

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Martin Woosley
1211 Edenton Street
Birmingham, AL 35242
Attn:

20200316000102220
03/16/2020 08:40:40 AM
SUBAGREM 1/6

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is effective as of February 19, 2020 by and between CenterState Bank, N.A., a national banking association ("Lender"), ACT Properties, LLC, an Alabama limited liability company ("Landlord"), and O'Reilly Automotive Stores, Inc., a Missouri corporation ("Tenant").

W I T N E S S E T H

WHEREAS, Landlord and Tenant have entered into that certain Build-To-Suit Lease dated March 22, 2019 and any amendment or modification thereto (collectively, the "Lease"), covering certain premises generally described as 2176 Highway 52 East, Pelham, Alabama 35124 located on real property situated in Shelby County, Alabama (the "Property"); and

WHEREAS, Lender holds a mortgage dated 2/19/2020 given by Landlord on the Property (the "Mortgage").

NOW, THEREFORE, in consideration of the mutual covenants, conditions, provisions and agreements set forth in this Agreement, as of the date hereof, Lender, Landlord and Tenant hereby represent, acknowledge, covenant and agree as follows:

1. The Lease. Landlord and Tenant covenant and represent to Lender and to each other that the Lease is in full force and effect.

2. Subordination. Tenant hereby subordinates the Lease at all times and in all respects to the Mortgage and to all renewals, modifications and extensions thereof. The Lease is and shall at all times be subordinate in all respects to the Mortgage and to all renewals, modifications and extensions thereof, but Lender and Tenant agree that any foreclosure of the Mortgage shall not terminate the Lease.

3. Non-Disturbance. Tenant's possession under the Lease and Tenant's rights and privileges thereunder shall not be diminished or interfered with by Lender, and accordingly, Tenant's occupancy shall not be disturbed by Lender during the term of the Lease, except in accordance with the terms of the Lease.

4. Recognition and Attornment. If Lender succeeds to the interest of Landlord in and to the Property or under the Lease, the Lease and all terms therein, and the rights of Tenant thereunder shall continue in full force and effect and shall not be altered, terminated or disturbed, and Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the Lease term thereof with the same force and effect as if Lender were the landlord under the Lease. In such event, Tenant shall attorn to Lender as its landlord, such attornment to be effective and self-operative without the execution of any other instruments on the part of Lender or Tenant. Upon receipt by Tenant of such notice from Lender, Tenant shall make all payments of monetary obligations due by Tenant under the Lease to Lender or as Lender may in writing direct, with no liability to Landlord. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the lease term of the Lease, shall be and are the same as are then in existence between Tenant and Landlord as set forth in the Lease.

5. Rights Under the Lease. If Lender shall (a) succeed to the interests of Landlord in and to the Property or under the Lease, or (b) enter into possession of the Property, Lender shall not be:

- (i) liable for any acts or omissions of any prior landlord (including, but not limited to, Landlord), unless Lender was given prior notice thereof;
- (ii) obligated to give Tenant a credit for and/or acknowledge any rent or additional rent which Tenant has paid to Landlord or any prior landlord which is in excess of the rent or additional rent due under the Lease unless such payment is provided for in the Lease as presently existing or as amended in accordance with this Agreement; or
- (iii) liable for any damages Tenant may suffer as a result of any misrepresentation, breach of warranty or any act or failure to act by any party other than Lender.

6. Lender Opportunity to Cure Landlord Defaults. Tenant hereby agrees that it shall provide Lender with a copy of any notice of default given to Landlord, pursuant to the terms of the Lease. In the case of any default by Landlord under the Lease which is of such a nature as to give Tenant a right to terminate the Lease, to reduce rent, or to credit or offset any amounts against future rents, Tenant agrees that no such remedy shall be exercised unless and until Lender shall have been given written notice of such default and the same time to cure such default as Landlord has under the Lease. The cure rights set forth in this Section 6 may be exercised in the sole discretion of Lender, and under no circumstance shall Lender be required to undertake curative measures on behalf of Landlord.

7. Notices. Any notice required or permitted to be delivered hereunder shall be deemed received on the date actually received or rejected if the notice is deposited in the United States mail, postage prepaid, certified mail, return receipt requested, or one business day after being sent by Federal Express or similar overnight courier, addressed to Tenant, Landlord or Lender, as the case may be, at the address of such party set forth opposite the signature of such party hereto, or such other address as may thereafter be provided in writing to the respective parties. Any notice sent to any party hereunder shall be sent to all parties hereunder. Tenant shall be entitled to rely upon any notice from Lender hereunder as to the matters stated in and covered by any such notice.

8. Assignment of Rents. Tenant acknowledges and agrees that this Agreement constitutes notice to Tenant of the existence of the Mortgage and that the Lease and the rent have been assigned to Lender as security for the note.

9. Applicable Law. This Agreement is governed by and will be construed in accordance with the laws of the State of Alabama.

10. Entire Agreement. This Agreement contains the sole and entire agreement and understanding between the parties with respect to the subject matter hereof and shall supersede any and all other oral or written agreements between the parties with respect to the subject matter hereof. If this Agreement conflicts with the Lease, then the Lease shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Subordination, Non-Disturbance and Attornment Agreement to be duly executed on the respective dates indicated below (the latest of which is the date hereof), but this Agreement is made by the parties hereto effective as of the day and year first above written.

LENDER:

CenterState Bank, N.A.,
a national banking association

1/29/20
Date

CenterState Bank
600 Luckie Drive
Birmingham, Alabama 35209

By: [Signature]
Name: Nathan Sasse
Title: Vice President

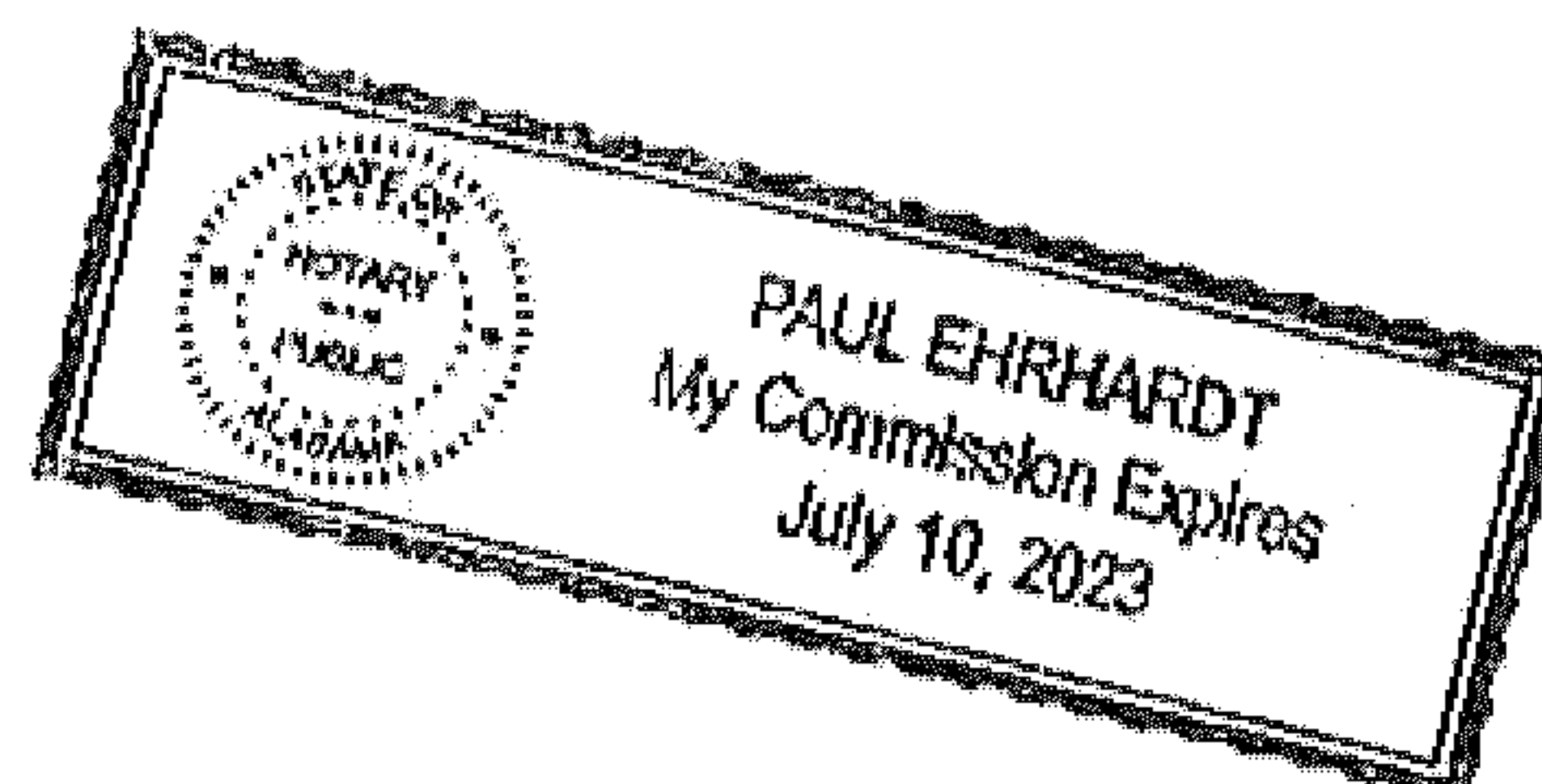
LENDER ACKNOWLEDGEMENT

STATE OF Alabama)
COUNTY OF Jefferson)

On this 29 day of January, 2020, before me personally appeared Nathan Sasse, to me known to be the person described in and who executed the foregoing and acknowledged that (s)he executed the same as her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal in the County of Jefferson, the day and year first above written.

[Signature]
Notary Public



LANDLORD:

ACT Properties, LLC,
an Alabama limited liability company

Date

ACT Properties, LLC
2725 Lockerbie Circle
Birmingham, Alabama 35223

By:

Name: Carl S. Thigpen

Title: Authorized Member

LANDLORD ACKNOWLEDGEMENT

STATE OF Alabama)

COUNTY OF Shelby)

On this 29th day of January, ~~2019~~ 2020, before me personally appeared Carl S. Thigpen, to me known to be the person described in and who executed the foregoing and acknowledged that (s)he executed the same as her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal in the County of Shelby, the day and year first above written.

Notary Public

My Commission Expires
November 1, 2020

TENANT:

O'Reilly Automotive Stores, Inc.,
a Missouri corporation

2-11-2020
Date

233 South Patterson
Springfield, MO 65802
Attn: Property Management

By: Carol E. Kirkman
Name: Carol E. Kirkman
Title: Director of Property Management
& ADA Compliance

TENANT ACKNOWLEDGEMENT

STATE OF MISSOURI)
COUNTY OF GREENE)

On this 11th day of February, 2020, before me personally appeared Carol E. Kirkman, to me known to be the person described in and who executed the foregoing and acknowledged that she executed the same as her free act and deed.

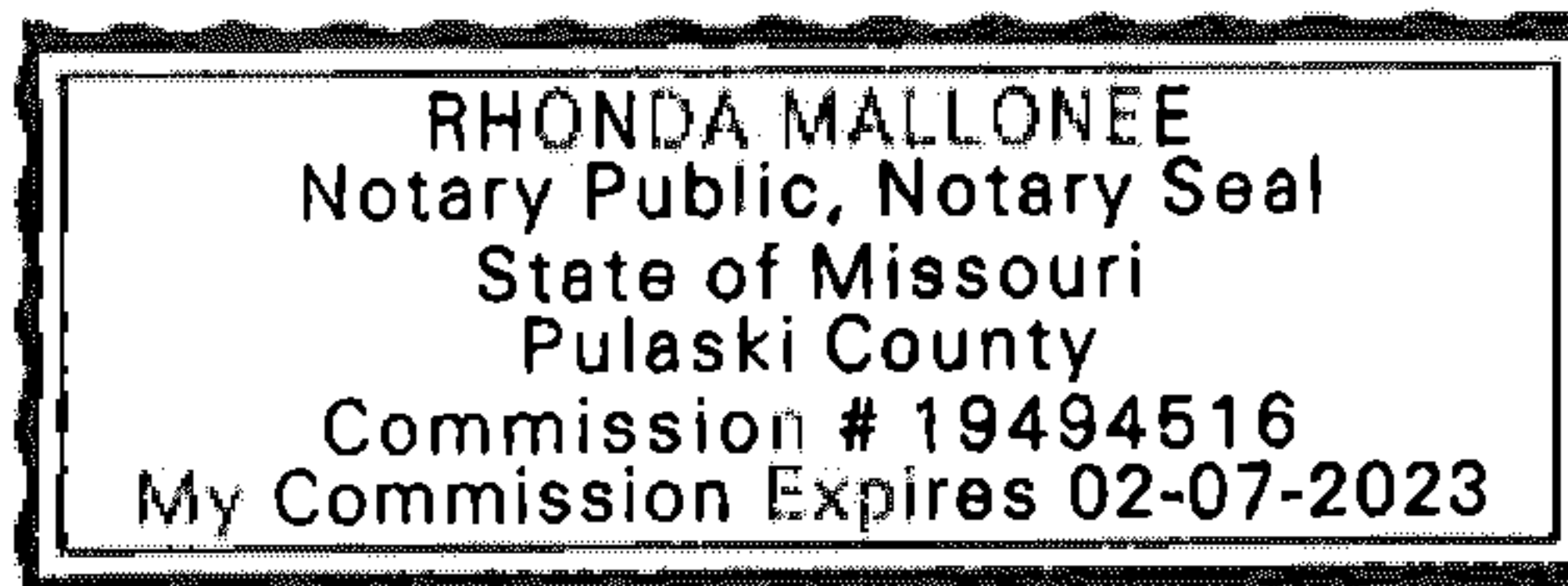
IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal in the County of Greene, the day and year first above written.

Rhonda Mallonee
Notary Public



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
03/16/2020 08:40:40 AM
\$37.00 CHERRY
20200316000102220

Allen S. Byrd



Subordination Nondisturbance Attornment