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CITY OF BIRMINGHAM, ALABAMA
DEPARTMENT OF PLANNING, ENGINEERING AND PERMITS
STORM WATER PRACTICES MAINTENANCE AGREEMENT
AND RESTRICTIVE COVENANT

STATE OF ALABAMA

Corporate Form

COUNTY OF JEFFERSON

THIS COVENANT, made and entered into this 31 day of August 2023 by (Insert Full Name of Owner) New Car Wash LLC hereinafter called the "Landowner",

WITNESSETH, that WHEREAS, the Landowner is the owner of certain real property described as (Tax Map/Parcel Identification Number) 027360001011.000 as more particularly described in the warranty deed recorded in Deed Book 24, at page 118, public records of ~~Jefferson~~ Shelby County, Alabama, hereinafter called the "Property", and as designated by the City of Birmingham AL Department of Planning, Engineering and Permits as Case Number CNS2023-00026

-OR-

Exhibit "A" attached hereto and made a part of this Covenant.

WHEREAS, the Landowner is proceeding to construct improvements on the Property; and

WHEREAS, the Storm Water Management Plan known as Dirty Dog's Carwash (Name of Plan/Development), hereinafter called the "Plan", filed at the Department Engineering, Planning and Permits of the City of Birmingham (the "City") which is expressly made a part hereof, as approved or to be approved by the City, and which provides for management of storm water quantity and/or quality within the confines of the Property; and

WHEREAS, the City requires a Storm Water Practices Location Map, hereinafter called the "Map", showing the location(s) and identifies the type(s) of storm water practices located on the property be included in this Maintenance Agreement; and

WHEREAS, the City prepared and published the *Property Owner's Guide to BMP Maintenance*, hereinafter called the "Maintenance Manual", providing guidance on the inspection and maintenance practices for the storm water practices located on the property be provided with the Plan; and

WHEREAS, the City requires that on-site storm water practices as shown on the Map be constructed and adequately maintained by the Landowner, in conformity with provisions of the *City of Birmingham Storm Water Management Ordinance*;

NOW, THEREFORE, in consideration of the foregoing premises, the covenants contained herein, and the following terms and conditions, the Landowner, for itself, its successors and assigns, covenants and agrees as follows:

1. The storm water practices located on the property, as shown on the Map, shall be constructed by the Landowner in accordance with the plans and specifications identified in the Plan.

2. The Map included in this Covenant the Plan shall accurately show the location and correctly identify the type of every storm water practice located on the Property.
3. The Landowner and person in possession of the property (hereafter, collectively referred to as "Landowner") are prohibited from removing, relocating, or modifying the storm water practices located on the Property without prior approval from the City. The City approval may require preparation and submittal of a new Plan. Modifications to storm water practices made as part of routine or remedial maintenance are allowed without prior City approval, provided said modifications are in keeping with the Maintenance Manual and do not result in a reduction or modification of the practice as designed in the approved Plan.
4. The Landowner shall adequately maintain the storm water practices, including all structures, improvements, vegetation, pipes, channels, or other appurtenances built as part of the practices to control, convey, contain, hold, detain, infiltrate, capture and reuse, evapotranspire, or treat storm water from the Property. "Adequate maintenance" as used herein means that the practices are kept in good working condition so that they perform their design functions. Adequate maintenance is described in the Maintenance Manual.
5. Significant alteration of a storm water practice addressed by this Covenant from its as-constructed condition, or relocation of a storm water practice addressed by the Covenant are prohibited without prior approval by the City and may require a new storm water permit and Covenant.
6. On each anniversary of this Covenant, the Landowner shall inspect the storm water practices and document the inspection on a form furnished by the City. The purpose of the inspection is to assure safe and proper functioning of the storm water practices. The inspection shall cover the entire storm water practices, as shown on the Plan, and any deficiencies shall be noted in the inspection form. The inspection documentation shall be kept on file by the Landowner for a period of three (3) years and shall be made available to the City upon request.
7. The Landowner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property, upon reasonable notice to the Landowner and during normal business hours and upon the presentation of appropriate credentials, for the purpose of inspecting the storm water practices as the City deems necessary. The Landowner or the Landowner's designated person(s) responsible for storm water practice maintenance shall be present during the City's inspection.

The purpose of such inspections is to ascertain whether practices are maintained, inspect practice condition, follow up on reported deficiencies, and/or to respond to citizen complaints. The City shall provide the Landowner copies of the inspections findings if requested by the Landowner. Where maintenance or operations deficiencies are noted, the City will provide the Landowner with a statement of said deficiencies and corrective actions required to be made the Landowner to cure the deficiencies.

8. In the event the Landowner fails to maintain the storm water practices in good working condition acceptable to the City, the City may enter upon the Property and take whatever steps necessary to correct deficiencies identified or abate public nuisances caused by the deficiencies and to charge the costs of such repairs or abatement to the Landowner in accordance with the *City of Birmingham Storm Water Management Ordinance*. The Landowner expressly understands and agrees that the City is under no obligation to routinely maintain or repair the storm water practices, and in no event shall this Covenant be construed to impose any such obligation on the City. Failure of the City to inspect, however, does not excuse or waive noncompliance by the Landowner nor make the City liable of any deficiency or condition that may have been revealed in an inspection.

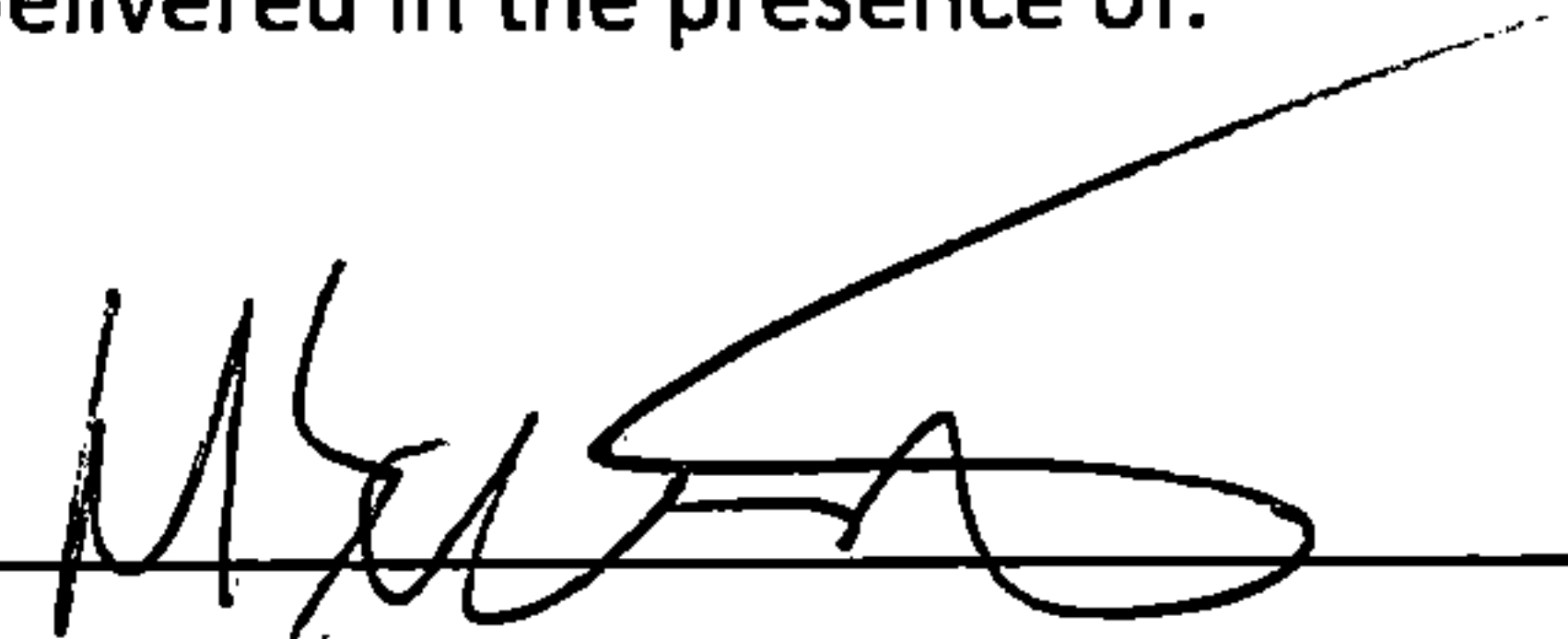


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9. The cost of such repairs shall constitute a lien, in favor of the City, enforceable against the Property as provided in the *City of Birmingham Storm Water Management Ordinance*.
10. The Landowner agrees to fully indemnify and hold the City harmless from any liability resulting from failure of the storm water practices maintained on the Property to operate properly.
11. This Covenant shall be recorded in the public records of ~~Jefferson~~ ^{Shelby} County, Alabama, and shall constitute a perpetual covenant running with the land, and shall be binding on the Landowner, its heirs, administrators, executors, successors and assigns until such time it is lawfully modified or released. It shall be the responsibility of the Landowner to seek release of this covenant if desired.
12. Modification or release of this Covenant may be allowed if the storm water practices encompassed by this Covenant:
 - a. will be, or have been, significantly altered or relocated such that this Covenant and its storm water practices map are incorrect and will, or do, not reflect the actual type or location of practice(s) located on the property. Note that significant alterations or relocation of storm water practice is prohibited without prior approval by the director;
 - b. will be, or are, no longer needed due to construction of other storm water practices, either on or off the property, that will, or do, manage the storm water handled by the practice(s) encompassed under this covenant; or;
 - c. will be, or have been, removed or relocated due to planned redevelopment of a portion, or all, of the property.
13. Landowners seeking to modify or release this Covenant shall request such modification or release from the Director of the City of Birmingham Department of Planning, Engineering and Permits (director). In the event the director denies the request, the Landowner may appeal the decision to the City of Birmingham storm water appeals board, as provided in section 4-8-05 of the General Code of the City of Birmingham, as it may be amended. In the event the position of director and/or the storm water appeals board are amended or eliminated in the future, application for modification or release shall be made to the person or body succeeding to the powers and duties of the director and/or storm water appeals board or as provided in any amended or succeeding post-construction storm water management ordinance.

IN WITNESS WHEREOF, the Landowner has executed and delivered this Covenant the day and year first above written.

Signed, sealed, and delivered in the presence of:

By:  LANDOWNER

STATE OF ~~ALABAMA~~ ^{Georgia}
COUNTY OF ~~JEFFERSON~~ ^{Fulton}

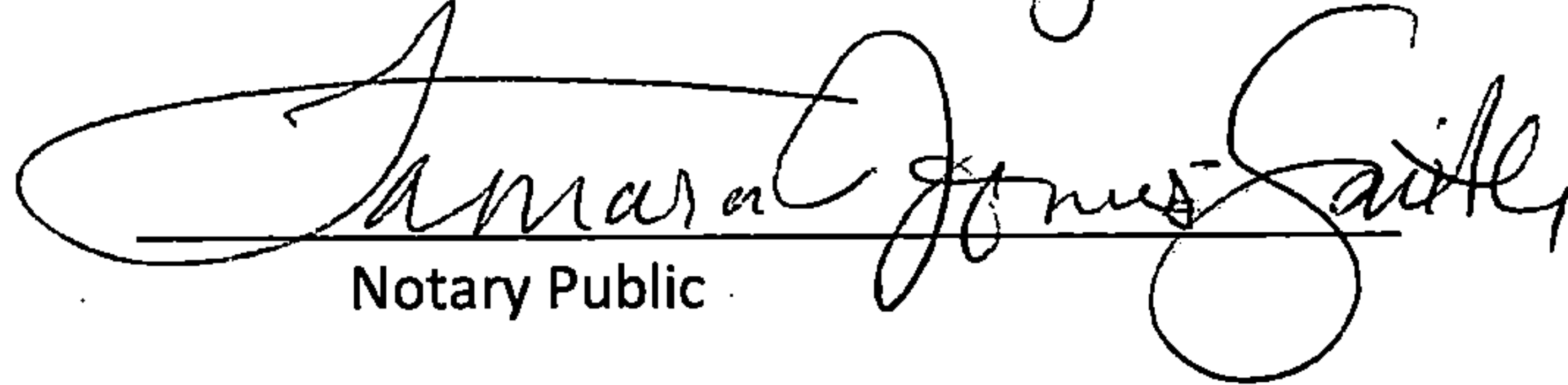
The undersigned, a notary public in and for said county in said state, hereby certify that Martin Emmett, whose name as President of New Car Wash, LLC, an Alabama entity is signed to the foregoing



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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 officer and with full authority, executed the same voluntarily for and as the act of said entity, on the day the same bears date.

Given under my hand and seal of office this 31st day of Aug, 2023.


Notary Public

[SEAL]

My Commission Expires: December 29, 2026

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

EXHIBIT A



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