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Shelby Cnty Judge of Probate, AL
09/13/2023 08:10:52 AM FILED/CERT

This instrument was prepared by
and after recording return to:
Trevor T. Jones
Fortson, Bentley and Griffin, P.A.
2500 Daniell's Bridge Road
Building 200, Suite 3A
Athens, Georgia 30606
(706) 548-1151

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") made as of the 24th day of June, 2023, by and among **OAKWORTH CAPITAL BANK**, an Alabama state banking corporation, whose address for notice under this Agreement is 850 Shades Creek Parkway, Ste 200, Birmingham, AL 35209 ("Lender"), **RESOURCE HOLDINGS, LLC**, an Alabama limited liability company, whose address for notice under this Agreement is 100 Centreview Drive, Suite 152, Birmingham, Alabama 35216, Attn: Donna Bruno ("Landlord") and **NEW CAR WASH, LLC**, a Delaware limited liability company, whose address for notice under this Agreement is 1401 Peachtree Street, Atlanta, Georgia 30309 ("Tenant").

Lender has made a loan to Landlord, as evidenced by, among other loan documents, a promissory note (the "Note") made by Landlord to order of Lender and which is secured by, among other things, that certain Mortgage dated November 7, 2019, recorded in Instrument No. 20191108000415210 in the Probate Office of Shelby County, Alabama (the "Mortgage") made by Landlord covering the land described on Exhibit A attached hereto (the "Property")

Tenant is the tenant or lessee under that certain Ground Lease dated effective as of April 25, 2023 (which lease, as the same may have been amended and supplemented as of the date hereof, is hereinafter called the "Lease"), whereby Tenant ground leases the Property from Landlord.

The parties hereto desire to make the Lease subject and subordinate to the Mortgage, subject to and in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Subordination. The Lease, as the same may hereafter be modified, amended or extended, and all of Tenant's right, title and interest in and to the Property, including all rights, remedies and options of Tenant under the Lease, are and shall be unconditionally subject and subordinate to the lien



of the Mortgage, and to all renewals, modifications, consolidations, replacements, substitutions and extensions thereof.

2. Non-disturbance/Attornment. Lender agrees that so long as no event exists on Tenant's part that constitutes a default under the Lease (following the expiration of any applicable grace or cure period), Lender shall honor and recognize all of Tenant's rights under the Lease, and that Tenant's leasehold estate under the Lease shall not be terminated by Lender and Tenant's possession of the Property shall not be disturbed by Lender, and Lender will not join Tenant as a party defendant for the purpose of terminating Tenant's interest and estate under the Lease in any proceeding for foreclosure of the Mortgage. Tenant shall attorn to Lender upon any foreclosure of the lien of the Mortgage and sale of the Property or deed-in-lieu of foreclosure of the Property, and shall recognize Lender as the landlord or lessor under the Lease, and shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Lender will accept the attornment of Tenant. Such attornment will be effective and self-operative without the execution of any further instrument.

3. Landlord Default. Tenant agrees to give Lender a copy of any default notice sent by Tenant to Landlord. Tenant agrees not to exercise any right to terminate the Lease, or to claim a partial or total eviction, or to reduce the rent payable under the Lease or credit or offset any amounts against future rents payable under the Lease (except as expressly allowed as provided in the Lease) due to any default by Landlord until it has given written notice of such default to Lender and a period of not less than thirty (30) days for remedying such default (except in the event of an emergency); provided, however, that Tenant may give Lender such notice at the same time notice is given to Landlord, such that the parties' cure periods may run concurrently. If Landlord's default cannot be cured within such thirty (30) day period, the time within which such default may be cured by Lender shall be extended for such reasonable period as may be necessary to complete the curing of the same so long as Lender proceeds promptly to effect a cure during such thirty (30) day period and thereafter prosecutes the curing of such default with diligence. Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Lease.

4. Limitation of Lender's Liability. If Lender succeeds to the position of landlord or lessor under the Lease and Tenant attorns to Lender as provided for above, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease, but Lender shall not be liable or bound to Tenant:

(a) for any act, obligation or omission of any prior landlord (including Landlord), provided that Lender as successor landlord shall be obligated to cure any continuing default of the prior landlord of which it has received prior written notice and shall be liable for acts or omissions accruing or arising after Lender's succession to the position of landlord and commencement of control and management of the Property; or

(b) for any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or

(c) for any rent or additional rent which Tenant might have paid for more than the then current month to any prior landlord (including Landlord), provided that the regular monthly payments by Tenant of common area maintenance expenses and real property taxes and other pass-through expenses paid to Landlord under the Lease shall not be deemed payments paid more than one month in advance; or

(d) for any security deposit, rental deposit or similar deposit given by Tenant to a prior landlord (including Landlord) unless such deposit is actually paid over to Lender by the prior landlord; or



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(e) any amendments or modifications of the Lease made without Lender's prior written consent, to the extent that any such amendment or modification shall extend the term of the Lease or materially and adversely affect Landlord's rights or obligations under the Lease.

5. Assignment of Rents. Tenant acknowledges that Landlord has assigned to Lender its right, title and interest in the Lease and to the rents, issues and profits of the Property pursuant to the Mortgage and pursuant to that certain Assignment of Rents and Leases dated November 7, 2019 recorded in Instrument No. 20191108000415220 in the Probate Office of Shelby County, Alabama (the "Assignment"). Upon receipt by Tenant of written notice from Lender that Lender has elected to terminate the license granted to Landlord to collect rents, and directing the payment of rents and other amounts due under the Lease by Tenant to Lender, Tenant shall comply with such direction to pay and shall not be required to determine whether Landlord is in default under the Note, Mortgage, or Assignment.

6. Landlord's Consent. Landlord is joining herein solely for the purpose of consenting to the terms and conditions of this Agreement and agreeing that Tenant may rely upon any and all notices from Lender relating to the rights of Lender hereunder and under the Assignment.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.

8. Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (a) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (b) by delivering same in person to the intended addressee; or (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth above; provided, however, that every party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other parties in the manner set forth herein.

9. Governing Law. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state where the Property is located.

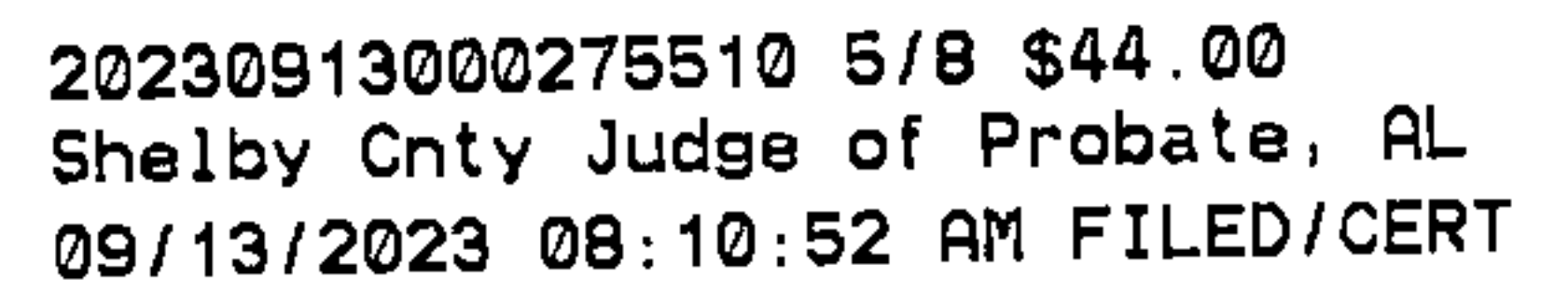
10. Binding Effect. This Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and assigns. As used herein "Lender" shall include any subsequent holder of the Mortgage, and any transferee of Lender's or Landlord's title in and to the Property by or following Lender's exercise of its rights and remedies under the Mortgage.


11. Lender's Obligations. Nothing in this Agreement shall impose upon Lender any liability for the obligations of Owner under the Lease unless and until Lender takes title to the Property, at which time Lender shall be responsible only for ongoing obligations arising after the date such Lender takes title and possession of the Property, except as otherwise provided in Section 4 above. Anything herein or in the Lease to the contrary notwithstanding, in the event Lender takes title to the Property, Tenant agrees that it shall look solely to Lender's interest in the Premises and the Lease for the satisfaction of Tenant's remedies or to collect any judgment requiring payment of any money by Lender..



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[The signature pages follow.]



By: 
Name: Craig Campbell
Title: Managing Director



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TENANT

NEW CAR WASH, LLC
a Delaware limited liability company

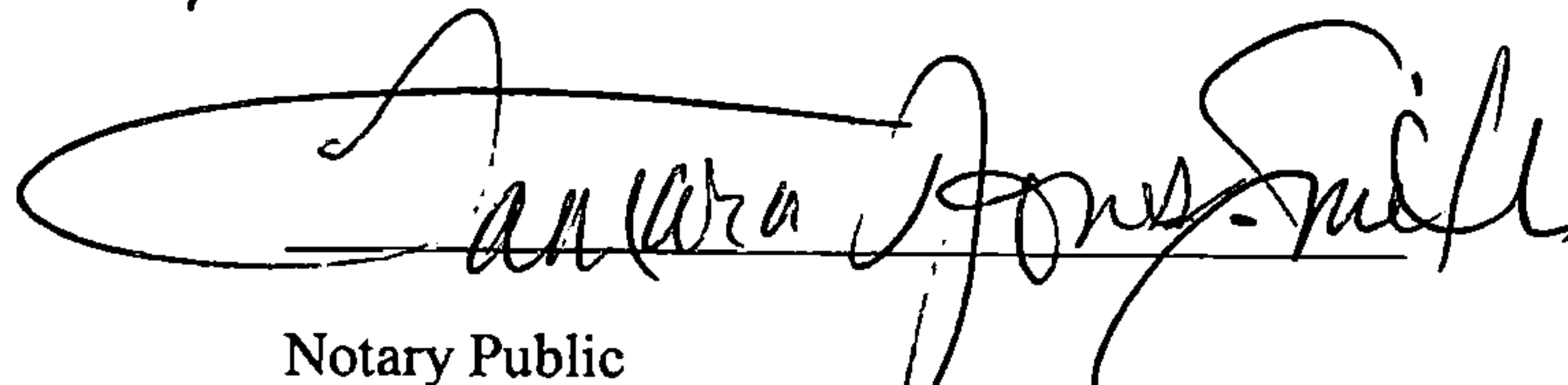
By: 
Name: Martin Emmett
Title: Managing Member

STATE OF Georgia)
Fulton COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Martin Emmett, whose name as Managing Member of New Car Wash, LLC, a Delaware 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 the instrument, he, as such Managing Member 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 this the 22 day of June, 2023.

[NOTARIAL SEAL]


Notary Public

My Commission Expires December 29, 2026

TAMARA JONES-SMITH
NOTARY PUBLIC
COBB County
State of Georgia
My Comm. Expires December 29, 2026

[Signatures continue on following page.]



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LANDLORD

RESOURCE HOLDINGS, LLC,
an Alabama limited liability company

By: Donna M. Bruno
Name: DONNA M. BRUNO
Title: MANAGER

STATE OF ALABAMA
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that DONNA M. BRUND, whose name as MANAGER of Resource Holdings, 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 the instrument, he/she, as such _____ 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 this the 26TH day of JUNE, 2023.

[NOTARIAL SEAL]

Jeanette S. Walker
Notary Public

**My Commission Expires
October 22, 2023**

My Commission Expires: **October 22,**



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EXHIBIT A

THE PROPERTY

Lot 1A according to the survey of Resource Center, as recorded in Map Book 24, Page 118 in the Probate Office of Shelby County, Alabama.