


THIS INSTRUMENT WAS PREPARED BY
AND UPON RECORDING RETURN TO:

STATE OF ALABAMA

COUNTY OF SHELBY

Chevron U.S.A. Inc.
Corporate Treasury
Chevron Credit Department Attn: Erick Onishi
2001 Diamond Blvd.
Concord, CA 94520

Re: Xpress Investments, LLC
851 First St. N., Alabaster, AL 35007


20100810000255330 1/29 \$1801.50
Shelby Cnty Judge of Probate, AL
08/10/2010 10:58:07 AM FILED/CERT

Note to Judge of Probate: \$2,794.50 mortgage filing privilege taxes have previously been paid on the indebtedness amount of \$1,863,000.00 in connection with the recordation of the following Mortgages, Assignment of Leases and Rents, Security Agreement and Financing Statements dated December 27, 2006 and recorded in i) Mortgage Book 2007, page 1123, in the Office of the Judge of Probate of St. Clair County, Alabama, ii) Book 2053, at Page 492, in the Office of the Judge of Probate of Walker County, Alabama, iii) Mortgage Book 1212, at Page 518, in the Office of the Judge of Probate of Talladega County, Alabama, iv) Instrument 20070104000005260, in the Office of the Judge of Probate of Shelby County, Alabama, v) Book LR200701, page 4364, in the Office of the Judge of Probate of Jefferson County, Alabama, and vi) Book LR200701, page 4335, in the Office of the Judge of Probate of Jefferson County, Alabama. This instrument is being recorded to secure an increase in the indebtedness in the amount of \$1,137,000.00.

Additional Note to Judge of Probate: This Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement along with a Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement being filed in St. Clair County secures the same debt.

Alabama (as to the property described on Exhibit "B" attached hereto)

[SPACE ABOVE FOR RECORDER'S USE ONLY]

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT and FINANCING STATEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT and FINANCING STATEMENT (herein sometimes called "Mortgage") is made as of Aug 9, 2010, between the undersigned Xpress Investments, LLC (herein, together with its successors and assigns, collectively, the "Mortgagor"), and Chevron U.S.A. Inc., a Pennsylvania corporation (herein, together with its successors and assigns, called the "Mortgagee").

RECITALS

A. WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of \$1,863,000.00 (the "Loan"), together with interest thereon, as evidenced by a certain Cash Advance Agreement dated December, 27, 2006 (said Cash Advance, as it may hereafter be amended, modified, supplemented, extended, renewed, or replaced from time to time, the "Note" or the "Promissory Note"); and

B. WHEREAS, Mortgagor and Mortgagee entered into an amendment to the Note increasing the indebtedness thereunder by \$1,137,000 to \$3,000,000 (the "Increase") and Mortgagee requires this instrument be filed in the appropriate land records office to secure the Increase; and

C. WHEREAS, Mortgagor is the owner of a fee interest in that certain property located within the County of Shelby, State of Alabama, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Estate"); and

C. WHEREAS, to induce Mortgagee to make the Loan and to secure payment of the Note and the other obligations described below, Mortgagor has agreed to execute and deliver this Mortgage.

D. It has been agreed that as a condition precedent to the making of the Note and loaning the increase, Mortgagee will further secure such indebtedness by the execution and delivery of this Mortgage.

E. NOW, THEREFORE, to secure to Mortgagee the full payment and performance of each of the following obligations (collectively, the "Liabilities") (i) the repayment of all sums due under this Mortgage and the Note (and all extensions, renewals, replacements and amendments thereof) (the "Loan Documents") including, without limitation, principal, interest, fees, late charges and expenses, including attorneys' fees; (ii) the performance of all terms, conditions and covenants set forth in the Loan Documents; (iii) the repayment of all reimbursement obligations due or that may become due under or in connection with any present or future letters of credit issued by Mortgagee for the account of Mortgagor; and (iv) all other obligations of Mortgagor to the Mortgagee, however created, arising or evidenced, whether direct or indirect, joint or several, absolute or contingent, or now or hereafter existing, or due or to become due, arising out of or in connection with the Note, the Mortgage or any other agreement between Mortgagor and Mortgagee, including without limitation, any and all advances, costs or expenses paid or incurred by Mortgagee to protect any or all of the Property (hereinafter defined) and other collateral under the Loan Documents to perform any obligation of the Mortgagor hereunder or under any of the other Loan Documents or to collect any amount owing to the Mortgagee which is secured hereby or under the other Loan Documents; interest on all of the foregoing; and all costs of enforcement and collection of this Mortgage, the Loan Documents and the Liabilities, Mortgagor hereby mortgages, grants and conveys unto Mortgagee, all of Mortgagor's right, title and interest in and to the following (collectively, the "Property"):

(i) All of the land described on Exhibit A attached hereto (the "Land"), together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise appertaining to the Land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Land; all estate, claim, demand, right, title or interest of the Mortgagor in and to any street, road, highway, or alley (vacated or otherwise) adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to

any of the foregoing (all of the foregoing is herein referred to collectively as the "Real Estate");

(ii) All buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate and owned or purported to be owned by the Mortgagor, together with all building or construction materials, equipment, appliances, machinery, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Real Estate and owned or purported to be owned by the Mortgagor, including (without limitation) all trees, shrubs and landscaping materials, reels, hoses, pumps, tanks, compressors, hydraulic lifts, generators, motors, boilers, engines and devices for the operation of pumps, and all heating, venting, electrical, lighting, power, plumbing, air conditioning, and ventilation equipment (all of the foregoing is herein referred to collectively as the "Improvements");

(iii) All furniture, furnishings, equipment (including, without limitation, telephone and other communications equipment, office and record keeping equipment, window cleaning, building cleaning, signs, monitoring, garbage, air conditioning, computers, point of sale devices, drive-through equipment and other equipment) and all other tangible property of any kind or character now or hereafter owned or purported to be owned by the Mortgagor and used or useful in connection with the Real Estate, regardless of whether located on the Real Estate or located elsewhere including, without limitation, all rights of the Mortgagor under any lease to equipment, furniture, furnishings, fixtures and other items of personal property at any time during the term of such lease below (all of the foregoing is herein referred to collectively as the "Goods");

(iv) All condemnation claims, demands, awards and settlement payments, insurance contracts, insurance payments and proceeds, unearned insurance premiums, warranties, guarantees, utility deposits, books and records of the Mortgagor relating to the Real Estate or the Improvements and all accounts, contract rights, instruments, chattel paper and other rights of the Mortgagor for payment of money to it for property sold or lent by it, for services rendered by it, for money lent by it, or for advances or deposits made by it, (including, without limitation, any deposits made by the Mortgagor pursuant to Section 1.19 and any other intangible property of the Mortgagor related to the Real Estate or the Improvements (all of the foregoing is herein referred to collectively as the "Intangibles");

(v) All rents, issues, profits, royalties, avails, income and other benefits derived or owned by the Mortgagor directly or indirectly from the Real Estate or the Improvements (all of the foregoing is herein collectively called the "Rents");

(vi) All rights of the Mortgagor under all subleases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any Person agrees to pay money to the Mortgagor or any consideration for the use, possession or occupancy of, or any estate in, the Real Estate or the Improvements or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing is herein referred to collectively as the "Leases"). For purposes of this

Mortgage, the term "Person" shall be used in its broadest sense and shall include, without limitation, living persons, executors, administrators, guardians, conservators, receivers, trustees, estates, trusts, corporations, partnerships, joint ventures, other business or artificial entities, governmental agencies, officials, entities or authorities, and other entities having the capacity to sue or to be sued, to contract or to do business.

(vii) All rights of the Mortgagor, if any, to all plans and specifications, designs, drawings and other matters prepared in connection with the Real Estate (all of the foregoing is herein called the "Plans");

(viii) All rights of the Mortgagor under any contracts executed by the Mortgagor with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Real Estate or the Improvements, including, without limitation, any architect's contracts, construction contracts and management contracts (all of the foregoing are herein referred to collectively as the "Contracts for Construction");

(ix) All rights of the Mortgagor as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which the Mortgagor has, with the prior written consent of the Mortgagee, obtained the agreement of any Person to pay or disburse any money for the Mortgagor's sale (or borrowing on the security) of the Property or any part thereof (all of the foregoing is herein referred to collectively as the "Contracts for Sale");

(x) All rights of the Mortgagor in any permits, approvals, consents and other authorizations in connection with the Real Estate or the Improvements (all of the foregoing is herein referred to collectively as the "Permits");

(xi) All other property or rights of the Mortgagor of any kind or character related to the Real Estate or the Improvements, all substitutions, replacements and additions thereto, whether now existing or hereafter acquired, and all proceeds (including insurance and condemnation proceeds) and products of any of the foregoing. All of the Real Estate and the Improvements, and any other property which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises".

TO HAVE AND TO HOLD the above granted and conveyed Property unto and to the proper use and benefit of Mortgagee, its successors and assigns, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the state or other jurisdiction in which the Real Estate is located providing for the exemption of homesteads from sale on execution or otherwise.

The Mortgagor hereby covenants with and warrants to the Mortgagee and the purchaser at any foreclosure sale: that at the execution and delivery hereof it is well seized of the Premises, and of a valid fee estate therein and that it has rights in the other Property; that the Property is free from all encumbrances whatsoever (and any claim of any other Person thereto) other than the interest granted to the Mortgagee herein and pursuant to the other Loan Documents and the encumbrances set forth in the title insurance policy insuring the lien of this Mortgage in favor of the Mortgagee (the "Permitted Exceptions") and if no title insurance policy is issued to insure the



lien of this Mortgage in favor of Mortgagee, then the Permitted Exceptions shall be all matters of record affecting the Premises, including a mortgage in favor of a bank or financial institution that is superior to that lien of this Mortgage; that it has good and lawful right to sell, mortgage and convey the Property; and that it and its successors and assigns will forever warrant and defend the Property against all claims and demands whatsoever with the exception of those arising by, through or under the Permitted Exceptions. The parties acknowledge and agree that this Mortgage is a second or junior mortgage encumbering the Premises.

ARTICLE I

COVENANTS AND AGREEMENTS OF THE MORTGAGOR

Further, to secure the payment and performance of the Liabilities, the Mortgagor hereby covenants, warrants and agrees with the Mortgagee as follows:

1.1. Payment of Liabilities. The Mortgagor agrees that it will pay, timely and in the manner required in the appropriate documents or instruments, all the Liabilities (including fees and charges). All sums payable by the Mortgagor hereunder shall be paid without demand, counterclaim, offset, deduction or defense. The Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

1.2. Payment of Taxes. The Mortgagor will pay or cause to be paid when due all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Property or any property used in connection therewith, and will pay when due any tax or other charge on the interest or estate in lands created or represented by this Mortgage or by any of the Loan Documents, whether levied against the Mortgagor or the Mortgagee or otherwise, and will submit to the Mortgagee all receipts showing payment of all of such taxes, assessments and charges.

1.3. Maintenance and Repair. The Mortgagor will not abandon the Premises; not do or suffer anything to be done which would depreciate or impair the use, operation or value of the Property or the security of this Mortgage; not remove or demolish any of the Improvements; pay promptly for all labor and materials for all construction, repairs and improvements to or on the Premises; not make any changes, additions or alterations to the Premises except as required by any applicable governmental requirement, or as otherwise approved in writing by the Mortgagee; maintain, preserve and keep the Goods and the Premises in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction, all as promptly as possible under the circumstances but in all cases in compliance with any time period provided under applicable requirements of governmental authorities and insurers; not commit, suffer, or permit waste of any part of the Premises; and maintain all grounds and abutting streets and sidewalks in good and neat order and repair.

1.4. Sales; Liens. The Mortgagor will not: sell, contract to sell, assign, transfer or convey, or permit to be transferred or conveyed, the Property or any part thereof or any interest



or estate in any thereof (including any conveyance into a trust or any conveyance of the beneficial interest in any trust that may be holding title to the Premises) or remove any of the Property from the Premises; or create, suffer or permit to be created or to exist any mortgage, lien, claim, security interest, charge, encumbrance or other right or claim of any kind whatsoever upon the Property or any part thereof, except those of current taxes not then due and payable, and the Permitted Exceptions.

1.5. Access by Mortgagee. The Mortgagor will at all times: deliver to the Mortgagee either all of its executed originals (in the case of chattel paper or instruments) or (in all other cases), if requested by Mortgagee, certified copies of all Leases, agreements creating or evidencing Intangibles, Plans, Contracts for Construction, Contracts for Sale, Permits, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Property; permit access at reasonable times by the Mortgagee to the Mortgagor's books and records; permit the Mortgagee to inspect construction progress reports, tenant registers, sales records, insurance policies and other papers for examination and the making of copies and extracts; prepare such schedules, summaries, reports and progress schedules as the Mortgagee may reasonably request; and permit the Mortgagee and its agents and designees, to inspect the Premises at reasonable times.

1.6. Stamp and Other Taxes. If the federal, or any state, county, local, municipal or other, government or any subdivision of any thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any income tax on the Mortgagee's receipt of interest payments on the principal portion of the loans), assessment or imposition upon this Mortgage, the Note, any of the Liabilities, or any of the other Loan Documents, the interest of the Mortgagee in the Property, or any of the foregoing, or upon the Mortgagee by reason of or as holder of any of the foregoing, or shall at any time or times require revenue stamps to be affixed to this Mortgage, the Note, or any of the other Loan Documents, the Mortgagor shall pay all such taxes and stamps to or for the Mortgagee as they become due and payable. If any law or regulation is enacted or adopted permitting, authorizing or requiring any tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits the Mortgagor from paying the tax, assessment, stamp, or imposition to or for the Mortgagee, then all sums hereby secured shall become immediately due and payable at the option of the Mortgagee.

1.7. Insurance. The Mortgagor will at all times maintain or cause to be maintained on the Goods, the Premises and on all other Property, all insurance required at any time or from time to time by the Mortgagee and in any event all-risk property insurance covering, without limitation, fire, extended coverage, windstorm, vandalism and malicious mischief, in an amount which is not less than 100% of the replacement cost of the Improvements and Goods without consideration for depreciation, with an inflation guard endorsement, insurance against business interruption and loss of rentals for such occurrences and in such amounts as the Mortgagee may reasonably require, and insurance against flood if required by the Federal Flood Disaster Protection Act of 1973 and regulations issued thereunder, and comprehensive general public liability insurance, protecting the Mortgagor in an amount acceptable to the Mortgagee, and all other insurance commonly or, in the judgment of the Mortgagee, prudently maintained by those whose business, improvement to, and use of real estate is similar to that of the Mortgagor, all in amounts satisfactory to the Mortgagee, and all of such insurance to be maintained in such form and with such companies as shall be approved by the Mortgagee, and to deliver to and keep



deposited with the Mortgagee original certificates and certified copies of all policies of such insurance and renewals thereof, with premiums prepaid, and with standard non-contributory mortgagee and loss payable clauses satisfactory to the Mortgagee, and clauses providing for not less than 30 days' prior written notice to the Mortgagee of cancellation or material modification of such policies attached thereto in favor of the Mortgagee and successors and assigns of each. All of the above-mentioned original insurance policies or certified copies of such policies and certificates of such insurance satisfactory to the Mortgagee, together with receipts for the payment of premiums thereon, shall be delivered to and held by the Mortgagee, which delivery shall constitute an assignment to the Mortgagee of all return premiums to be held as additional security hereunder. The liability insurance policies required hereunder shall name the Mortgagee as additional insured and loss payee. All renewal and replacement policies shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the expiring policies. The Mortgagor agrees that, subject to the terms of the Facility Lease, any loss paid to the Mortgagee under any of such policies shall be applied, at the option of the Mortgagee, toward pre-payment of the loans or any of the Liabilities, or to the rebuilding or repairing of the damaged or destroyed Improvements or other Property, as the Mortgagee in its sole and unreviewable discretion may elect; provided, however, that any proceeds of insurance made available for the rebuilding or repairing of the damaged or destroyed Improvements or other Property shall be subject to the Mortgagee's construction, lending conditions and to such other conditions as the Mortgagee may in its discretion impose; and provided further that no election made by Mortgagee under this section shall relieve Mortgagor of the duty to repair and restore. The Mortgagor hereby empowers the Mortgagee, in its discretion, to settle, compromise and adjust any and all claims or rights under any insurance policy maintained by the Mortgagor relating to the Property. In the event of foreclosure of this Mortgage transfer of title to the Premises by deed in lieu of foreclosure or other transfer of title to the Premises in extinguishment, in whole or in part, of the Liabilities all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. Nothing contained in this Mortgage shall create any responsibility or obligation on the Mortgagee to collect any amounts owing on any insurance policy or resulting from any condemnation, to rebuild or replace any damaged or destroyed Improvements or other Property or to perform any other act hereunder. The Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and the Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

1.8. Eminent Domain. In case the Property, or any part or interest in any thereof, is taken by condemnation, the Mortgagor shall take all action required by the Mortgagee, in order to protect Mortgagor's and Mortgagee's rights with respect to any such taking, including the commencement of, appearance in or prosecution of any appropriate action or proceeding. The Mortgagee is hereby empowered to collect and receive all compensation and awards of any kind whatsoever (referred to collectively herein as "Awards" which may be paid for any property taken or for damages to any property not taken (all of which the Mortgagor hereby assigns to the Mortgagee), and, subject to the terms of the Facility Lease, all Condemnation Awards so received shall be forthwith applied by the Mortgagee, as it may elect in its sole and unreviewable discretion, to the prepayment of the loans or any of the other Liabilities or, at the option of the Mortgagee, may be held by the Mortgagee as additional security for the Liabilities, or may be

applied to the repair and restoration of any property not so taken or damaged, provided, however, that no election made by the Mortgagee under this section shall relieve the Mortgagor of the duty to repair and restore. The Mortgagor hereby empowers the Mortgagee, in the Mortgagee's absolute discretion to settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the Property or any portion thereof.

1.9. Governmental Requirements. The Mortgagor will at all times fully comply in all material respects with, and cause the Property and the use and condition thereof fully to comply in all material respects with, all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate to the Mortgagor or the Property or the use thereof (including, without limitation, those relating to land use and development, construction, access, water rights and use, noise, environmental pollution and hazardous waste and substances including, without limitation, Hazardous Substances – as defined herein), and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, construction, access, water rights and use, noise, environmental pollution and hazardous waste and substances including, without limitation, Hazardous Substances) which are applicable to the Mortgagor or have been granted for the Property or the use thereof. Unless required by applicable law, or unless Mortgagee has otherwise first agreed in writing, the Mortgagor shall not make or allow any changes to be made in the nature of the occupancy or use of the Premises or any portion thereof for which the Premises or such portion was intended at the time this Mortgage was delivered. The Mortgagor shall not initiate or acquiesce in any change in any zoning or other land use classification now or hereafter in effect and affecting the Premises or any part thereof without in each case obtaining the Mortgagee's prior written consent thereto.

1.10 Hazardous Substances. Mortgagor warrants and represents to Mortgagee as follows:

(a) That neither Mortgagor nor any other person, to Mortgagor's knowledge after reasonable inquiry, has ever used the Premises as a facility for the storage, treatment or disposal of any "Hazardous Substances", as that term is hereinafter defined.

(b) That the Premises is now, to the best of Mortgagor's knowledge and at all times hereafter will continue to be in full compliance with all federal, state and local "Environmental Laws" (as that term is defined hereinafter) including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 USC § 9601, *et seq.*, the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law 99-499, 100 Stat. 1613, the Resource Conservation and Recovery Act ("RCRA"), 42 USC § 6901, *et seq.*, as the same may be amended from time to time and all ordinances, regulations, codes, plans, orders, and decrees now existing or in the future enacted, promulgated, adopted, entered or issued, both within and outside present contemplation of the Mortgagor and Mortgagee.

(c) That: (i) as of the date hereof, to the best of Mortgagors knowledge there are no hazardous or toxic materials, substances, wastes or other environmentally regulated substances (including solids or gaseous products and any materials containing asbestos), the presence of which is limited, regulated or prohibited by any state, federal or local governmental

authority or agency having jurisdiction over the Premises, or which are otherwise known to pose a hazard to health or safety of occupants of the Premises, located on, in or under the Premises or used in connection therewith; or (ii) Mortgagor has fully disclosed to Mortgagee in writing the existence, extent and nature of any such hazardous or toxic material waste or other environmentally regulated substance, which Mortgagor is legally authorized and empowered to maintain on, in or under the Premises or use in connection therewith, and Mortgagor has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals.

(d) That Mortgagor shall notify Mortgagee of any change in the nature or extent of any hazardous or toxic materials, substances or wastes maintained on, in or under the Premises or used in connection therewith, and will transmit to Mortgagee copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Premises.

(e) That Mortgagor is not aware of, nor has the Mortgagor nor any of its subsidiary or affiliated entities received notice of, any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent compliance or continued compliance with Environmental Laws or any ordinance, regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, or which may give rise to any common law or legal liability, or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Substance.

(f) That there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice or demand letter, notice of violation, investigation, or proceeding pending or threatened against Mortgagor or the Premises, relating in any way to any Environmental Laws or any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder.

(g) That Mortgagor will investigate, clean up, remove or remediate any spill or release of Hazardous Substances at the Premises in accordance with the requirements of all Environmental Laws

(h) Mortgagor hereby agrees to indemnify, reimburse, defend and hold harmless Mortgagee, its officers, directors, employees, successors and assigns from and against all demands, claims, civil or criminal actions or causes of action, liens, assessments, civil or criminal penalties or fines, losses, damages, liabilities, obligations, costs, disbursements, expenses or fees of any kind or of any nature (including, without limitation, cleanup costs, attorneys', consultants' or experts' fees and disbursements and costs of litigation at trial and appellate levels) which may at any time be imposed upon, incurred by or asserted or awarded against, Mortgagee directly or indirectly, resulting from: (i) any acts or activities of Mortgagor, its agents, employees or contractors, at, on or about the Premises which contaminate air, soils, surface waters or groundwaters over, on or under the Premises; (ii) arising from or out of any

Hazardous Substance on, in or under the Premises; (iii) pursuant to or in connection with the application of any Environmental Law to the acts or omissions of Mortgagor or any other person and any environmental damage alleged to have been caused, in whole or in part, by the transportation, treatment, storage, or disposal of any Hazardous Substance; or (iv) arising from or in relation to the presence, whether past, present or future, of any Hazardous Substances on the Premises.

Mortgagor's indemnification obligation hereunder shall be one of strict liability and shall be enforceable without regard to any knowledge of Mortgagee with respect to any act or omission or condition or event which is the basis of the claim under such indemnification obligation. Mortgagor's obligation under this section shall not be limited to any extent by the term of the Note or other obligations secured hereby, and such obligation shall continue, survive and remain in full force and effect notwithstanding payment in full or other satisfaction or release of said Note (and other obligations secured hereby) and this Mortgage, or any foreclosure under this Mortgage, or any delivery of a deed in lieu of foreclosure. The provisions of this section shall be deemed to survive and continue in full force and effect after any foreclosure or other proceeding by which the Mortgagee, and its successors and/or assigns succeed to ownership of the Premises.

As used herein, "Environmental Law" means any federal, state, or local statutory or common law relating to pollution or protection of the environment, including without limitation, any common law of nuisance or trespass, and any law or regulation relating to emissions, discharges, releases or threatened releases of Hazardous Substances into the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

As used herein, "Hazardous Substances" means any substance or material: (i) identified in § 101(14) of CERCLA, 42 USC § 9601(14), as the same may be amended from time to time; or (ii) determined to be toxic, a pollutant or contaminant, under federal, state or local statute, law, ordinance, rule or regulation or judicial or administrative order or decision, as same may be amended from time to time, including but not limited to, petroleum and petroleum products as defined in as same may be amended from time to time.

(i) Mortgagee shall have the right at any time, upon reasonable cause, to require Mortgagor to periodically (but not more frequently than annually from the date hereof unless an Environmental Complaint is then outstanding) perform (at Mortgagor's expense) an environmental audit and, upon reasonable cause to require an environmental risk assessment, each of which must be reasonably satisfactory to Mortgagee in its sole discretion, of the Premises, hazardous waste management practices and/or hazardous waste disposal sites used by Mortgagor. Such audit and/or risk assessment must be by an environmental consultant satisfactory to Mortgagee. Should Mortgagor fail to perform such environmental audit or risk assessment within thirty (30) days of the Mortgagee's written request, Mortgagee shall have the right but not the obligation to retain an environmental consultant to perform such environmental audit or risk assessment. All costs and expenses incurred by Mortgagee in the exercise of such rights shall bear interest at the default rate set forth in the Note and shall be secured by this Mortgage and shall be payable by Mortgagor upon demand or charged to Mortgagor's loan balance at the discretion of the Mortgagee.



(j) Any breach of any warranty, representation or agreement contained in this Section shall be a Default hereunder and shall entitle Mortgagee to exercise any and all remedies provided in this Mortgage, or otherwise permitted by law. At any time deemed necessary by Mortgagee, in its sole and absolute discretion, Mortgagee may, at its election, obtain one or more environmental assessments of the Premises prepared by a geohydrologist, an independent engineer, or other qualified consultant or expert approved by Mortgagee evaluating or confirming (i) whether any Hazardous Substances are present in the soil or water at the Premises and (ii) whether the use and operation of the Premises comply with all applicable Environmental Laws relating to air quality, environmental control, release of oil, hazardous materials, hazardous wastes and hazardous substances, and any and all other applicable environmental laws. Environmental assessments may include detailed visual inspections of the Premises including, without limitation, any and all storage areas, storage tanks, drains, dry wells, and leaching areas, and the taking of soil samples, surface water samples, and ground water samples, as well as such other investigations or analyses as are necessary or appropriate for a complete determination of the compliance of the Premises and the use and operation thereof with all applicable Environmental Laws. All such environmental assessments shall be at the sole cost and expense of Mortgagor. In the event it is determined that additional tests and/or remediation are necessary as a result of the aforesaid assessments, or in the event such additional testing or remediation is recommended by the aforesaid assessments, the Mortgagor agrees to immediately perform the tests or undertake the remediation as recommended. In the event contamination or an environmental problem is found on the Premises, the Mortgagor shall be in Default hereunder.

1.11. No Mechanics' Liens. The Mortgagor will not suffer any construction, mechanic's, laborer's or materialmen's lien to be created or remain outstanding upon the Premises or any part thereof and will bond or otherwise discharge all such liens within 10 days from the date of filing. The Mortgagor agrees to promptly deliver to the Mortgagee a copy of any notices that the Mortgagor receives with respect to any pending or threatened lien or the foreclosure thereof.

1.12. Continuing Priority. The Mortgagor will: pay such fees, taxes and charges, execute and record or file (at the Mortgagor's expense) such deeds, conveyances, mortgages and financing statements, obtain such title opinions, title insurance policy endorsements, acknowledgments or consents, notify such obligors or providers of services and materials and do all such other acts and things as the Mortgagee may from time to time request to establish and maintain a valid and perfected first and prior lien on and security interest in the Property; maintain its office and principal place of business at all times at the address shown below; and keep all of its books and records relating to the Property on the Premises or at such address; and keep all tangible Property on the Real Estate except as the Mortgagee may otherwise consent in writing.

1.13. Utilities. The Mortgagor will pay or cause to be paid all utility charges incurred in connection with the Property promptly when due and maintain all utility services available for use at the Premises.

1.14. Contract Maintenance: Other Agreements: Leases. The Mortgagor will, for the benefit of the Mortgagee, fully and promptly keep, observe, perform and satisfy each obligation, condition, covenant, and restriction of the Mortgagor affecting the Premises or imposed on Mortgagor under any agreement between Mortgagor and a third party relating to the Property or

the Liabilities secured hereby, including, without limitation, the Leases, the Contracts for Sale, Contracts for Construction and the Intangibles (collectively, the "Third Party Agreements") so that there will be no default thereunder and so that the Persons (other than the Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Mortgagee; and the Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such Person to avoid such performance. Without the prior written consent of the Mortgagee, the Mortgagor shall not (i) make or permit any termination or amendment of the rights of the Mortgagor under any Third Party Agreement; (ii) collect rents or the proceeds of any Leases or Intangibles more than 30 days before the same shall be due and payable; (iii) modify or amend any Leases, or, except where the lessee is in default, cancel or terminate the same or accept a surrender of the leased premises; (iv) consent to the assignment or subletting of the whole or any portion of any lessee's interest under any Leases; or (v) in any other manner impair Mortgagee's rights and interest with respect to the Rents. The Mortgagor shall promptly deliver to the Mortgagee copies of any demands or notices of default received by the Mortgagor in connection with any Third Party Agreement and allow the Mortgagee the right, but not the obligation, to cure any such default. All security or other deposits, if any, received from tenants under the Leases shall be segregated and maintained in an account satisfactory to the Mortgagee and in compliance with the law of the state where the Premises are located and with an institution satisfactory to the Mortgagee.

1.15. No Assignments; Future Leases. The Mortgagor will not cause or permit any Rents, Leases, Contracts for Sale, or other contracts relating to the Premises to be assigned, transferred, conveyed, pledged or disposed of to any party other than the Mortgagee without first obtaining the express written consent of the Mortgagee to any such assignment or permit any such assignment to occur by operation of law. In addition, the Mortgagor shall not cause or permit all or any portion of or interest in the Premises or the Improvements to be leased (that word having the same meaning for purposes hereof as it does in the law of landlord and tenant) directly or indirectly to any Person, except Leases of storage space in the ordinary course of Mortgagor's business under Leases the form of which has been approved in writing by the Mortgagee which Leases are for a term not exceeding one year and are for a rental rate of at least equal to the then current market rate for similar space.

1.16. Assignment of Leases and Rents and Collections.

(a) All of the Mortgagor's interest in and rights under the Leases now existing or hereafter entered into, and all of the Rents, whether now due, past due, or to become due, and including all prepaid rents and security deposits, and all other amounts due with respect to any of the other Property, are hereby absolutely, presently and unconditionally assigned and conveyed to the Mortgagee to be applied by the Mortgagee in payment of all sums due under the Note, the other Liabilities and all other sums payable under this Mortgage. Prior to the occurrence of any Default, the Mortgagor shall have a license to collect and receive all Rents and other amounts, which license shall be terminated at the sole option of the Mortgagee, without regard to the adequacy of its security hereunder and without notice to or demand upon the Mortgagor, upon the occurrence of any Default. It is understood and agreed that neither the foregoing assignment to the Mortgagee nor the exercise by the Mortgagee of any of its rights or remedies under Article III hereof shall be deemed to make the Mortgagee a "mortgagee- in- possession" or otherwise responsible or

liable in any manner with respect to the Property or the use, occupancy, enjoyment or any portion thereof, unless and until the Mortgagee, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Property by any court at the request of the Mortgagee or by agreement with the Mortgagor, or the entering into possession of any part of the Property by such receiver, be deemed to make the Mortgagee a mortgagee-in- possession or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any portion thereof. Upon the occurrence of any Default, this shall constitute a direction to and full authority to each lessee under any Leases, each guarantor of any of the Leases and any other Person obligated under any of the Property to pay all Rents and other amounts to the Mortgagee without proof of the Default relied upon. The Mortgagor hereby irrevocably authorizes each such Person to rely upon and comply with any notice or demand by the Mortgagee for the payment to the Mortgagee of any Rents and other amounts due or to become due.

(b) The Mortgagor shall apply the Rents and other amounts to the payment of all necessary and reasonable operating costs and expenses of the Property, debt service on the Liabilities and otherwise in compliance with the provisions of the Loan Documents.

(c) The Mortgagee shall have the right to assign the Mortgagee's right, title and interest in any Leases to any subsequent holder of this Mortgage or any participating interest therein or to any Person acquiring title to all or any part of the Property through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to the Mortgagee. Upon the occurrence of any Default, the Mortgagee shall have the right to execute new leases of any part of the Property, including leases that extend beyond the term of this Mortgage. The Mortgagee shall have the authority, as the Mortgagor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of the Mortgagor and to bind the Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Property.

1.17. The Mortgagee's Performance. If the Mortgagor fails to pay or perform any of its obligations herein contained (including payment of expenses of foreclosure and court costs), the Mortgagee may (but need not), as agent or attorney-in-fact of the Mortgagor, make any payment or perform (or cause to be performed) any obligation of the Mortgagor hereunder, in any form and manner deemed expedient by the Mortgagee, and any amount so paid or expended (plus reasonable compensation to the Mortgagee for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the rate of two per cent (2%) above the interest rate provided for in Section 1 of the Note (the "Rate") shall be added to the principal debt hereby secured and shall be repaid to the Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, the Mortgagee may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any of the Property; complete construction; make repairs; collect rents; prosecute collection of the Property or proceeds thereof; obtain insurance and pay premiums therefor; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Premises. In making any payment or securing any performance relating to any obligation of the Mortgagor hereunder, the Mortgagee shall be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other

matters necessary to be determined in satisfaction thereof. No such action of the Mortgagee shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes a Default or an Event of Default.

1.18. Subrogation. To the extent that the Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or the Mortgagor or any other Person pays any such sum with the proceeds of the loan secured hereby, the Mortgagee shall have and be entitled to a lien or other interest on the Property equal in priority to the lien or other interest discharged and the Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit the Mortgagee in securing the Liabilities.

1.19. Reserve for Taxes, Assessments and Insurance. Upon request by the Mortgagee, the Mortgagor covenants and agrees to pay to the Mortgagee (or the Mortgagee's agent) monthly until the loans and all of the other Liabilities have been paid in full, a sum equal to real estate taxes and assessments and insurance premiums next due upon the Premises (all as reasonably estimated by the Mortgagee or its agent) divided by the number of months to elapse before one month prior to the date when such taxes, and assessments and insurance premiums will become due and payable, such sums to be held by the Mortgagee without interest accruing thereon (except to the extent, if any, required by applicable law), to pay each of the said items.

All payments described above in this Section shall be paid by the Mortgagor each month in a single payment to be applied by the Mortgagee (or its agent) to the foregoing items in such order as the Mortgagee shall elect in its sole but reasonable discretion. The Mortgagor shall also pay to the Mortgagee, at least 30 days prior to the due date of any taxes, and assessments levied on, against or with respect to the Premises, or any insurance premium due with respect to the Premises, such additional amount as may be necessary to provide the Mortgagee (or its agent) with sufficient funds to pay any such tax, assessment, and insurance premiums under this Section 1.19 at least 30 days in advance of the due date thereof.

The Mortgagee (or its agent) shall, within 20 days of receipt from the Mortgagor of a written request therefor together with such supporting documentation as the Mortgagee (or its agent) may reasonably require (including, without limitation, official tax bills or, as applicable, statements for insurance premiums), cause proper amounts to be withdrawn from such account and paid directly to the appropriate tax collecting authority or insurer. Even though the Mortgagor may have made all appropriate payments to the Mortgagee (or its agent) as required by this Mortgage, the Mortgagor shall nevertheless have full and sole responsibility at all times to cause all taxes, assessments and insurance premiums to be fully and timely paid, and the Mortgagee (or its agent) shall have no responsibility or obligation of any kind with respect thereto except with respect to payments required to be made by the Mortgagor hereunder for which the Mortgagee (or its agent) has received funds to cover such payments in full and all statements, invoices, reports or other materials necessary to make such payments, all not less than 30 days prior to the deadline for any such payment. If at any time the funds so held by the Mortgagee (or its agent) shall be insufficient to cover the full amount of all taxes, assessments and insurance premiums then accrued (as estimated by the Mortgagee or its agent) with respect to the then- current twelve-month period, the Mortgagor shall, within ten days after receipt of notice thereof from the Mortgagee (or its agent) deposit with the Mortgagee (or its agent) such

additional funds as may be necessary to remove the deficiency. If the Premises are sold under foreclosure or are otherwise acquired by the Mortgagee, accumulations under this Section 1.19 may be applied to the Liabilities in such order of application as the Mortgagee may elect in its sole discretion.

1.20. Periodic Appraisals. If at anytime the Mortgagee shall determine in good faith that as a result of:

- (a) any law, regulation or guideline or any change or interpretation thereof;
- (b) any central bank or other fiscal, monetary or other governmental authority having jurisdiction over the Mortgagee or the activities of the Mortgagee requesting, directing or imposing a condition upon the Mortgagee (whether or not such request, direction or condition shall have the force of law); or
- (c) the Mortgagee, in its sole discretion deeming appropriate; the Mortgagee may require that the Mortgagor provide at the Mortgagor's sole cost and expense, within forty- five (45) days after the Mortgagee's request (but not more than once during each calendar year), an update or supplement to the previously furnished appraisal for the Property indicating the present appraised fair market value of the Property.

1.21 Reasonable Attorneys' Fees. The Mortgagor and each borrower, endorser, and guarantor jointly and severally agree to pay all costs, reasonable attorneys' fees, paralegal fees, and expenses incurred in the event it becomes necessary for the Mortgagee to protect its security and/or in the event of collection, whether suit be brought or not, and if suit is brought said parties agree to pay the Mortgagee's costs and reasonable attorneys' fees, paralegal fees and expenses incurred therein including costs and reasonable attorneys' fees, paralegal fees and expenses incurred upon appeal, if any.

1.22. Title Warranty. The Mortgagor covenants with the Mortgagee that the Mortgagor warrants the title to the Property.

ARTICLE II

DEFAULT

2.1 The occurrence of an event of default or default under the terms and provisions of the Note, any of the Loan Documents or any of the documents evidencing the Liabilities, or the occurrence of any default under any such documents which do not define "Event of Default" or "Default", shall constitute an Event of Default or Default, respectively, under this Mortgage.

Mortgagor shall be in default upon the occurrence of any one or more of any of the following events (each an "Event of Default") or any event which with the lapse of time or the giving of notice or both would be an "Event of Default"):

- (a) Mortgagor breaches or defaults on any covenant, condition, obligation or provision of any of the loan agreements, notes, security documents, or any other document that creates a financial obligation on the part of Mortgagor in favor of First American

Bank of Alabama that is secured by the mortgages in favor of the First American Bank of Alabama as a first priority lien on the Real Estate, or if Mortgagor breaches such mortgages; or

(b) Any warranty or representation made by Mortgagor or any guarantor of the Liabilities shall prove to be false or misleading in any respect at the time made or deemed made; or

(c) Mortgagor or any guarantor of the Liabilities shall liquidate, merge, dissolve, terminate its existence, suspend business operations, for any reason, generally wind up or readjust its debt, have a receiver or similar official appointed for all or any part of its property, make an assignment for the benefit of its creditors, admit in writing its inability to pay its debts when due, generally fail to pay its obligations when due, or have any bankruptcy or insolvency proceeding with respect to it or a substantial part of its property instituted by or against it, or take any action to authorize any of the foregoing; or

(d) Mortgagor or any guarantor of the Liabilities fails to perform any covenants or obligations under any Loan Document or any other agreement intended to secure the repayment of the Liabilities and such failure shall continue for ten (10) days after notice from Mortgagee of such failure; or

(e) Any provision of any Loan Document shall for any reason cease to be valid and binding on any party thereto and such invalidity continues for ten days, or any guarantor revokes or seeks to revoke its guaranty or the Sales Agreement (as defined in (j) below) and the other Loan Documents shall cease or fail to create a valid perfected first priority security interest in the Property; or

(f) Mortgagor shall fail to perform its obligations under any lease or other material contract relating to the Premises and such failure shall continue for ten (10) days after notice from Mortgagee; or

(g) Enforcement shall have commenced of any judgment or final order for the payment of money in an amount of \$10,000 or more against Mortgagor or any guarantor without a stay of enforcement for a period of ten (10) days, unless contested in good faith by appropriate proceedings with adequate reserves set aside therefor satisfactory to Mortgagee; or

(h) Mortgagor or any guarantor shall at any time suffer a material adverse change in its business, condition (financial or otherwise), operations, performance, properties or prospects; or

(i) Mortgagor, if an individual, shall die and no Successor Arrangement shall have been entered into with parties acceptable to the Mortgagee, in its sole discretion, within ninety (90) days of the Mortgagor's death. "Successor Arrangement" shall mean such documents, instruments, recordings and filings as shall be satisfactory in form and substance to the Mortgagee, in its sole discretion, including without limitation, amendments hereto and to the other Loan Documents, satisfactory compliance with all inheritance, probate, tax and other similar laws and regulations and assumption of all



obligations of the Mortgagor under this Mortgage and the other Loan Documents. Under no circumstances shall the foregoing constitute a commitment on the part of the Mortgagee to enter into or consent to any Successor Arrangement or other agreement with any party upon the death of the Mortgagor.

(j) Grantor shall breach any provision of the Chevron Xpress Lube Sales Agreement dated December 1, 2006, by and between Mortgagor, Kwik Car Care, Inc., and Mortgagee ("Sales Agreement") or the Sales Agreement shall be cancelled, terminate or expire.

ARTICLE III

REMEDIES

3.1. Acceleration. Upon the occurrence of any Event of Default under Section 2.1(c), the entire indebtedness evidenced by the Note and all other Liabilities together with interest at the Default Rate shall become immediately due and payable. Upon the occurrence of any other Event of Default, the entire indebtedness evidenced by the Note and all other Liabilities together with interest thereon at the Default Rate shall, subject to the terms, of the Agreement and Note, at the option of the Mortgagee, without demand or notice of any kind to the Mortgagor or any other person, become immediately due and payable.

3.2. Remedies Cumulative. No remedy or right of the Mortgagee hereunder or under the Note or any of the other Loan Documents, or otherwise, or available under applicable law or in equity, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law or in equity. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by the Mortgagee. All obligations of the Mortgagor, and all rights, powers and remedies of the Mortgagee, expressed herein shall be in addition to, and not in limitation of, those provided by law or in equity or in the Note or any other Loan Documents or any other written agreement or instrument relating to any of the Liabilities or any security therefor.

3.3. Acceleration of Secured Obligations; Foreclosure. Upon the occurrence and during the continuance of any Event of Default and in addition to all other remedies available to Mortgagee under this Mortgage, at law or in equity, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in the case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, after giving notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale by publication in a newspaper published in the county or counties wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase

the Property, or any part thereof, if the highest bidder therefor. Mortgagee may credit on its bid any at any such sale an amount up to and including the full amount of the Liabilities, including without limitation, accrued and unpaid interest, principal, charges, advances made hereunder or under the Note. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Liabilities shall have been paid in full. The Mortgagor hereby waives, to the extent permitted by law, any statutory right of redemption in connection with such foreclosure proceeding. Upon such foreclosure, Mortgagee is authorized and empowered to execute and deliver to the purchaser a deed and/or bill of sale to the property sold in the name and on behalf of the Mortgagor. Mortgagee may postpone the sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

Further, upon the occurrence of any Event of Default, Mortgagee, may immediately or any time thereafter institute an action for the complete or partial judicial foreclosure of the Mortgage. Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of the Mortgagee or at any time thereafter, either before or after foreclosure sale, and without notice to the Mortgagor or to any party claiming under the Mortgagor and without regard to the solvency or insolvency at the time of such application of any Person then liable for the payment of any of the Liabilities, without regard to the then value of the Premises or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without regarding any bond from the complainant in such proceedings, appoint a receiver for the benefit of the Mortgagee, with power to take possession, charge, and control of the Premises, to lease the same, to keep the buildings thereon insured and in good repair, and to collect all Rents during the pendency of such foreclosure suit, and, in case of foreclosure sale and a deficiency, during any period of redemption.

The court may, from time to time, authorize said receiver to apply the net amounts remaining in its hands, after deducting reasonable compensation for the receiver and its counsel as allowed by the court, in payment (in whole or in part) of any or all of the Liabilities, including without limitation the following, in such order of application as the Mortgagee may elect: (i) amounts due under the Note, (ii) amounts due to Mortgagee, if any, under the Sales Agreement, (iii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iv) costs and expenses of foreclosure and litigation upon the Premises, (v) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises, (vi) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same, and (vii) all moneys advanced by the Mortgagee to cure or attempt to cure any Default by the Mortgagor in the performance of any

obligation or condition contained in any Loan Documents or this Mortgage or otherwise, to protect the security hereof provided herein, or in any Loan Documents, with interest on such advances at the Default Rate. The surplus of the proceeds of sale, if any, shall then be paid to the Mortgagor, upon reasonable request. This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Premises, as the Mortgagee may elect, until all of the Premises have been foreclosed against and sold. As part of the foreclosure, the Mortgagee in its discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Premises, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable law. Upon the completion of any such sale or sales, Mortgagee shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers the property so sold, in the manner and form as provided by applicable law, and Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose Mortgagee may execute and deliver, for and in the name of Mortgagor, all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof. In the case of any sale of the Premises pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Note and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by the Mortgagee for the enforcement, protection or collection of this security, including court costs, attorneys' fees, stenographers' fees, costs of advertising, appraisals and environmental investigations, including the costs of the preparation of phase I and phase II environmental inspections of the Premises, and costs of title insurance and any other documentary evidence of title, shall be paid by the Mortgagor.

3.4. Possession of the Premises; Remedies for Leases and Rents. The Mortgagor hereby waives all right to the possession, income, and rents of the Premises from and after the occurrence of any Event of Default, and the Mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the Premises or any part thereof. If any Event of Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, the Mortgagee shall be entitled, in its sole discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the Rents, the Leases and other Property relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating thereto; (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Leases and other Property relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its sole discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Leases and other Property



relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsure the Property for all risks incidental to the Mortgagee's possession, operation and management thereof; and (viii) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Property, as the Mortgagee in its discretion may deem proper, the Mortgagor hereby granting the Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Event of Default without notice to the Mortgagor or any other Person. The Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment, in such order as Mortgagee may determine, of or on account of any one or more of the following: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Property, including the cost from time to time of installing, replacing or repairing the Property, and of placing the Property in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and (c) to the payment of any Liabilities. The entering upon and taking possession of the Premises, or any part thereof, and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any Event of Default theretofore or thereafter occurring or affect any notice of Default hereunder or invalidate any act done pursuant to any such Event of Default or notice, and, notwithstanding continuance in possession of the Premises or any part thereof by the Mortgagee or a receiver and the collection, receipt and application of the Rents, the Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of an Event of Default. Any of the actions referred to in this Section 3.4 may be taken by the Mortgagee irrespective of whether any notice of Default has been given hereunder and without regard to the adequacy of the security for the indebtedness hereby secured.

3.5. Personal Property. If any Event of Default shall occur, the Mortgagee may exercise from time to time any rights and remedies available to it under the Loan Documents or applicable law upon default in payment of indebtedness, including, without limitation, those available to a secured party under the Uniform Commercial Code of the state where the goods are located. The Mortgagor shall, promptly upon request by the Mortgagee, assemble the Property and make it available to the Mortgagee at such place or places, reasonably convenient for both the Mortgagee and the Mortgagor, as the Mortgagee shall designate. The Mortgagor hereby expressly waives, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings, or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies after an Event of Default occurs. If any notification of intended disposition of any of the Property is required by law, such notification, if mailed, shall be

deemed reasonably and properly given if mailed by registered or certified mail, return receipt requested, at least five (5) business days before such disposition, postage prepaid, addressed to the Mortgagor either at the address shown below or at any other address of the Mortgagor appearing on the records of the Mortgagee. Without limiting the generality of the foregoing, whenever there exists an Event of Default hereunder, the Mortgagee may, with respect to so much of the Property as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (i) notify any Person obligated on the Property to perform directly for the Mortgagee its obligations thereunder, (ii) enforce collection of any of the Property by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of the Mortgagor to allow collection of the Property, (iv) take control of any proceeds of the Property, (v) enter upon any premises where any of the Property may be located and take possession of and remove such Property and render all or any part of the Property unusable, all without being responsible for loss or damage, (vi) sell any or all of the Property, free of all rights and claims of the Mortgagor therein and thereto, at any lawful public or private sale and on such terms as the Mortgagee deems advisable and (vii) bid for and purchase any or all of the Property at any such public or private sale. Any proceeds of any disposition by the Mortgagee of any of the Property may be applied by the Mortgagee to the payment of expenses in connection with the Property, including attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by the Mortgagee toward the payment of such of the Liabilities and in such order of application as the Mortgagee may from time to time elect. Without limiting the foregoing, the Mortgagee may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law. The Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies hereunder. The Mortgagor hereby constitutes the Mortgagee its attorney-in-fact with full power of substitution to take possession of the Property upon any Event of Default and, as the Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by the Mortgagee to accomplish the disposition of the Property; this power of attorney is a power coupled with an interest and is irrevocable while any of the Liabilities are outstanding. The Mortgagor shall remain liable for any deficiency resulting from the sale of the Property and shall pay such deficiency forthwith upon demand, and the Mortgagee's right to recover such deficiency shall not be impaired by the sale or other disposition of Property without required notice. Expenses of retaking, holding, preparing for sale, selling or the like will first be paid from the proceeds before the balance will be applied toward any Liabilities.

3.6. No Liability on Mortgagee. Notwithstanding anything contained herein, the Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether hereunder, under any of the Third Party Agreements or otherwise. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises (including but not limited to use, storage, manufacture, discharge or transportation of hazardous waste or substances including, without limitation, Specified Substances, by the Mortgagor) or be

responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other Person. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers granted to it under this Mortgage, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage under any of the Third Party Agreements or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees.

3.7. Transfer of Premises by Mortgagor. To induce the Mortgagee to extend funds under the Note, the Mortgagor agrees that in the event of any transfer (by sale, lease, operation of law or otherwise) of the Leasehold Estate or the Premises without the prior written consent of the Mortgagee, the Mortgagee shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Any transfer consented to by the Mortgagee shall be made subject to this Mortgage, and any such transferee shall assume the obligations of the Mortgagor hereunder, without releasing Mortgagor therefrom.

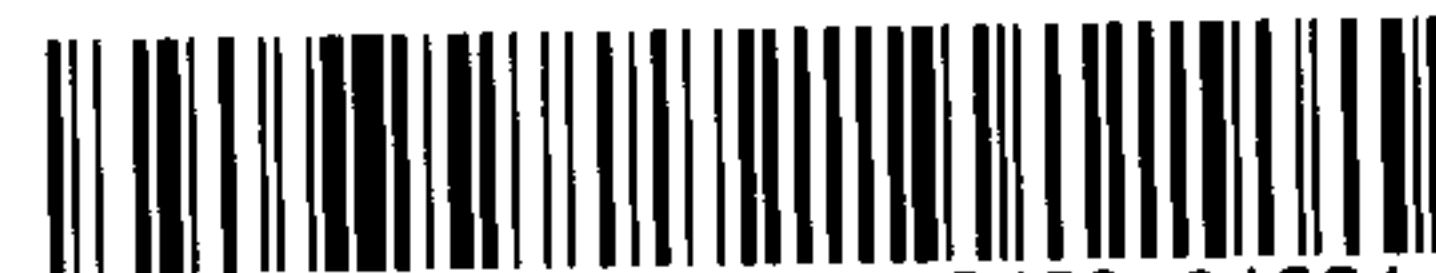
ARTICLE IV

GENERAL

4.1. Permitted Acts. The Mortgagor agrees that, without affecting or diminishing in any way the liability of the Mortgagor or any other Person, except any Person expressly released in writing by the Mortgagee (with the consent of any pledgee of the Liabilities), for the payment or performance of any of the Liabilities or for the performance of any obligation contained herein or affecting the lien hereof upon the Property or any part thereof, the Mortgagee may at any time and from time to time, without notice to or the consent of any Person, release any Person liable for the payment or performance of the Note or any of the other Liabilities or any guaranty given in connection therewith; extend the time for, or agree to alter the terms of payment of, any indebtedness under the Note or any of the other Liabilities or any guaranty given in connection therewith; modify or waive any obligation; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind for repayment of the Note or the other Liabilities or any guaranty given in connection therewith; release any Property or other property securing any or all of the Note or the other Liabilities or any guaranty given in connection therewith; make releases of any portion of the Premises; consent to the making of any map or plat of the Premises; the creation of any easements on the Premises or of any covenants restricting the use or occupancy thereof; or exercise or refrain from exercising, or waive, any right the Mortgagee may have.

4.2. Legal Expenses. The Mortgagor agrees to indemnify the Mortgagee from all loss, damage and expense, including (without limitation) attorneys' fees, incurred in connection with any suit or proceeding in or to which the Mortgagee may be made or become a party for the purpose of protecting the lien or priority of this Mortgage.

4.3. Security Agreement; Fixture Filing; Future Advances.



(a) This Mortgage, to the extent that it conveys or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the Uniform Commercial Code as in effect in the state in which the Premises are located, and this Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Premises are located with respect to any and all fixtures included within the term "Property" as used herein and with respect to any Goods or other personal property that may now be or hereafter become such fixtures. For purposes of the foregoing, the Mortgagor is the debtor (with its address as set forth below), the Mortgagee is the secured party (with its address as set forth below). If any item of Property hereunder also constitutes Property granted to the Mortgagee under any other mortgage, agreement, document, or instrument, in the event of any conflict between the provisions of this Mortgage and the provisions of such other mortgage, agreement, document, or instrument relating to the Property, the provision or provisions selected by the Mortgagee shall control with respect to the Property.

(b) This Mortgage is granted to secure, among other Liabilities, future advances and loans (whether obligatory, made at the option of Mortgagee or otherwise) from the Mortgagee to or for the benefit of the Mortgagor or its successors or assigns or the Premises, as provided in the Note, and costs and expenses of enforcing the Mortgagor's obligations under this Mortgage, the Note and the other Loan Documents. All advances, disbursements or other payments required by the Note are obligatory advances up to the credit limits established therein and shall, to the fullest extent permitted by law, have priority over any and all construction and mechanics' liens and other liens and encumbrances arising after this Mortgage is recorded.

4.4. Defeasance. Upon full payment of all indebtedness secured hereby and satisfaction of all the Liabilities in accordance with their respective terms and at the time and in the manner provided, and when the Mortgagee has no further obligation to make any advance, or extend any credit hereunder, under the Note or any Loan Documents, this conveyance shall be null and void, and thereafter, upon demand therefor, the Mortgagee shall promptly make and deliver an appropriate satisfaction instrument, at the expense of the Mortgagor.

4.5. Notices. All notices, demands and other communications provided for hereunder shall be made in writing and delivered to Mortgagor at Xpress Investments, LLC, Attention: Doug Levene, PO Box 381027, Birmingham, AL 35238, and delivered to Mortgagee at Chevron U.S.A. Inc., Attn: Credit Manager, 2005 Diamond Blvd., Concord, California 94520, or to either party at such other address as it gives written notice of to the other party. Any such notice shall be deemed effective (i) when delivered, if delivered personally or by facsimile transmission, or (ii) two days after delivered (properly addressed and all fees paid) for overnight delivery service to a courier which regularly provides such service and regularly obtains executed receipts evidencing delivery.

4.6. Successors; the Mortgagor; Gender; Severability. All provisions hereof shall bind the Mortgagor and the Mortgagee and their respective successors, vendees and assigns and shall inure to the benefit of the Mortgagee, its successors and assigns, and the Mortgagor and its permitted successors and assigns. THE MORTGAGOR CONSENTS TO THE ASSIGNMENT BY THE MORTGAGEE OF ALL OR ANY PORTION OF ITS RIGHTS UNDER THIS

MORTGAGE AND THE OTHER LOAN DOCUMENTS. THE MORTGAGOR ACKNOWLEDGES AND AGREES THAT ANY AND ALL RIGHTS OF THE MORTGAGEE UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS MAY BE EXERCISED FROM TIME TO TIME BY ANY ASSIGNEE OR SUCCESSOR OF THE MORTGAGEE. The Mortgagor shall not have any right to assign any of its rights hereunder. Except as limited by the preceding sentence, the word "Mortgagor" shall include all Persons claiming under or through the Mortgagor and all Persons liable for the payment or performance by the Mortgagor of any of the Liabilities whether or not such Persons shall have executed the Note or this Mortgage. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under the applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity only, without invalidating the remainder of such provision or the remaining provisions of this Mortgage, it being the parties' intention that this Mortgage and each provision hereof be effective and enforced to the fullest extent permitted by applicable law.

4.7. Care by the Mortgagee. The Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any of the Property assigned by the Mortgagor to the Mortgagee or in the Mortgagee's possession if it takes such action for that purpose as the Mortgagor requests in writing, but failure of the Mortgagee to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of the Mortgagee to preserve or protect any rights with respect to such Property against prior parties, or to do any act with respect to the preservation of such Property not so requested by the Mortgagor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Property.

4.8. No Waiver, Writing. No delay on the part of the Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Mortgagee of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

4.9. Governing Law. This Mortgage shall be a contract made under and governed by the internal laws of the State where the Premises are located.

4.10. Waiver. The Mortgagor, on behalf of itself and all Persons now or hereafter interested in the Premises or the Property, to the fullest extent permitted by applicable law hereby waives all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all Liabilities secured by this Mortgage, and the Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of this Property. Without limiting the generality of the preceding sentence, the Mortgagor, on its own behalf and on behalf of each and every Person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any

power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. The Mortgagor, for itself and for all Persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

4.11. JURY TRIAL. THE MORTGAGOR, AND THE MORTGAGEE BY ITS ACCEPTANCE OF THIS MORTGAGE, HEREBY EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY LOAN DOCUMENTS TO WHICH THE MORTGAGOR IS A PARTY, OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR ANY RELATED DOCUMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

4.12. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple or leasehold title to the Premises, it is hereby understood and agreed that should the Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple or leasehold title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple or leasehold title. So long as any of the indebtedness secured by this Mortgage shall remain unpaid, unless the Mortgagee shall otherwise in writing consent, the fee or leasehold title and the Leasehold Estate, in the Premises hereinbefore described, shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee, or in a third party, by purchase or otherwise; and the Mortgagor further covenants and agrees that, in case it shall acquire the fee title, or any other estate, title or interest in the premises covered by the Facility Lease, this Mortgage shall attach to and cover and be a first lien upon such other estate so acquired, and such other estate so acquired by the Mortgagor shall be considered as mortgaged, assigned or conveyed to the Mortgagee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein mortgaged, assigned or conveyed and spread.


4.13. Time of Essence and Severability. Time is declared to be of the essence in this Mortgage, the Agreement, the Note and the Loan Documents and of every part hereof and thereof. If the Mortgagee chooses to waive any covenant, section, or provision of this Mortgage, or if any covenant, section, or provision of this Mortgage is construed by a court of competent jurisdiction to be invalid or unenforceable, it shall not affect the applicability, validity, or enforceability of the remaining covenants, paragraphs, or provisions.

4.14. Indemnification of Mortgagee. Except for any action or proceeding arising out of the willful misconduct or, to the extent prohibited by law, the gross negligence of Mortgagee,

Mortgagee shall be reimbursed by Mortgagor, immediately and without demand, for all reasonable costs, charges and attorneys' fees incurred by it in any case, and the same shall become so much additional indebtedness secured hereby.

4.15. Matters to Be in Writing. This Mortgage cannot be altered, amended, modified, terminated, waived, released or discharges except in a writing signed by the party against whom enforcement is sought.

4.16. Sole Discretion of Mortgagee. Whenever Mortgagee's judgment, consent or approval is required hereunder for any matter, or Mortgagee shall have an option or election hereunder, such judgment, the decision as to whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Mortgagee.


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Shelby Cnty Judge of Probate, AL
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IN WITNESS WHEREOF, the undersigned have executed and delivered this Mortgage on the day and year first above written.

MORTGAGOR:

Xpress Investments, LLC

By: Douglas A. Levene

Name: Douglas A. Levene

Title: Authorized Member

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public, in and for said County in said State, hereby certify that Douglas A. Levene, whose name as the Authorized Member of Xpress Investments, 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, as such Authorized Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my official hand and seal this the 9 day of Aug 2010.

William B. Harst
Notary Public

My Commission Expires: 6/7/11

Address of Mortgagor/Debtor:

Xpress Investments, LLC
Attention: Doug Levene
PO Box 381027
Birmingham, AL 35238

Address of Mortgagee/Secured Party:

Chevron U.S.A. Inc.
Chevron Credit Department
2001 Diamond Blvd.
Concord, CA 94520



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Shelby Cnty Judge of Probate, AL
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EXHIBIT A

Legal Description

Legal Description – A tract of land lying on the Westerly side of Highway #31 and being in the SE ¼ of NE ¼ of section 35, Township 20 South, Range 3 West and being more particularly described as follows:

Commence at a found concrete monument being at the intersection of the South ROW of Shelby County #66 and the Westerly ROW of Highway #31; thence run Southerly along the said Westerly ROW of Highway #31 on an azimuth of 189°33'16" Southwesterly 568.85 feet to the corner of a sidewalk, said point being the point of beginning; thence an azimuth of 185°32' Southwesterly along a segment of a curve to the left, said curve having a central angle of 2°18' a radius of 2675.64 feet; thence along a chord to said segment a distance of 107.40 feet to the P.C.; thence a azimuth of 185°23' along said westerly ROW a distance of 33.66 feet to a found ½" rebar, at a point on the Northerly side of concrete curbing; thence an azimuth 275°38' Northwesterly along said curbing a distance of 77.43 feet to a found ½" rebar, at a point on the Easterly right of way of L & N Railroad; thence an azimuth of 5°52' Northeasterly along the Easterly ROW of L & N Railroad a distance of 132.12 feet to a nail found in concrete; thence an azimuth of 88°54' Northeasterly 76.65 feet to the point of beginning.

Situated in Shelby County, Alabama.




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EXHIBIT B

Legal Description of Additional Collateral located in St. Clair County

Legal Description – a parcel of land lying in the Southwest quarter of the Southwest quarter of Section 7, Township 17 south, Range 4 East, Pell City, St. Clair County, Alabama and being more particularly described as follows: Commence at the Southeast corner of Lot 12 Block 1 of the E. D. Scott Subdivision on the west right-of-way of U.S. Highway 231 (said subdivision map is on record in Map Book 1908, Page 60 in the office of the Judge of Probate, St. Clair County Courthouse Pell City, Alabama). Thence run south $09^{\circ}41'25''$ East along said right of way for 282.52 feet, thence run South $81^{\circ}14'20''$ west along said right of way for 75.05 feet. thence run along a spiral to the right of said right of way for 195.38 feet (chord = south $08^{\circ}21'15''$ east, 195.37 feet), the PC of a curve on said right of way (said curve Delta = $08^{\circ}27'58''$ right, CH = 404.47 feet, south $02^{\circ}56'58''$ east, Radius = 2739.79), thence run southerly along the arc of said curve for 404.84 feet to the point of beginning. thence continue along the arc of said curve to the right (Delta = $02^{\circ}49'23''$ Ch = 134.98 feet, South $02^{\circ}41'44''$ West) for 135.00 feet to a point on a curve of the Northeast right of way of the old Talladega-Coosa Valley Railroad, (Said curve R = 1253.24 feet, Delta = $14^{\circ}16'21''$ Rt., CH = 311.38 feet, North $61^{\circ}21'36''$ West), thence run Northwesterly along the arc of said curve for 312.18 feet, thence run North $87^{\circ}02'57''$ East for 280.00 feet to the point of beginning. Bearings are referred to the Alabama East Zone Grid. Surveyed 19th February 1990 by Derrol B. Luker, Al. Reg. No. 11673.


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Shelby Cnty Judge of Probate, AL
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