

STATE OF ALABAMA

SHELBY COUNTY

THIS LEASE, made this 16th day of October,
19 73, by and between MELINA FIORELLA TRUST, 623 South 29th
Street, Birmingham, Alabama, 35233, hereinafter called "Lessor",
of the one part and

Joe R. Brocato

hereinafter called "Lessee" of the other part:

WITNESSETH: That the Lessor does hereby demise and let
unto the Lessee the following described premises in the town
of Pelha, Shelby County, Alabama, to wit:

A tract of land lying partly in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$,
Section 6, Township 20S, Range 2 West, and partly in
the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Section 1, Township 20S, Range 3
West, and fronting 100 feet on the east side of the
new Highway 31, with depth of approximately 200 feet,
shown in blue on Exhibit "A" attached hereto.

A building suitable for use as a car wash operation
constructed according to the plans and specifications
set forth on Exhibit "B" attached hereto.

Subject to existing easements, if any, and the regula-
tory laws and ordinances of the political subdivision in
which the property is situated, for use and occupation by
the Lessee as an automobile car wash and for no other or
different use or purpose, for and during the term of
FIFTEEN (15) YEARS, to wit: from November 1, 1973, to
October 31, 1988, plus certain options to extend this lease.

The Lessor covenants to keep the Lessee in possession of
said premises during said term, and all extensions thereof,
provided the Lessee shall comply fully with all requirements
of this lease and the Agreement of even date, by and between
Lessor and Lessee, pertaining thereto. The Lessor or the
Lessor's Agent have made no representations or promises with

Jerry Smith

Inst # 1993-05401

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respect to demised premises and accepts the same in the physical condition in which the same now exists (except as otherwise expressly provided herein).

IN CONSIDERATION WHEREOF, the Lessee agrees to pay the Lessor, at the address stated above, as rental for the ground portion of the herein leased premises, on the first day of the month of said term, in advance, the sum of \$200.00 per month, being at the rate of \$2,400.00 per year.

ALSO, in consideration whereof, the Lessee agrees to pay the Lessor, at the address stated above, as rental for the building portion of the herein leased premises, an annual amount equal to fourteen (14%) per cent of the total construction cost of the building. When computed, this annual amount shall be payable in monthly payments. The first monthly payment of the building rent shall be due and payable on the first day of the month following the actual beginning of the car wash operation.

\$500.00
a month

ALSO, when finally computed, the amount of this monthly rental shall be stated in this lease agreement by amendment executed by both Lessor and Lessee.

NOW THEREFORE, Lessor and Lessee hereby agree that the covenants, conditions, and terms of the said Agreement shall be treated as part of this Lease, to the same extent as if they were copies in full herein; this Lease and the said Agreement being collectively called the Lease.

IN WITNESS WHEREOF, the Lessor and Lessee have respectfully executed these presents the day and year first above written.

MELINA FIORELLA TRUST

WITNESS:

Peter Thomas

By:

Lessor

Trustee

Carol Harris

Lessee

Sam A. Fiorella
Joe R. Biscato

AGREEMENT

THIS AGREEMENT, made this 16th day of October,
19 73, by and between

MELINA FIORELLA TRUST
623 South 29th Street
Birmingham, Alabama 35233

hereinafter called "Lessor", and

JOE R. BROCATO

hereinafter called "Lessee."

WHEREAS by Lease of even date herewith, Lessor leased certain premises to Lessee for the rental herein provided, conditions and terms herein provided, said premises being situated in the Town of Pelham, Shelby County, Alabama, more particularly described as follows, to wit:

A tract of land lying partly in the NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 6, Township 20S, Range 2 West, and partly in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Section 1, Township 20S, Range 3 West, and fronting 200 feet on the east side of new Highway 31, with depth of approximately 218 feet, comprising one (1.0) acre, shown in red on Exhibit "A" to said Lease.

A building suitable for use as a car wash operation constructed according to the plans and specifications set forth on Exhibit "B" attached hereto.

Together with all improvements owned or controlled by Lessor, and located thereon, all rights, alleys, rights of way, easements, appurtenances thereunto belonging or in any wise appertaining, and all rights of Lessor in and to any public thoroughfares abutting the above described premises, all being hereinafter referred to as the "demised premises."

NOW THEREFORE, Lessor and Lessee hereby agree that the following covenants, conditions and terms shall be treated as part of said Lease to the same extent as if they were copies in full therein; said Lease and this Agreement being hereinafter collectively called this Lease.

1. RENT. In consideration whereof, the Lessee agrees to pay the Lessor, at the address stated above, as rental for the ground portion of the herein leased premises, on the first day of the month of said term, in advance, the sum of \$200.00 per month, being at the rate of \$2,400.00 per year.

ALSO, in consideration whereof, the Lessee agrees to pay the Lessor, at the address stated above, as rental for the building portion of the herein leased premises, an annual amount equal to fourteen (14) per cent of the total construction cost of the building. When computed, this annual amount shall be payable in monthly payments. The first monthly payment of the building rent shall be due and payable on the first day of the month following the actual beginning of the car wash operation.

ALSO, when finally computed, the amount of this monthly rental shall be stated in this lease agreement by amendment executed by both Lessor and Lessee.

All rental payments may be made by check payable and delivered to Lessor personally, or by mail, to the address stated above.

2. PERMITS. Lessor hereby sets over and assigns to Lessee, with right of Lessee to reassign to others, all of Lessor's licenses, consents, and permits to maintain and operate a car wash on the demised premises; such assignment to be effective only during the term of this lease, and all renewals and extensions thereof.

In case Lessee, its assigns or sublessee, shall be unable to obtain from municipal or other public authorities, any permit or license necessary for the operation of a car wash upon said premises, or in case any such permit or license, if obtained, be afterward revoked without fault of Lessee, its assignee or sublessee, or if the use of said premises be restrained or enjoined by judicial process, then and in such event or any thereof Lessee shall have the right to cancel this lease by giving Lessor at least ten days notice of its intention to do so.

3. SURVEY. Lessor, at its expense, will promptly furnish a current certified survey, prepared by a competent surveyor licensed in the State of Alabama, of the demised premises, with appropriate field notes and property description, to Lessee. In the event the survey has not been received within 30 days from the date of execution of this lease, Lessee may obtain the required survey for the account of the Lessor, and deduct the cost thereof from the rental. Said survey shall be reasonably consistent with Exhibit "A" to said Lease.

4. IMPROVEMENTS. Lessee shall have the right, at its option, to construct such other buildings and/or any other structures and signs, and make such improvements on the demised premises, and to alter, repair, or reconstruct the same, as it may deem necessary in the conduct of the business on the demises premises. With the exception of all permanent buildings constructed on the premises, any temporary buildings and all equipment such as signs, tanks, pumps, etc., shall be and remain the property of the Lessee, with the right, under this lease and all extensions thereof, at its option, at any time before the expiration of termination of this lease and for a reasonable time thereafter to remove the same. However, Lessee shall not remove any of the improvements, goods, wares, or merchandise of the Lessee from said premises other than in the regular course of the Lessee's trade or business without having first paid all rent due or to become due under the terms of this lease. In the event the Lessee removes any such equipment from the premises, he agrees to restore the land to a condition satisfactory to the Lessor.

5. REPAIRS, INSPECTION. Lessor shall not be obligated or required to make any repairs, unless and only to the extent herein agreed. Lessee will keep the demised premises and improvements thereon clean and in a good state of repair, and as required by applicable laws and ordinances. Lessee covenants and agrees it will not permit any nuisance to be created, maintained, or carried on upon said premises. Lessor reserves the right to visit and inspect said premises at all reasonable times, and the right to show said premises to prospective tenants and purchasers, and the right to display "For Sale" and "For Rent" signs on said premises.

6. OPTION TO EXTEND. Lessee shall have the option to extend this lease for a total of two (2) successive periods of five (5) years each upon the rental terms and conditions in effect as stated in this lease.

In order to exercise any of said options to extend, Lessee shall give to Lessor a written notice of its intention to do so at least thirty (30) days prior to the expiration of the then current period, and sending of such notice shall constitute the renewal and extension of this lease in accordance with the terms of such renewal option so exercised without necessity of the execution of a separate renewal lease.

7. FIRST OPTION TO PURCHASE. Should the Lessor, or the Lessor's heirs, executors, grantees, successors, or assigns, at any time during the term of this lease or any extension thereof, receive an offer to purchase the demised premises, or any part thereof, or any premises which includes the demised premises, and desires to accept said offer, or should Lessor during any such time make an offer to sell the demised premises, or any part thereof, or any premises which include the demised premises, Lessor shall give the Lessee thirty (30) days notice in writing of such offer, setting forth the name and address of the proposed purchaser, the amount of the proposed purchase price, and all other terms and conditions of such offer, and Lessee shall have the first option to purchase the premises which are the subject of the offer by giving written notice to Lessor of its intention to purchase within said thirty-day period at the same price and terms of any such offer, it being understood that in the event the Lessee does not give notice of its intention to exercise said option to purchase within said period, this lease and all of its terms and conditions shall nevertheless remain in full force and effect and Lessor and any purchaser or purchasers of the demised premises, or any part thereof, or any premises which includes the demised premises, shall be bound thereby, and in the event that the premises set forth in the offer are not sold for any reason, Lessee shall have, upon the same conditions and notice, the continuing first option to purchase the demised premises, or any part thereof, or any premises which includes the demised premises, upon the terms of any subsequent offer or offers to purchase. In the event any of said options is exercised, Lessor shall convey a merchantable title to said real estate by good and sufficient warranty deed, free of all encumbrances, together with a title insurance policy by a reputable company, and normal prorations of rents, taxes and insurance.

8. TAXES. Lessor covenants that it is well seized of the demised premises, has a good right to lease them and hereby warrants and agrees to defend the title thereto and to reimburse and to hold the Lessee harmless from any loss by reason of any defect in title. Lessor covenants to pay all taxes and assessments of every nature upon the demised premises, including the land and all improvements of Lessee thereon, and agrees to notify Lessor immediately upon any default in the payment of taxes or other liens upon the demised premises, and Lessor shall have the right to make such defaulted payments for the account of Lessee. Any sums so advanced by Lessor, including the costs and attorney's fees incurred by Lessor in defending any suits and protecting its rights herein involved, shall bear interest at the rate of six (6%) percent

per annum, and shall be a charge against the Lessee and unless paid in full within a period of ninety (90) days, the Lessor may at its option, terminate this lease.

9. MORTGAGE. Lessor agrees to notify Lessee immediately upon any default in the payment of the mortgage interest or principal affecting the demised premises, and Lessee shall have the right to make such default payments for the account of the Lessor. Any sums so advanced by Lessee, including costs and attorney's fees incurred by Lessee in defending any suits and protecting its rights herein granted, shall bear interest at the rate of six percent (6%) per annum and the rent provided for herein may be applied to the payment of such sums and interest, or Lessee may require Lessor to pay any unpaid balance. Should the term of this lease or any extension thereof expire before such sums with interest have been fully repaid to Lessee, Lessee may, at its option, continue to occupy said premises on the terms and conditions herein provided until such sums with interest have been fully paid.

10. USE OF DEMISED PREMISES. Lessor agrees that Lessee shall have the privilege of using said demised premises, among other things, for the purpose of operating thereon a car wash, or any other lawful related purpose including the sale of food and beverages, and the construction of such buildings, driveways, and other improvements as may be necessary or desirable for the aforesaid purposes, and if any such use shall be for bidden, interfered with, limited, or prevented by legislation or regulation of Federal, State or local government, or any agency thereof, by requests or any governmental authority, by war conditions, or by any contingency beyond the control of Lessee, its assigns or sublessees, or if by reason of any similar restriction, limitation, interference, or prohibition, the Lessee or its assigns or sublessee, shall be unable to obtain adequate supplies of petroleum products essential to the profitable use of said demised premises for any of the purposes stated, or, if because of any request order of any governmental authority, the sale of gasoline at said demised premises is substantially curtailed, then and in such event or any thereof, Lessee shall have the right to cancel this lease by giving Lessor at least ten (10) days notice of its intention to do so. Lessee agrees that it shall be responsible for the payment of all utilities, including water, gas electricity, heat, and other services delivered to the demised premises.

11. HOLDOVER. In the event the Lessee shall holdover beyond the expiration of the term herein provided or any renewal or extension thereof, it is expressly understood and agreed that any such holdover tenancy shall be a month to month tenancy only, and either Lessor or Lessee may terminate such tenancy at any time by giving the other party thirty (30) days written notice of its intention to do so.

12. NOTICES. All notices given under this lease shall be deemed to be properly served if delivered in writing personally, or sent by certified mail to Lessor at the address shown in the first unnumbered paragraph of this lease, or where the rent hereunder was last paid, or to the Lessee at its offices as in the first unnumbered paragraph of this lease. Date of service of a notice served by mail shall be the date on which such notice is deposited in a post office of the United States Post Office Department.

13. QUIET ENJOYMENT. Lessor covenants that it is well seized of the demised premises, has a good right to lease them and hereby warrants and agrees to defend the title thereto, and to reimburse and hold the Lessee harmless from any loss by reason of any defect in title. Lessor covenants that Lessee, upon paying said rent and performing the covenants on its part to be performed hereunder, shall and may peaceably and quietly have, hold, and enjoy the demised premises for the term aforesaid, and any renewals and extensions.

14. CONVEYANCE, CHANGE OF LESSOR'S INTEREST. Lessor covenants that no conveyance, assignment by or other change of interest of Lessor in the premises hereby demised, whether recorded or unrecorded, shall be binding upon Lessee unless and until Lessee shall be actually notified thereof by U.S. certified mail, or by personal service, and in no event shall such conveyance, assignment, or other change of interest affect this lease or the renewal or purchase option rights of Lessee hereunder.

15. ORAL AGREEMENTS. This lease incorporates all of the obligations of the parties hereunder and there are no oral agreements or understandings between the parties concerning the property covered by this lease. This lease shall not be modified, changed or altered in any respect except in writing, and in the event of any termination of this lease pursuant to any right reserved by Lessee herein, all liability on the part of the Lessee for payment of rent shall cease and determine upon payment proportionately to the date of such termination of this lease.

16. BINDING. The terms, conditions, and covenants of this lease shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors, sublessees or assigns, and shall run with the land; and where more than one party shall be Lessors under this lease, the word "Lessor" whenever used in this lease shall be deemed to include all parties-lessor jointly and severally.

17. DEFAULT. Upon the happening of any one or more of the events as expressed in this paragraph, the Lessor shall have the right, at the option of the Lessor, to either annul and terminate this lease upon two days written notice to Lessee and thereupon re-enter and take possession of the premises; or the right upon two days written notice to the Lessee to re-enter and re-let said premises, from time to time, as agents of the Lessee, and such re-entry or re-letting or both, shall not discharge the Lessee from any liability or obligation hereunder, except that rents (That is, gross rents less the expense of collecting and handling, and less commission) collected as a result of such re-letting shall be credited on the Lessee's liability up to the amount due under the terms of this lease and the balance, if any, credited to the Lessor. Nothing herein, however, shall be construed to require the Lessor to re-enter and re-let, nor shall anything herein be construed to postpone the right of the Lessor to sue for rents, whether matured by acceleration or otherwise, but on the contrary, the Lessor is hereby given the right to sue therefor at any time after default. The events of default referred to herein are: failure of the Lessee to pay any one or more of the installments of rent, or any other sum, provided for in this lease as and when the same become due, within ten (10) days after written demand for the payment thereof is made by Lessor upon Lessee; the removal, attempt to remove or permitting to be removed from said premises, except in the usual course of trade, the goods, furniture, effects or other property of the Lessee or any assignee, or sub-tenant of the Lessee; the levy of an execution or other legal process upon the goods, furniture, effects or other property of the Lessee brought on the leased premises or upon the interest of the Lessee in this lease; the filing of a Petition of Bankruptcy, a Petition for an Arraignment or reorganization by or against the Lessee; the appointment of a receiver or trustee, or other court officer, for the assets, of the Lessee; the execution of an assignment for the benefit of creditors of the Lessee; the vacation or abandonment by the Lessee of the leased premises or the use thereof for any purpose other than the purpose for which the same are hereby let or (if the rental herein is based in whole or in part on the percentage of Lessee's sales) failure of the Lessee to exercise diligent effort to produce the maximum volume of sales; the assignment by Lessee of this lease or the re-letting

for sub-letting by the Lessee of the leased premises or any part thereof without notifying the Lessor in writing within ten (10) days thereafter; the violation by the Lessee of any other of the terms, conditions or covenants on the part of the Lessee herein contained and failure of the Lessee to remedy such violation within ten (10) days after written notice thereof is given by the Lessor to the Lessee.

The Lessee will pay Lessor a reasonable attorney's fee in the event Lessor employs an attorney to collect any rents due hereunder by Lessee, or to protect the interest of Lessor in the event the Lessee is adjudged a bankrupt, or legal process is levied upon the goods, furniture, effects or personal property of the Lessee upon the said premises, or upon the interest of the Lessee in this Lease or in said premises, or in the event the Lessee violates any of the terms, conditions, or covenants on the part of the Lessee herein contained. In order to further secure the prompt payments of said rents, as and when the same mature, and the faithful performance by the Lessee of all and singular the terms, conditions and covenants on the part of the Lessee herein contained, and all damages, and costs that the Lessor may sustain by reason of the violation of said terms, conditions and covenants, or any of them, the Lessee does hereby waive any and all rights to claim personal property as exempt from levy and sale.

18. TRANSFER OR ASSIGNMENT. Each and every transfer or assignment of this lease, or any interest therein, and each and every sub-letting of said premises, or any part thereof, or any interest therein, shall be null and void, unless the Lessor be notified thereof in writing within ten days thereafter. As a condition precedent to such transfer or sub-letting, etc., the assignee or sub-lessee must assume, in writing, all of the obligations of the Lessee hereunder, but such assumption shall not operate to release the Lessee from any agreement or understanding on the part of the Lessee expressed or implied in this lease.

19. RELOCATE ELECTRICAL LINES. Lessor agrees, at Lessor's expense, to relocate the present electrical utility lines and wires, now crossing the demised premises, if the Lessee so requires, along the new Highway 31 on the eastern right of way line.

20. LESSEE HOLD HARMLESS. Lessee will indemnify and hold Lessor and Lessor's agent free and harmless from all demands, claims, suits caused by any default committed hereunder on the part of the Lessee. Lessee will further indemnify and save harmless Lessor and Lessor's agent from any loss, cost, damage, and/or expenses caused by injuries to persons or property while in, or about, the demised premises, not attributable to the willfully wrongful act of the Lessor or Lessor's Agent. Any property stored in the demised premises shall be at the sole risk of Lessee.

21. EMINENT DOMAIN, ETC. In the event of any change in grade of adjoining streets, alleys, or highways, or in the event the demised premises shall be taken by or pursuant to any governmental authority or through the exercise of the right of eminent domain; or in the event any part of said demised premises, or any interest therein, including, but not limited to the right of free access to the demised premises, is so taken or substantially interfered with and said demised premises after said taking or interference in the opinion of the Lessee, is not suitable for the operation of a car wash, this lease, at the option of Lessee, shall terminate without liability on the part of Lessee, or Lessee may continue in possession of the remaining portion of said demised premises, in which event the rent herein shall be reduced in proportion to the reduction of the utilizable area of the premises, but nothing herein shall be deemed a waiver of the sole right of the Lessee to any award for damages to it or to its leasehold interest caused by such taking, whether

made separately or as a part of the general award. Lessor shall carry out at its expense any regrading of the premises and approaches thereto necessary to conform the premises to any change in grade of any adjoining streets, alleys, or highways.

IN WITNESS WHEREOF, the Lessor and Lessee have duly signed these presents and affixed their respective seals this day and year first above written.

WITNESS:

MELINA FIORELLA TRUST

John Thomas

By:

Sam A. Fiorella
Lessor Trustee

Carol Harris

Joe R. Brucato
Lessee

Mr. Guy J. Smith
2406 Tyler Road
Birmingham, Alabama 35226
June 20, 1984

Mr. Sam A. Fiorella, Trustee
Melina Fiorella Trust
623 South 29th Street
Birmingham, Alabama 35233


Dear Sir:

Pursuant to Paragraph 18 of the Agreement between you and Mr. Joe R. Brocato notice is hereby given of the transfer and/or assignment of the following property situated in Pelham, Shelby County, Alabama:

A tract of land lying partly in the NW 1/4 of SW 1/4, Section 6, Township 20S, Range 2 West, and partly in the NE 1/4 of the SE 1/4, Section 1, Township 20S, Range 3 West, and fronting 200 feet on the east side of new Highway 31, with depth of approximately 218 feet, comprising one (1.0) acre.

Said property contains a building suitable for the use as a car wash operation. The assignee/sublessee assumes all of the obligations of the lessee under said agreement. I would kindly appreciate your forwarding to me the necessary documents to effect the assignment/sub-lease. It is my understanding that the monthly payments will be made directly to you.

Very truly yours,


Guy J. Smith


Nell T. Smith

vc

cc: Joe R. Brocato

Pelham Car Wash
2599 Highway 31 South
Birmingham, Alabama 35124
June 18, 1984

Mr. Sam A. Fiorella, Trustee
Melina Fiorella Trust
623 South 29th Street
Birmingham, Alabama 35233

Dear Sir:

Pursuant to Paragraph 18 (Transfer or Assignment) of our Agreement of October 16, 1973, notice is hereby given of the transfer and/or assignment of our lease agreement to Guy J. Smith and Nell T. Smith. Mr. & Mrs. Smith understand and agree to all of my obligations as lessee under said agreement. I also understand that I am not released from the terms and conditions of our agreement by their subleasing and/or assuming the same. Please forward the necessary papers to Mr. & Mrs. Smith for their signature.

Very truly yours,

Joe R. Brocato

Joe R. Brocato

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vc

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Sam A. Fiorella

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SHELBY COUNTY JUDGE OF PROBATE
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