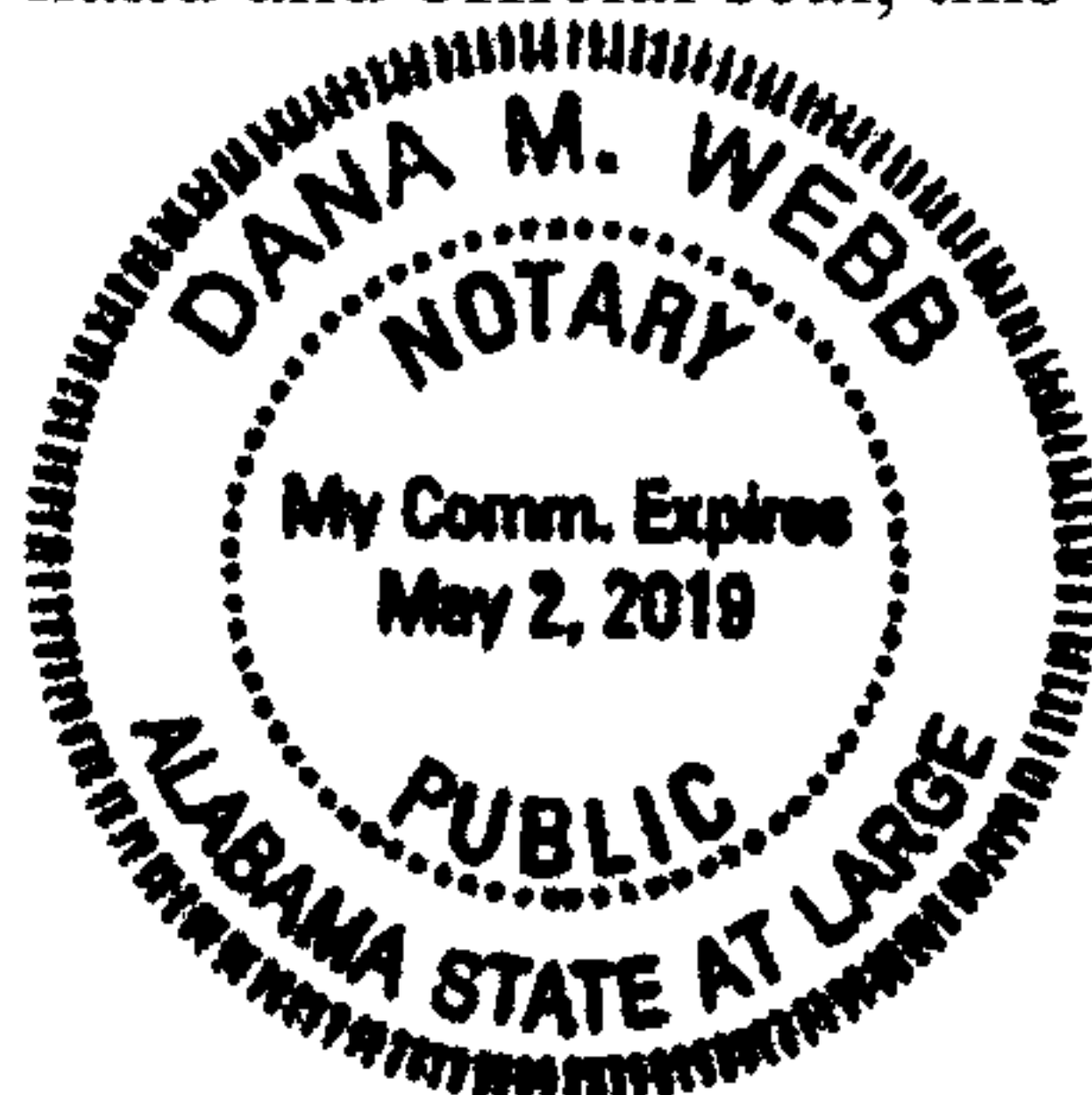
Witness

STATE OF Alabama
COUNTY OF Jefferson

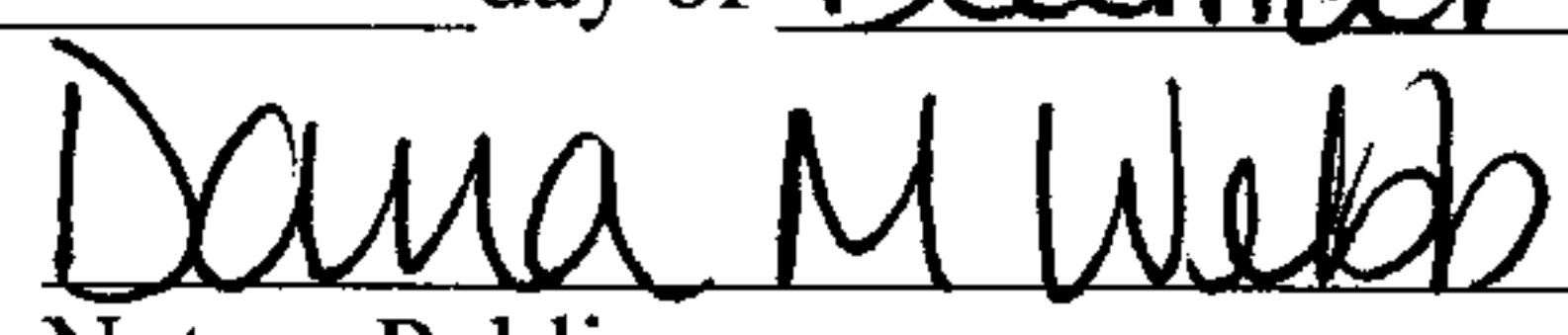
LANDLORD:
FOWL PLAY HOLDINGS, LLC

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 Holdings, 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 11th day of December, 2015.



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7927-1540



Notary Public
My Commission Expires: May 2, 2019


20151218000432620 4/8 \$35.00
Shelby Cnty Judge of Probate, AL
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Witness Ky H

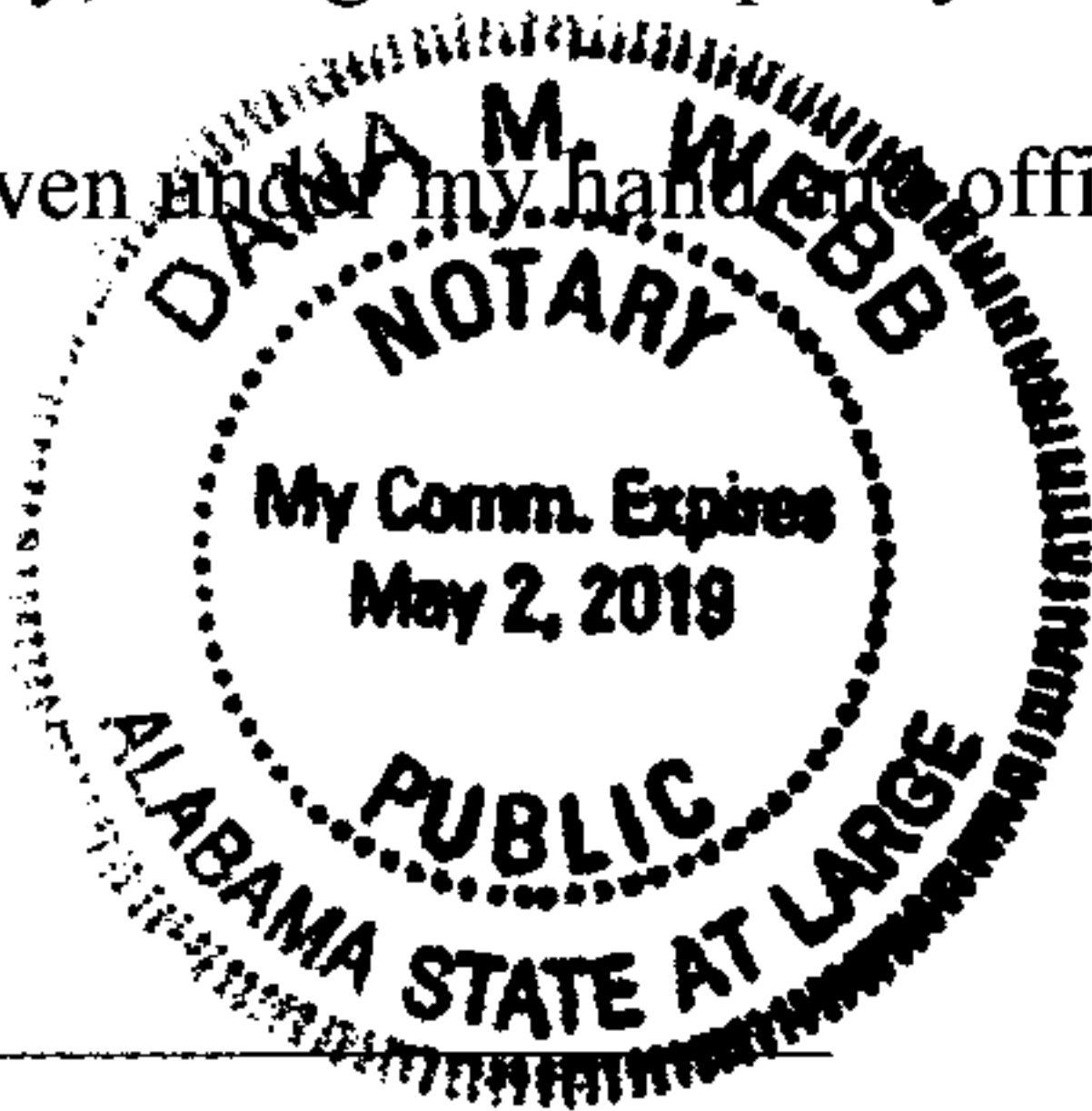
Witness

STATE OF Alabama

COUNTY OF Jefferson

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 Holdings, 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 11th day of December, 2015.



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

Dana M Webb
Notary Public
My Commission Expires: May 2, 2019

TENANT:
CHICKEN SCRATCH, INC.

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

[CORPORATE SEAL]

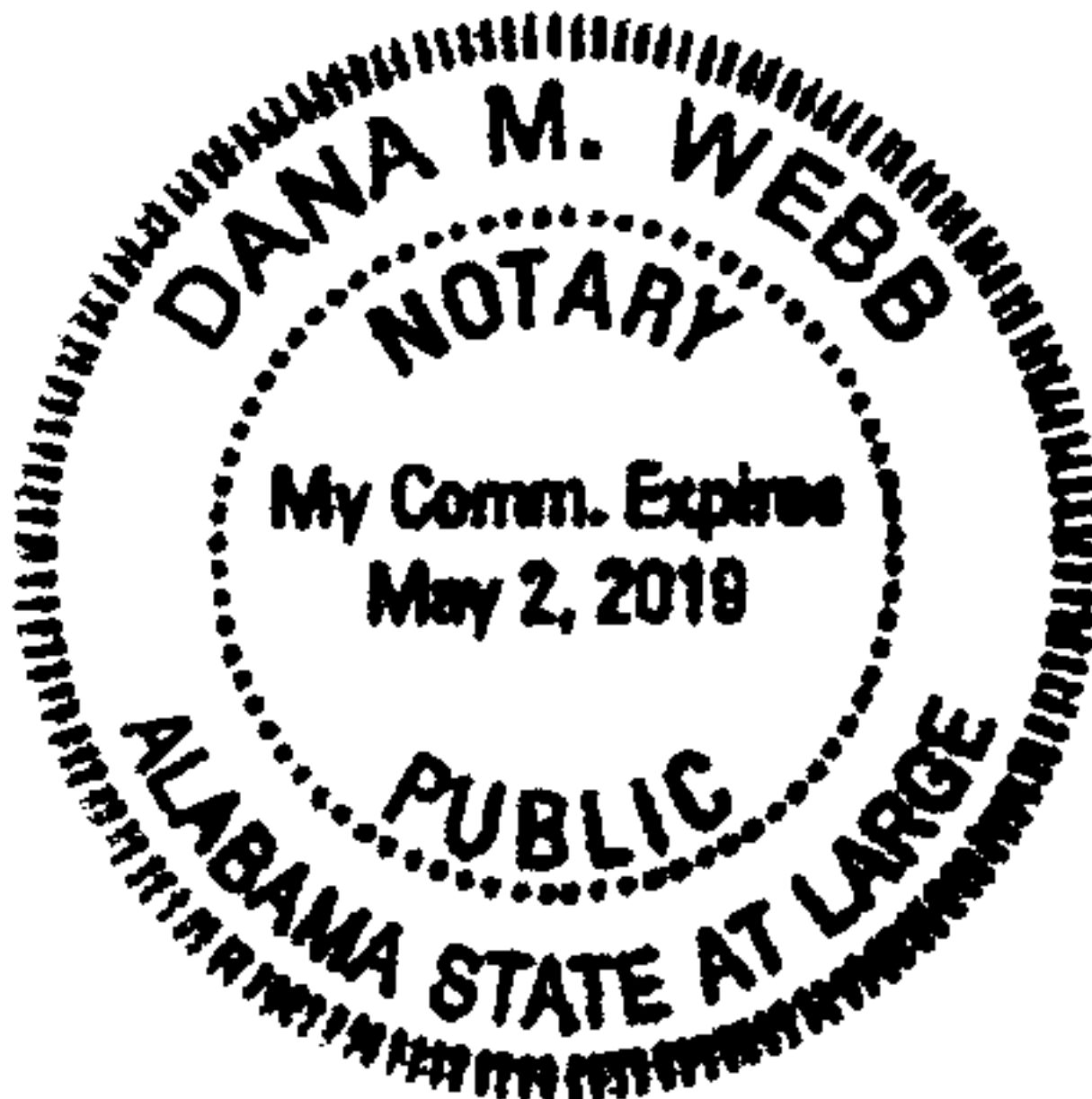
Witness Ky H
Witness

STATE OF Alabama

COUNTY OF Jefferson

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 corporation, acting in his capacity aforesaid.

Given under my hand and official seal, this the 11th day of December, 2015.



Dana M Webb
Notary Public
My Commission Expires: May 2, 2019

20151218000432620 5/8 \$35.00
Shelby Cnty Judge of Probate, AL
12/18/2015 02:39:20 PM FILED/CERT

Lauren Nix
Witness

[Signature]
Witness

ZFI:
ZAXBY'S FRANCHISING, INC.

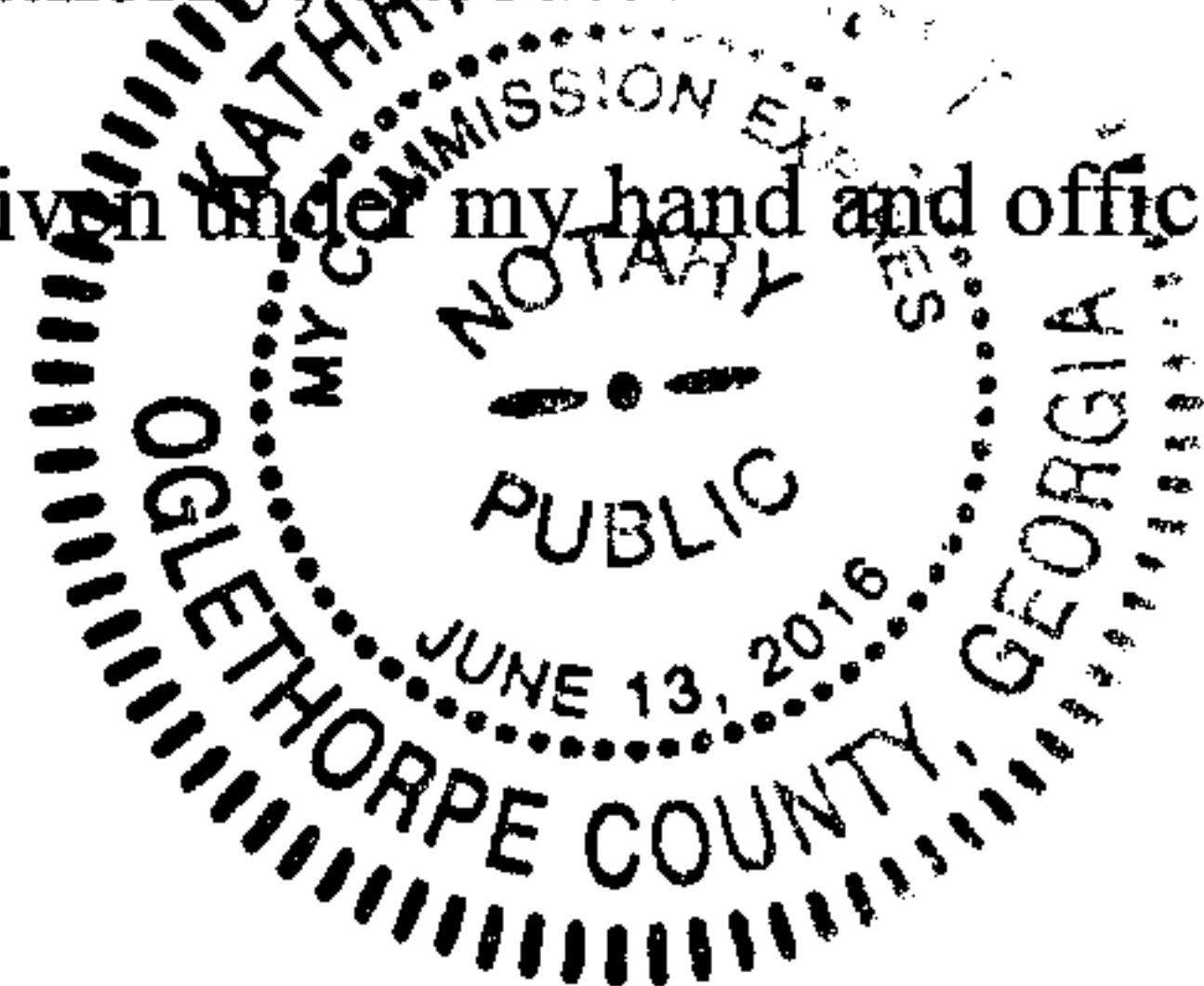
By: _____
Name: Amy C. Pritchett
Title: Vice President of Franchise Development

[CORPORATE SEAL]

STATE OF Georgia
COUNTY OF DeKalb

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 corporation, acting in her capacity aforesaid.

Given under my hand and official seal, this the 27th day of October, 2015.



[Signature]
Notary Public
My Commission Expires: 6-13-16

Witness

Witness

LENDER:
OAKWORTH CAPITAL BANK

By: _____
Name: _____
Title: _____

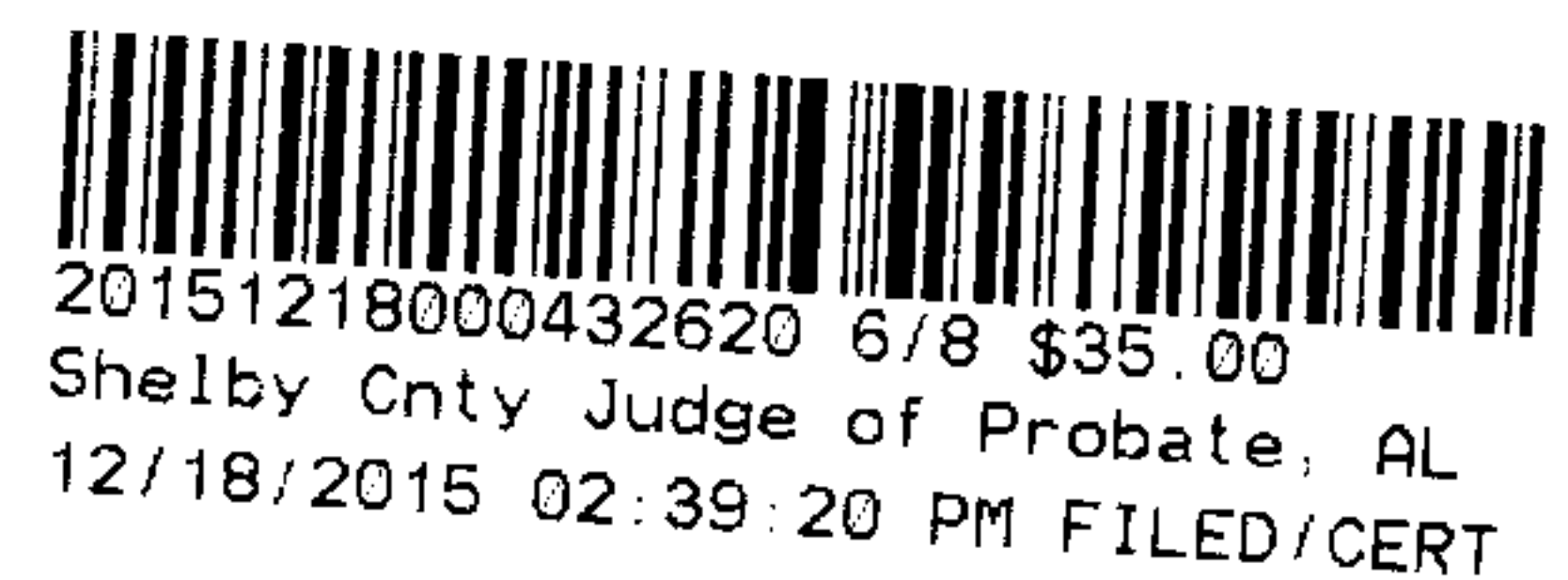
[CORPORATE SEAL]

STATE OF _____
COUNTY OF _____

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of Oakworth Capital Bank, 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 _____, and with full authority, executed the same voluntarily, as an act of said corporation, acting in his capacity aforesaid.

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

Notary Public
My Commission Expires: _____



Witness

Witness

ZFI:
ZAXBY'S FRANCHISING, INC.

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

[CORPORATE SEAL]

STATE OF _____

COUNTY OF _____

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 corporation, acting in her capacity aforesaid.

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

Notary Public
My Commission Expires: _____

C. Michelle McComb
Witness
Dawn S. Tillery
Witness

LENDER:
OAKWORTH CAPITAL BANK

By: Reese Kincaid
Name: REESE KINCAID
Title: ITS OFFICER

[CORPORATE SEAL]


STATE OF Alabama

COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Reese Kincaid, whose name as Associate Managing Dir. of Oakworth Capital Bank, 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 _____, and with full authority, executed the same voluntarily, as an act of said corporation, acting in his capacity aforesaid.

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

Chante Michelle McComb
Notary Public
My Commission Expires: 10.21.19


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Shelby Cnty Judge of Probate, AL
12/18/2015 02:39:20 PM FILED/CERT

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, Assignment of Rents and Leases, 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.

Witness

Witness

GUARANTOR:
CHICKEN SCRATCH HOLDINGS, INC.

By:

Name: Courtney H. Mason, Jr.

Title: President

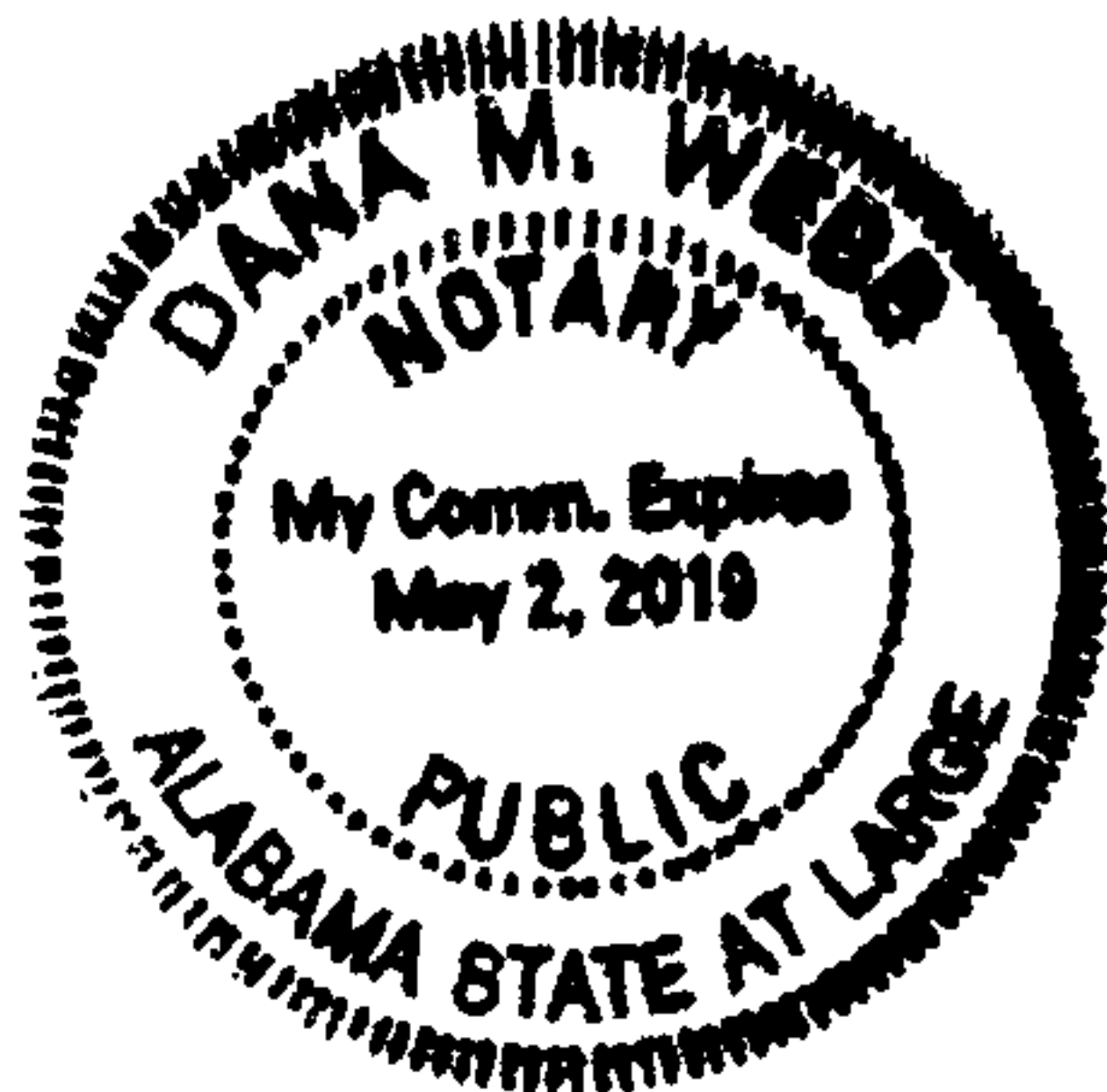
[CORPORATE SEAL]

STATE OF Alabama

COUNTY OF Jefferson

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Given under my hand and official seal, this the 11th day of December, 2015.



Dana M Webb
Notary Public

My Commission Expires: May 2, 2019

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