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12/28/2017 08:37:03 AM
ASSIGN 1/6

This instrument prepared by:
Austin A. Averitt, Esq.
Butler Snow LLP
One Federal Place, Suite 1000
1819 Fifth Avenue North
Birmingham, Alabama 35203
(205) 297-2200

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES OF RENTS (this “**Assignment**”) is dated and is effective as of December 11, 2017, by **NEWCO2, LLC**, an Alabama limited liability company (the “**Borrower**”), with an address of One Office Park Circle, Suite 300, Birmingham, Alabama 35223, in favor of **RENASANT BANK**, a Mississippi state banking corporation, with an address of 2001 Park Place N, Suite 600, Birmingham, Alabama 35203 (together with its successors or assigns, the “**Bank**”).

RECITALS:

This Assignment is made as additional security for the payment of indebtedness due by Borrower to Bank in the original principal amount of up to Six Hundred Sixty Thousand and No/100 Dollars (\$660,000.00) (as amended, renewed, extended, modified, restated or refinanced, collectively, the “**Loan**”), as evidenced by, among other things, that certain Promissory Note of even date herewith executed and delivered by Borrower to Lender in said amount (as extended, renewed, modified or amended, the “**Note**”), and as additional security for the full and faithful performance by Borrower of all the terms, covenants and conditions of that certain Construction Loan Agreement of even date herewith by and between Borrower and Bank (the “**Loan Agreement**”; capitalized terms used and not otherwise defined herein shall have the meaning ascribed in the Loan Agreement), and all other Loan Documents evidencing or securing the Loan, together with any supplements or amendments thereto.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, and as an inducement to Bank to make the Loan to Borrower, Borrower does hereby sell, assign, transfer and set over unto Bank, its successors and assigns, all of Borrower’s interest in and to all leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the real property and improvements located in Shelby County, Alabama, as more particularly described in Exhibit “A” attached hereto and incorporated herein (the “**Land**”), together with all the rents, issues, and profits now due and which may hereafter become due under or by virtue of said leases (all leases and agreements, if any, presently existing or hereafter made, including, including without limitation, that certain Lease Agreement

effective as of December 11, 2017, between Borrower and Express Oil Change, LLC, a Delaware limited liability company, and all rents, issues, profits and other sums from time to time accruing or paid or payable thereunder, collectively the "Leases").

Borrower agrees to duly operate and maintain the Land and perform all requirements on its part to keep the Leases in full force and effect.

Borrower agrees that this Assignment shall cover all future Leases, whether written or verbal.

Borrower further agrees that it will not without the prior express written consent of Bank, (a) assign or encumber, or permit the assignment or encumbrance of, the Leases (or any amounts accruing or paid or payable thereunder), or (b) do any other act or omit to take any action which could result in the lien of the Mortgage or this Assignment being impaired.

Borrower further agrees that it will not, without the prior express written consent of Bank, which consent may not be unreasonably withheld (a) collect rents or other sums under any Leases for a period further in advance than the current month, other than security deposits, if any, or (b) except as may otherwise be permitted by the Loan Agreement, agree to any waiver of any material provision, term, condition, covenant or requirement of any Lease, modify, amend or terminate, or permit the modification, amendment or termination of any Lease, exercise any remedy under any Lease, or release any party primarily or secondarily liable under any Lease or allow any right against any party primarily or secondarily liable to be impaired by any action or inaction of Borrower.

Borrower further agrees that this Assignment may be enforced by Bank and shall remain in full force and effect so long as the Loan or other obligations secured hereby remain unpaid or unperformed.

It is the intention of the parties that this Assignment be a present and absolute assignment of the Leases and all rents and other sums thereunder; however, it is expressly understood and agreed by Borrower and Bank that Borrower reserves, and is entitled to collect, the monthly rents as they accrue, but not prior to their accrual, under the Leases, and to retain, use and enjoy the same unless and until the occurrence of an Event of Default pursuant to the Note, the Mortgage, the Loan Agreement, or the Loan Documents, or until the violation of any term, condition or agreement of this Assignment, each of which shall constitute an "Event of Default" hereunder. Upon an Event of Default, Borrower's privilege to collect the rents and other sums shall automatically terminate.

Borrower does hereby authorize and empower Bank to collect directly from the lessees under the Leases, upon demand, but only after any Event of Default hereunder, all of the rents, issues and profits now due or which may hereafter become due under or by virtue of any of the Leases, and to take such action, legal or equitable, as may be deemed necessary to enforce payment of such rents, issues and profits. Borrower hereby authorizes and directs the lessees under the Leases to pay to Bank all rents and other sums as the same become due, which authorization and directions shall become effective without further action by Borrower upon

notice from Bank that an Event of Default has occurred hereunder. Any lessee making such payment to Bank shall be under no obligation to inquire into or determine the actual existence of any Event of Default claimed by Bank.

Any amount received or collected by Bank by virtue of this Assignment shall be applied for the following purposes, but not necessarily in the order named, priority and application of such funds being within the sole discretion of Bank:

- (1) to the payment of all necessary out-of-pocket expenses (including reasonable attorneys' fees) for the operation, protection and preservation of the Land, including the usual and customary fees for management services;
- (2) to the payment of taxes and assessments levied and assessed against the Land as said taxes and assessments become due and payable;
- (3) to the payment of premiums due and payable on any insurance policy related to the Land;
- (4) to the payment of installments of principal and interest on the Note as and when they become due and payable pursuant to the terms of the Note whether by acceleration or otherwise;
- (5) to the payment of any other sums due to Bank, including those due under the Note, the Mortgage, the Loan Agreement, or the other Loan Documents; and
- (6) the balance remaining after payment of the above shall be paid to the then owner of record of the Land.

Borrower hereby agrees to indemnify Bank for, and to hold Bank harmless from, any and all liability, loss or damage which Bank might incur under the Leases or by virtue of this Assignment, as a result of any act, or failure to act, prior to foreclosure, and from any and all claims and demands whatsoever which may be asserted against Bank thereunder or hereunder, and, without limiting the generality of the foregoing, covenants that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Land upon Bank, nor the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Bank responsible or liable for any waste committed on the Land by the lessees or any other party, or for any negligence in the management, upkeep, repair or control of the Land resulting in loss or injury or death to any lessee, licensee, invitee, employee, stranger or other person. Notwithstanding the foregoing sentence Borrower shall not be obligated to indemnify Bank for Bank's damages directly caused by Bank's gross negligence or willful misconduct.

This Assignment shall be governed by and interpreted, construed and enforced according to the laws of the State of Alabama. The parties submit to exclusive personal jurisdiction in the courts of Jefferson County in the State of Alabama for the enforcement of any and all obligations under the Loan Documents, or arising out of or related to the transactions contemplated thereby

This Assignment shall be binding upon Borrower, its successors and assigns and subsequent owners of the Land, or any part thereof, and shall inure to the benefit of Bank, its successors and assigns and any holder of the Note.

EACH PARTY HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE LOAN DOCUMENTS OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF BANK AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT BANK MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF BANK TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN BORROWER AND BANK SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

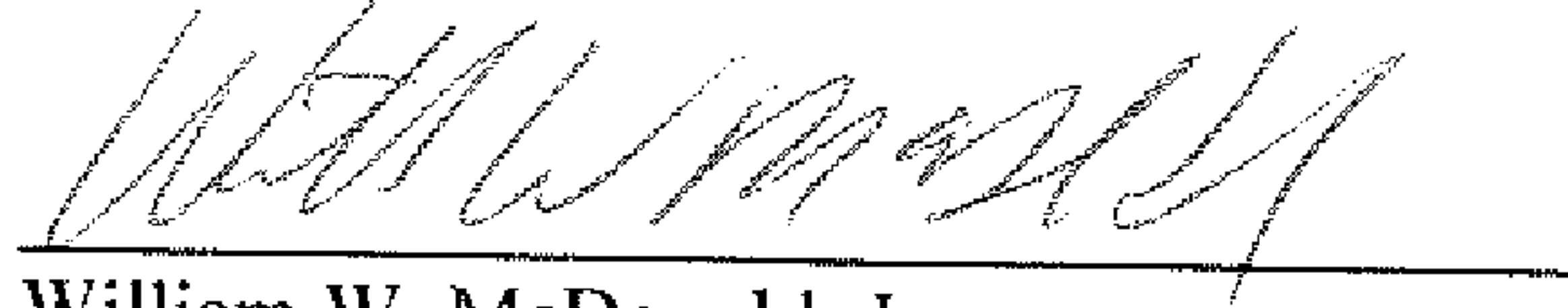
[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have caused this agreement to be executed by their respective duly authorized representative as of the date and year first above written.

BORROWER:

NEWCO2, LLC, an Alabama limited liability company

By:



William W. McDonald, Jr.

Its:

Manager

STATE OF ALABAMA

)

COUNTY OF Jefferson

)

)

I, PATRICIA FAYE WATTS, a Notary Public in and for said County, in said State, hereby certify that William W. McDonald, Jr., whose name as the manager of **NEWCO2, LLC**, an Alabama limited liability company, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said agreement, he, as such manager of the company and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal, this 5TH day of December, 2017.

[AFFIX SEAL]



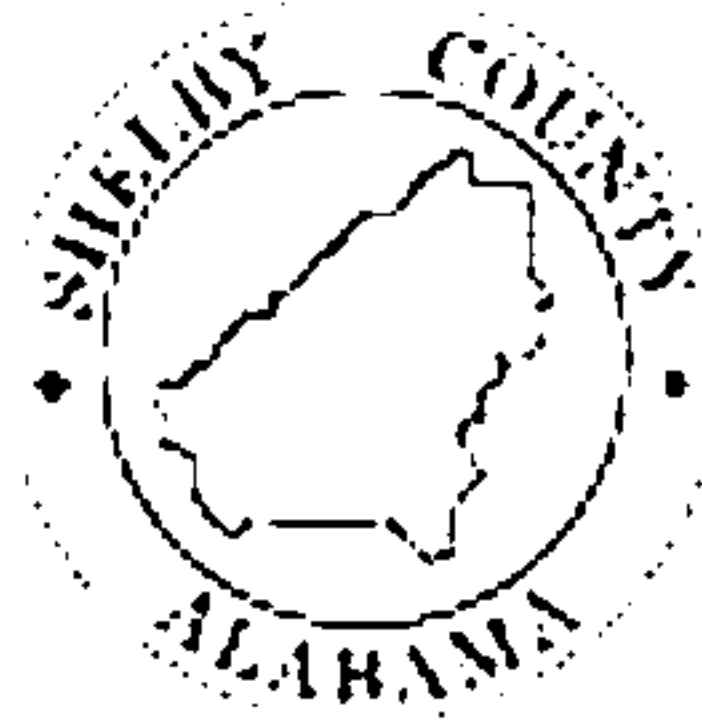
Notary Public

My Commission Expires: 8/15/2020

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EXHIBIT A

LEGAL DESCRIPTION

LOT 11, ACCORDING TO THE SURVEY OF SOUTH PARK, AS RECORDED IN MAP
BOOK 20, PAGE 100, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
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A handwritten signature in black ink, appearing to read "J. W. Fuhrmeister", is written over the official text.