

LANDLORD'S SUBORDINATION AND WAIVER

KNOW ALL MEN BY THESE PRESENTS, that JAMES F. DONOVAN and DOROTHY DONOVAN (collectively referred to herein as "Landlord"), being the owner and landlord with regard to the real property described on Exhibit "A" ("Premises"), having leased such Premises to PEAK, INC., an Alabama corporation ("Tenant"), under a Lease Agreement dated March 22, 1995 (the "Lease"), does hereby:

(a) Acknowledge that Landlord has received notice that Tenant is about to enter into certain agreements including a Leasehold Mortgage and Security Agreement, a Commercial Loan Agreement, a Modification to Loan Agreement, and other related documents (the "Loan Documents") with First Alabama Bank, an Alabama banking corporation (the "Secured Party"), whereby Tenant will grant to Secured Party a mortgage on its leasehold interest in the Premises and a security interest in all improvements, personal property, furniture, fixtures, equipment, and all materials delivered to the Premises to be used in construction of an Express Oil Change Business thereon, which are now owned or hereafter acquired by Tenant (said personal property is collectively referred to herein as the "Collateral"), all or part of which may be located on the Premises. Landlord agrees only to what follows hereafter as concerns this Subordination Agreement and has not seen and is not bound by anything in the Loan Documents except as set forth herein.

(b) Agree that in the event Secured Party forecloses the Leasehold Mortgage and Security Agreement, such foreclosure sale will not constitute an event of default under the Lease, and any purchaser at such foreclosure sale, and any assignee of such purchaser, shall have the right to perform Tenant's obligations under the Lease notwithstanding the provisions of paragraph 6.01 of the Lease.

(c) In order to further induce the Secured Party to enter into the Loan Documents with Tenant, irrevocably waive and release any and all right of distraint, levy, or execution against the Collateral for any rent or other sums due or to become due under the Lease or otherwise, and all claims and demands of every kind against the Collateral, during the term of the Loan Documents and any renewal, extension, or modification thereof or any substitution therefor.

(d) Agree that Tenant's granting of the mortgage and security interest pursuant to the Loan Documents shall not constitute a breach or default under the Lease.

(e) Agree that the Collateral will remain personal property and will not become part of the Premises, and that Secured Party may enter the Premises at any time to remove the Collateral in the exercise of its rights and remedies arising from the aforesaid Loan Documents and may occupy said Premises for the purpose of maintaining possession of the Collateral and preparing for and conducting a sale of the Collateral, whether private or public. In the event that the Secured Party, or any purchaser at a foreclosure sale or any assignee of such purchaser, enters into occupation of the Premises for the purposes set forth above in this paragraph (e), it shall be liable only for the rents that accrue during the period of such possession or occupation,

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at the rental rate set forth in the Lease. Secured Party or its purchaser at a foreclosure sale, or such purchaser's assignee, shall comply with paragraph 5.03(c) of the Lease.

(f) Agree to make this Landlord's Subordination and Waiver known to any transferee of the Premises and any person who may have any interest or right in the Premises or the Collateral.

(g) Agree to promptly notify Secured Party in writing of any default by Tenant under the Lease. Secured Party shall have the right, but not the obligation, to cure such default in accordance with the provisions of paragraph 7.01 of the Lease. Any dispute between Secured Party and Express Oil Change Inc. ("Franchisor"), concerning the priority of their respective rights to cure such default and perform Tenant's obligations under the Lease shall be governed by the Subordination Agreement between Secured Party and Franchisor, a copy of which is attached hereto as Exhibit B.

(h) Represents and warrants to Secured Party that the Lease is in full force and effect and that no breach or event of default presently exists.

This Landlord's Subordination and Waiver shall be binding upon the successors and assigns of the Landlord, and shall inure to the benefit of the successors and assigns of the Secured Party.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has executed and delivered this Waiver this the 30th day of June, 1995.

James F. Donovan
JAMES F. DONOVAN

Dorothy H. Donovan
DOROTHY DONOVAN

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that JAMES F. DONOVAN, whose name 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 executed the same voluntarily on the date the same bears date.

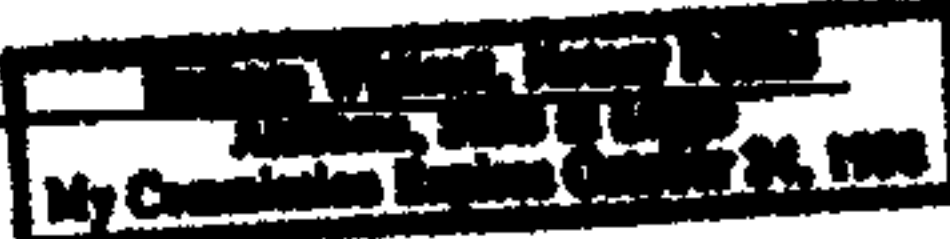
Given under my hand and official seal this the 30th day of June, 1995.

Barbara Whitsett
Notary Public
My Commission Expires: 

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that DOROTHY DONOVAN, whose name 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 executed the same voluntarily on the date the same bears date.

Given under my hand and official seal this the 30th day of June, 1995.

Barbara Whitsett
Notary Public
My Commission Expires: 

This document was prepared by:

Joe A. Joseph
Lange, Simpson, Robinson & Somerville
417 20th Street North, Suite 1700
Birmingham, AL 35203

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Amended Exhibit "A"

LEASE DESCRIPTION

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 31, TOWNSHIP 18 SOUTH, RANGE 1 WEST; THENCE RUN NORTH ALONG THE EAST LINE OF SAID SECTION A DISTANCE OF 1663.70 FEET; THENCE TURN LEFT 90-18'08" AND RUN WEST 533.53 FEET; THENCE TURN LEFT 90-00'00" AND RUN SOUTH 239.54 FEET; THENCE TURN 83-08'00" RIGHT AND RUN WESTERLY ALONG THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 280 24.75 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE WESTERLY 120.00 FEET; THENCE TURN 96-52'00 RIGHT AND RUN NORTH 256.70 FEET; THENCE TURN 90-00'00" RIGHT AND RUN EASTERLY 119.14 FEET; THENCE TURN 90-00'00 RIGHT AND RUN SOUTH 242.35 FEET TO THE POINT OF BEGINNING. SUBJECT TO ANY RIGHTS OF WAYS AND/OR EASEMENTS OF RECORD.

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