

**This Instrument Prepared By:**

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3138 Cahaba Heights Rd.  
Suite 110A  
Birmingham, Alabama 35243  
(205) 879-0500

**STATE OF ALABAMA            )**

**COUNTY OF SHELBY            )**

**SUBORDINATION, NONDISTURBANCE, ATTORNMENT AND ESTOPPEL AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE, ATTORNMENT AND ESTOPPEL AGREEMENT** (this "Agreement") is made as of the 12<sup>th</sup> day of August, 2019, the ("Effective Date"), by and among **SOUTHPOINT BANK** ("Lender"), **KEZHU CHEN, an individual, d/b/a The Juice Seafood Restaurant**, ("Tenant") and **DASHAM, LLC**, an Alabama limited liability company ("Landlord").

**RECITALS:**

- A. Tenant is the holder of a leasehold estate in a portion of the property described on **Exhibit "A"** (the "**Property**"), under and pursuant to the provisions of that certain lease agreement by and between Tenant and Landlord as described with more particularity on the attached **Exhibit "B"** hereto and incorporated herein by reference (the "**Lease**").
- B. The Property is or is to be encumbered by that certain Mortgage and Security Agreement and that certain separate Assignment of Rents and Leases (collectively, the "**Security Instrument**"), from Landlord in favor of Lender.
- C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

**AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, Tenant, Landlord and Lender mutually agree as follows:

1. **Subordination.** The Lease shall be subject and subordinate in all respects (i) to the Security Instrument, (ii) to any and all advances to be made thereunder, and (iii) to all renewals, modifications, consolidations, replacements and extensions thereof.
2. **Nondisturbance.** So long as Tenant pays all rents and other charges as specified in the Lease

and is not otherwise in default (beyond applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, Lender agrees for itself and its successors in interest and for any other person acquiring title to the Property through a foreclosure (an "**Acquiring Party**"), that Tenant's possession of the premises as described in the Lease, will not be disturbed during the term of the Lease, as said term may be extended pursuant to the terms of the Lease, by reason of a foreclosure. For purposes of this Agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instrument, the termination of any superior lease of the Property and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, conveyance in lieu of foreclosure, but shall not include Landlord or its permitted assigns under the Lease.

3. **Attornment.** Tenant agrees to attorn to, accept and recognize any Acquiring Party as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to the Lease, upon receipt of written notice of such acquisition to Tenant. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Tenant as a condition to its effectiveness. Tenant agrees, however, to execute and deliver within ten (10) days upon receipt of written request from Lender or any Acquiring Party any reasonable instrument which may be necessary or appropriate to evidence such attornment.

4. **Estoppel Certificate.** Tenant agrees to execute and deliver within ten (10) days after request therefor from Landlord or to such other addressee or addressees as Landlord may designate (and any such addressee may rely thereon), a statement in writing certifying (if true) that the Lease is in full force and effect and unmodified or describing any modifications; that Tenant has accepted the Premises; that Landlord has performed all of its obligations under the Lease arising prior to the date of the certificate; that there are no defenses or offsets against the enforcement of the Lease or stating with particularity those claimed by Tenant; stating the date to which rent has been paid; and making such other true representations as may be reasonably requested by Landlord. If Tenant fails to give the Estoppel Certificate required by this Section within the time permitted thereby and fails to object in writing specifying with particularity the manner in which the requested estoppel certificate is untrue, it shall be conclusively deemed that the matters set forth in the requested estoppel are true and correct as of the date of the request. Tenant shall indemnify, defend (with counsel reasonably approved by Landlord in writing) and hold Landlord and/or Mortgagee, as applicable, harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) attributable to any failure by Tenant to timely deliver any such estoppel certificate to Landlord.

5. **No Liability.** Notwithstanding anything to the contrary contained herein or in the Lease, it is specifically understood and agreed that neither the Lender, any receiver nor any Acquiring Party shall be:

(a) liable for any act, omission, negligence or default of any prior landlord; provided, however, that any Acquiring Party shall be liable and responsible for the performance of all covenants and obligations of landlord under the Lease accruing from and after the date that it takes title to the Property;

(b) except as set forth in subsection (a) above, liable for any failure of any prior landlord to construct any improvements;

(c) subject to any offsets, credits, claims or defenses which Tenant might have against any prior landlord;

(d) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord; or

(e) be liable to Tenant hereunder or under the terms of the Lease beyond its interest in the Property.

6. **Rent.** Tenant has notice that the Lease, the rents, and all other sums due thereunder have been assigned to Lender as security for the loan secured by the Security Instrument. In the event Lender notifies Tenant in writing of the occurrence of a default under the Security Instrument and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise authorized in writing by Lender. Landlord hereby irrevocably authorize Tenant to make the foregoing payments to Lender upon such notice and demand.

7. **Lender to Receive Notices.** Tenant shall notify Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Lender shall have received notice of default giving rise to such cancellation and shall have failed within thirty (30) days after receipt of such notice to cure such default, or if such default cannot be cured within thirty (30) days, shall have failed within thirty (30) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default (nothing contained herein obligates Lender to pursue a cure of any such default).

8. **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address set forth above, and:

If to Tenant:                      Kezhu Chen d/b/a The Juicy Seafood Restaurant  
   1007 Silver Lakes Dr.  
   Columbus, GA 31904

If to Lender:                        SOUTHPOINT BANK  
   3501 Grandview Parkway  
   Birmingham, AL 35243  
to the attention of:                John Sivley

If to Landlord:                      DASHAM, LLC  
   310 Cahaba Valley Road  
   Pelham, Alabama 35124  
to the attention of:                Kishan Amin



or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Paragraph 8, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in Birmingham, Alabama. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. **Successors.** The obligations and rights of the parties pursuant to this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties. In addition, Tenant acknowledges that all references herein to Landlord shall mean the owner of the landlord's interest in the Lease, even if said owner shall be different than the Landlord named in the Recitals.

9. **Duplicate Originals; Counterparts.** This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

10. **Assignment of Lease.** Except as provided in the Lease, Tenant agrees that it shall not assign, pledge or convey its interest in the Lease or any part thereof, to any party without the prior written consent of Lender.

11. **Estoppel.** Tenant and Landlord represent and warrant to Lender that: (a) the Lease is presently in full force and effect as of the date of this Agreement and has not been modified, (b) neither the Tenant nor the Landlord are in default under any of the terms, covenants, or provisions of the Lease and the Tenant knows of no event which, but for the passage of time, or the giving of notice, or both, would constitute an event of default by Tenant or Landlord under the Lease, (c) neither the Tenant nor the Landlord has commenced any action or received any notice for the purpose of terminating the Lease, (d) the Lease constitutes the entire agreement between the Landlord and the Tenant with respect to the subject matter of the Lease and the occupancy, use or enjoyment of the premises thereby demised, (e) no rent has been paid in advance under the Lease, except the rent for the current month, and Tenant agrees that it will not pay any rent in advance other than the then current month, (f) Tenant has no defense or offsets that could be asserted with respect to the Lease, (g) Tenant has no option or right of first refusal to purchase any part of the premises, (h) the Tenant has delivered this Agreement with the understanding that the Lender will rely upon it making the loan evidenced by the aforementioned Security Instrument.

12. **Amendment.** This Agreement may not be modified except by a written agreement signed by the parties hereto or their respective successors in interest.

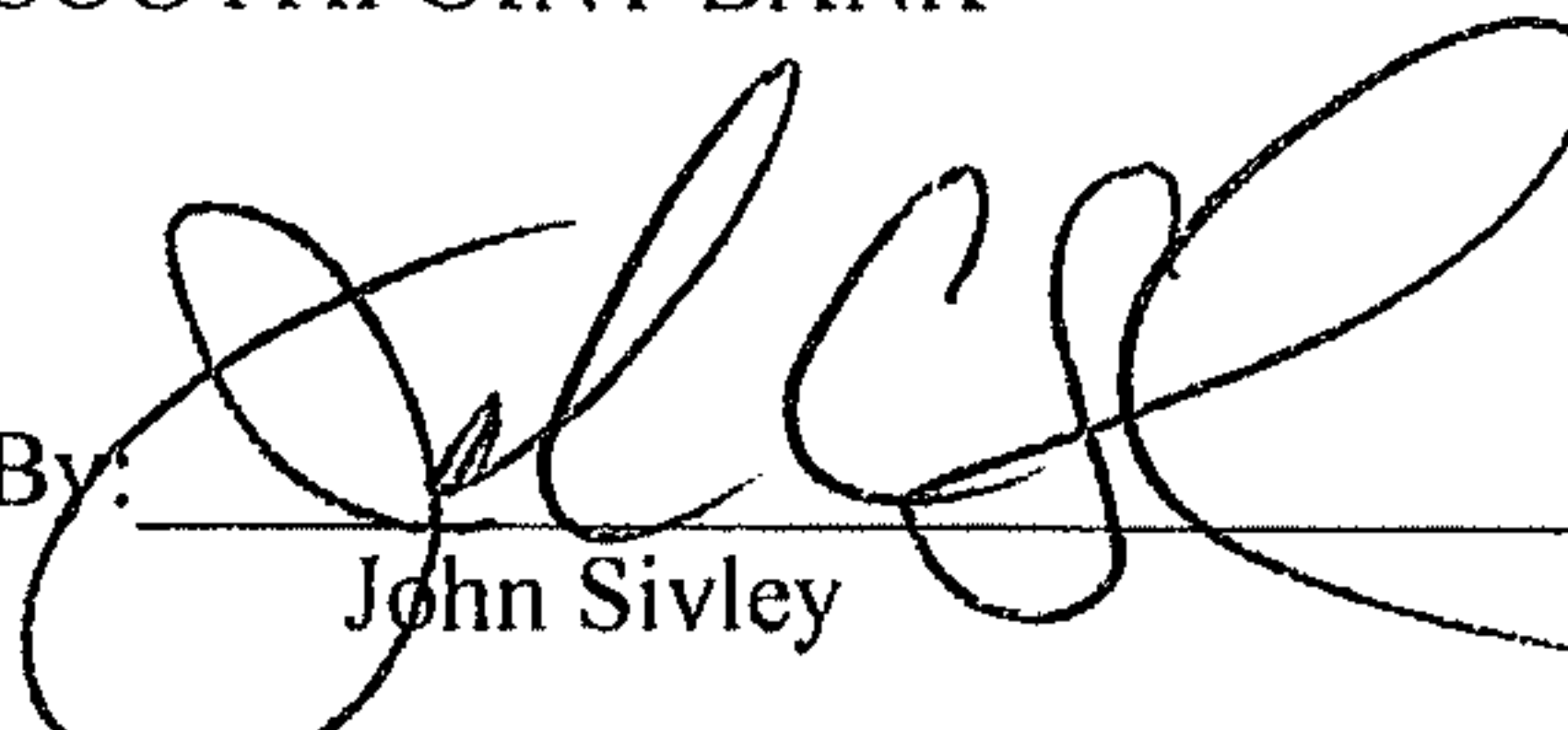
13. **Termination.** If an Event of Default occurs under the Loan Agreement by and between Landlord and Lender dated of even date herewith, then Lender may at Lender's option any time thereafter while such Event of Default is continuing terminate the Lease by written notice to Landlord and Tenant.

*[Signature and Acknowledgement Pages to Follow]*

20190822000308760 08/22/2019 01:18:11 PM SUBAGREM 5/9  
IN WITNESS WHEREOF, Lender has executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

LENDER:

SOUTHPOINT BANK

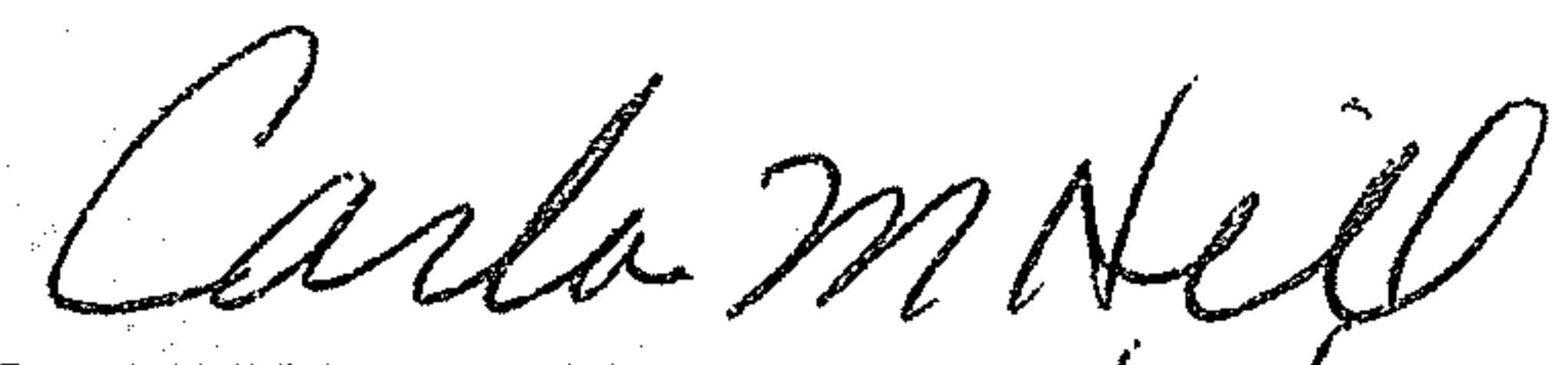
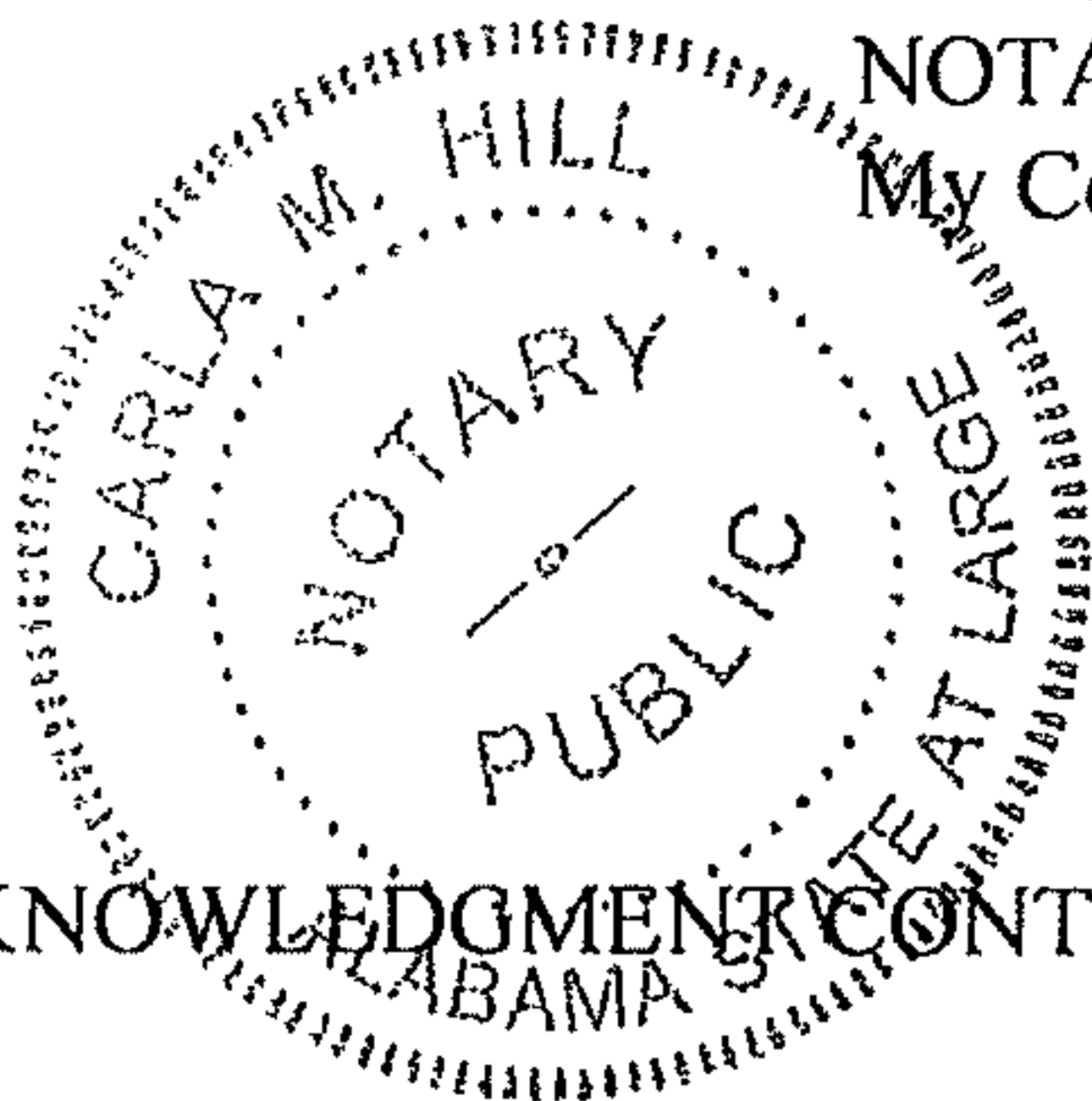
By:  [SEAL]  
John Sivley  
Its: Vice President

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that JOHN SIVLEY, whose name as Vice President of SouthPoint 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 Vice President, and with full authority, executed the same for and as the act of said company.

Given under my hand and official seal this 12<sup>th</sup> day of August, 2019.

  
NOTARY PUBLIC  
My Commission Expires: 3/23/23  


[EXECUTION AND ACKNOWLEDGMENT CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Tenant has executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

TENANT:



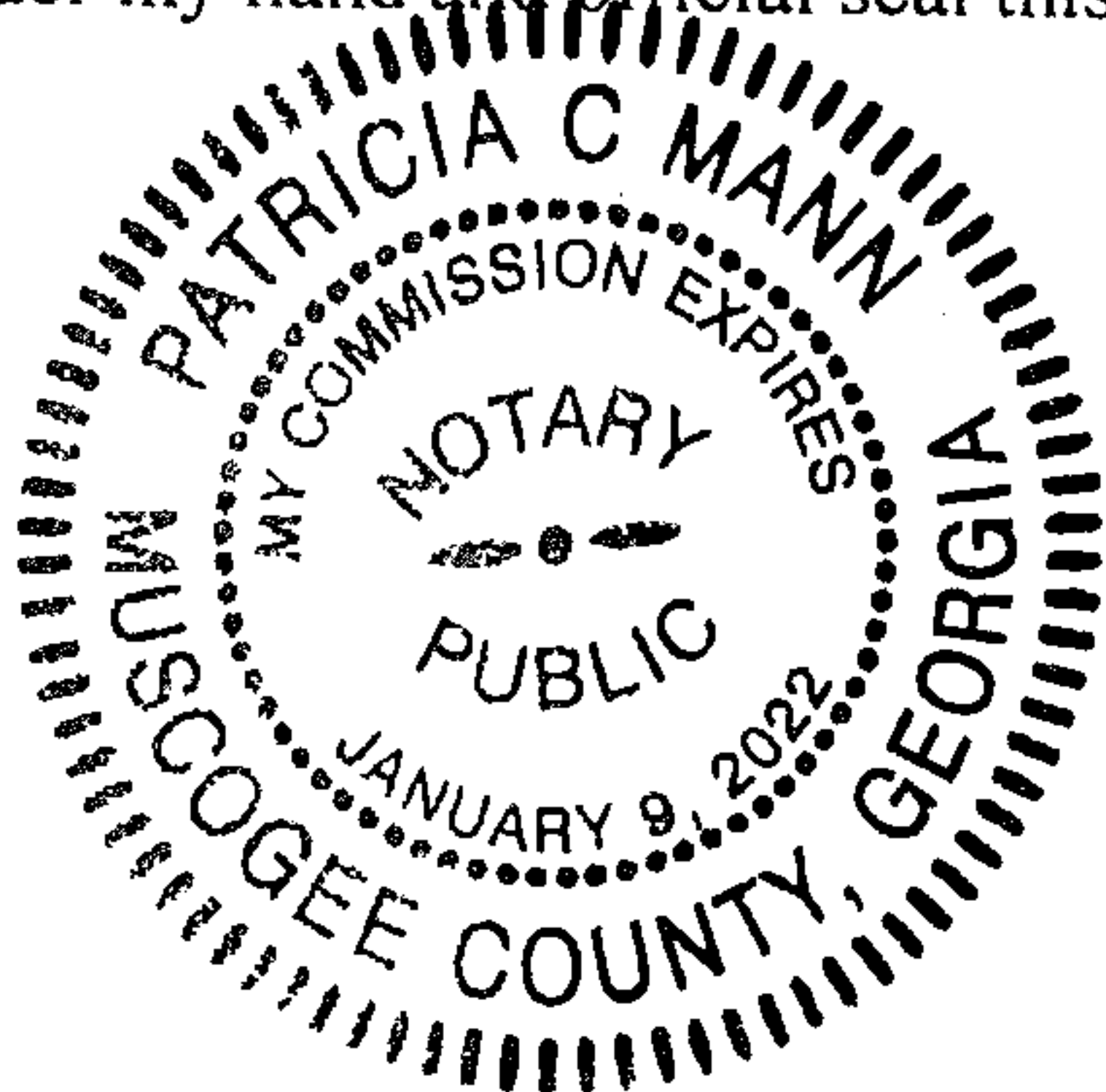
KENZU CHEN, d/b/a The Juicy  
Seafood Restaurant

STATE OF Georgia )

COUNTY OF Muscogee

I, the undersigned Notary Public in and for said County, in said State, hereby certify that KENZU CHEN, , 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, voluntarily executed the same.

Given under my hand and official seal this 15th day of August, 2019.



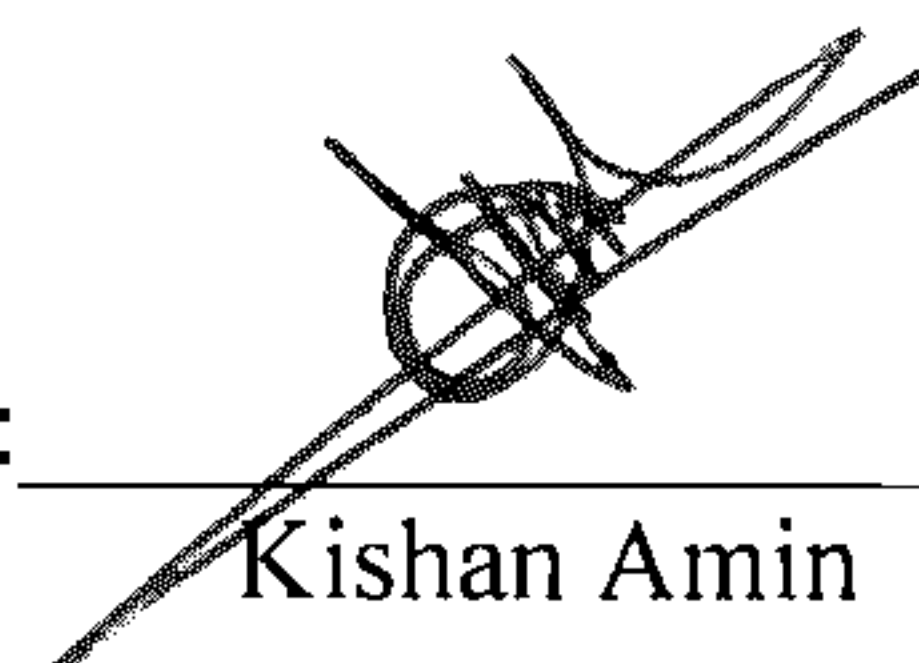
*Patricia C Mann*  
NOTARY PUBLIC  
My Commission Expires: 1-9-2022

[EXECUTION AND ACKNOWLEDGMENT CONTINUE ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, Landlord has executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

**LANDLORD:**

DASHAM, LLC,  
an Alabama limited liability company

By:  [SEAL]  
Kishan Amin

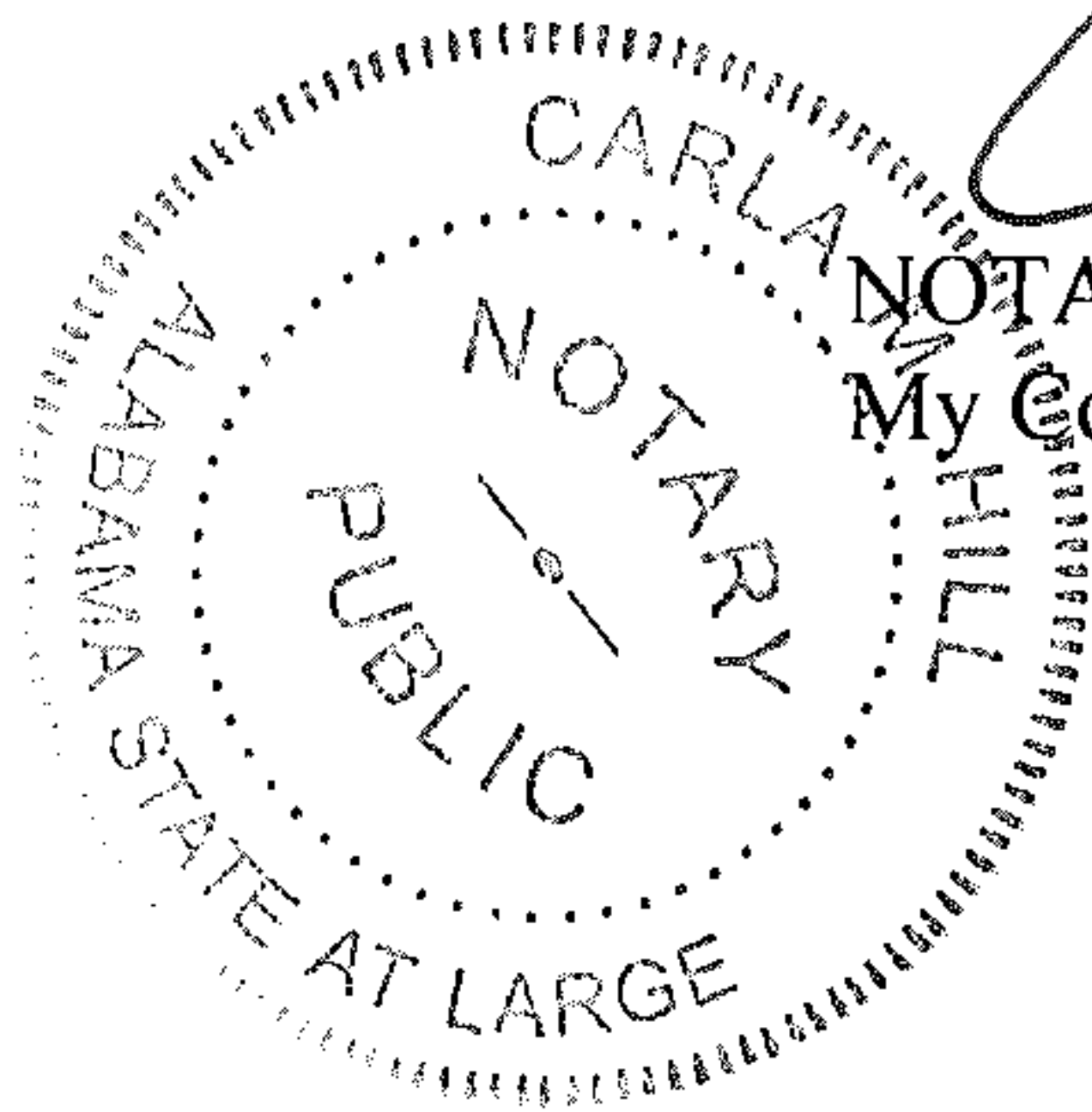
Its: Chief Executive Manager

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that KISHAN AMIN, whose name as Chief Executive Manager of DASHAM, 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 Chief Executive Manager, and with full authority, executed the same for and as the act of said company.

Given under my hand and official seal this 12<sup>th</sup> day of August, 2019.

  
Carla M. Hill  
NOTARY PUBLIC  
My Commission Expires: 3/23/23



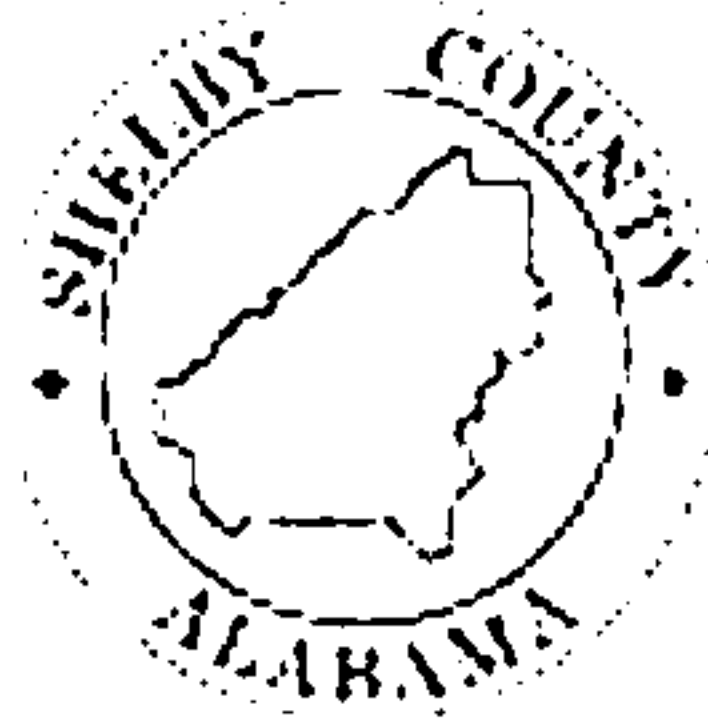
A parcel of land lying on the North side of Alabama Highway No. 119 (a.k.a. Cahaba Valley Road) in the City of Pelham, Shelby County, Alabama, being a portion of the Northeast quarter of the Southeast quarter of Section 31, Township 19 South, Range 2 West and being more particularly described as follows:

Commencing at the Southeast corner of Lot C-1 of the Survey of Cahaba Valley Park North as recorded in Map Book 13, Page 140, in the Office of the Judge of Probate of Shelby County, Alabama, said point being a 5/8 inch rebar (cap illegible) and the point of beginning of the parcel herein described, said point lying on the North right of way of Alabama Highway No. 119; thence leaving said right of way North 30° 11' 08" West 200.13 feet to a 5/8 inch rebar (cap 11375); thence North 59° 50' 32" East 200.17 feet to a 5/8 inch rebar (cap illegible); thence South 30° 03' 53" East 200.04 feet to a 5/8 inch rebar lying on the North right of way of Alabama Highway No. 119; thence along said right of way South 59° 48' 54" West 199.75 feet to the point of beginning.



**EXHIBIT "B"**

Lease dated July 29<sup>th</sup>, 2019, by and between Dasham, LLC as Landlord, and Kezhu Chen, d/b/a The Juicy Seafood Restaurant, as Tenant.



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
08/22/2019 01:18:11 PM  
\$39.00 CHARITY  
20190822000308760

*Allen S. Bayl*