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Sum 6824

NOTE TO TAX COMMISSIONER. *This Mortgage secures indebtedness in a maximum principal amount of \$3,900,000 outstanding from time to time.*

THE NAMES OF THE MORTGAGOR (AS DEBTOR UNDER THE UNIFORM COMMERCIAL CODE OF ALABAMA) AND THE GRANTEE (AS SECURED PARTY UNDER THE UNIFORM COMMERCIAL CODE OF ALABAMA), THE MAILING ADDRESS OF THE SECURED PARTY FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED, THE MAILING ADDRESS OF THE DEBTOR AND A STATEMENT INDICATING THE TYPES, OR DESCRIBING THE ITEMS OF COLLATERAL, ARE AS DESCRIBED ON PAGE 1 AND IN SECTION 21 HEREOF FOLLOWING, IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 9-502 OF THE UNIFORM COMMERCIAL CODE OF ALABAMA. This document serves as a fixture filing under the Alabama Uniform Commercial Code (Ala. Code § 7-9A-502).

NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY MORTGAGED.

**MORTGAGE, ASSIGNMENT OF RENTS, AND SECURITY
AGREEMENT
COLLATERAL INCLUDES FIXTURES**

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT (hereinafter called "**Mortgage**") made and entered into as of **December 27, 2012**, by and among **RACETRAC PETROLEUM, INC.**, a Georgia corporation, whose address is 322 Cumberland Boulevard, Atlanta, GA 30339 (hereinafter called "**Mortgagor**"), and **REGIONS BANK**, an Alabama state banking association, whose address is Atlantic Center Plaza, 1180 West Peachtree Street, Suite 900, Commercial Banking, Atlanta, Georgia 30309 (hereinafter called "**Bank**");

RECITALS:

A. Pursuant to an Amended and Restated Loan Agreement dated as of even date herewith between Pepperwood, Inc. ("**Pepperwood**") and Mortgagor, as borrowers, and Bank, as lender (as the same may be amended, modified, restated, supplemented, extended or renewed from time to time, the "**Loan Agreement**"), Bank has made available to Pepperwood

and Mortgagor a term loan in the principal amount of up to \$25,000,000 (the “**Loan**”), as evidenced by a Promissory Note dated as of even date herewith from Pepperwood and Mortgagor and payable to Bank (as the same may be amended, modified, replaced, restated, supplemented, extended, or renewed from time to time, the “**Note**”). Except as otherwise provided herein, capitalized terms used herein without definition shall have the meanings given to them in the Loan Agreement, and defined terms in the Loan Agreement are used herein with the same meaning. Pepperwood and Mortgagor intend to use the proceeds of the Loan (i) to fund the construction of new store sites, and (ii) to pay certain costs fees and expenses in connection with the Loan.

B. As partial consideration for Bank extending the Loan and entering into the Loan Agreement, Mortgagor has agreed to secure, by execution and delivery of this Mortgage and the collateral hereafter described, the payment and performance of the obligations of Mortgagor under the following documents or instruments (hereinafter collectively referred to as the “**Obligations**”): (i) payment of all payment obligations evidenced by the Loan Agreement in accordance with the terms thereof, including repayment of the indebtedness evidenced by the Note, with interest thereon; (ii) payment of any and all other indebtedness owing from Mortgagor to Bank or any Affiliate of Bank, including any Hedge Agreement (as defined below) to which Mortgagor and Bank or any affiliate of Bank is a party, and the fulfillment and performance of the other covenants and agreements set forth in the Loan Agreement, the Note, this Mortgage and in any of the other instruments or documents evidencing or securing the indebtedness described in the Loan Agreement (the Loan Agreement, the Note, this Mortgage and such other instruments and documents, as hereafter amended, modified, restated, supplemented, extended or renewed from time to time, are known herein collectively as the “**Loan Documents**”); (iii) the fulfillment and performance of the other covenants and agreements set forth in this Mortgage; and (iv) the payment of all charges provided herein and all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage. For purposes of this Mortgage, a “Hedge Agreement” shall mean (a) an agreement (including terms and conditions incorporated by reference therein and all schedules thereto and confirmations thereof) in any notional principal amount (which notional amount may reduce periodically under the agreement) from time to time and at any time executed and delivered by Mortgagor and Bank, or an Affiliate of Bank, which provides for an interest rate, currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign exchange transaction, cross-currency rate swap, currency option, any combination thereof, or option with respect to, any of the foregoing or any similar transactions, for the purpose of hedging the Borrower’s exposure to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (including any such or similar agreement or transaction entered into by Bank in connection with any other agreement or transaction between Mortgagor and Bank and (b) a master agreement for any of the foregoing agreements referenced in (a), together with all supplements. The foregoing definition of Hedge Agreement shall include, without limitation, any swap agreement as defined in 11 U.S.C. § 101.

C. The maximum principal amount of the Obligations, including present and future advances and obligations, that may be secured by this Mortgage at any one time is an amount

up to **Three Million Nine Hundred Thousand Dollars (\$3,900,000)**. The current principal amount of the Obligations outstanding which are secured by this Mortgage as of the date hereof (including any amounts which have been advanced prior to the date hereof) is **Three Million Nine Hundred Thousand Dollars (\$3,900,000)**.

NOW, THEREFORE, in consideration of these premises and the sum of One and No/100 Dollars (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor has given, granted, bargained, sold, conveyed and mortgaged, and by these presents does give, grant, bargain, sell, convey and mortgage, with power of sale, to Bank, its successors and assigns, upon the representations, warranties, covenants, terms and conditions set forth in this Mortgage, all of Mortgagor's right, title and interest in and to the following property (collectively, the "**Premises**");

(a) The real property described in **EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE** (the "**Land**");

(b) All buildings and other improvements now or hereafter located in, on or about the Land, and all of Mortgagor's building materials intended for incorporation but not incorporated into the improvements to the Land, and all furnishings, furniture, fixtures, machinery, equipment, tools, and all other personal property (excluding inventory) or chattels owned and used in connection with the operation of such improvements, specifically including, without limitation, appliances, gas and electric fixtures and systems, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures and systems, carpeting and other floor coverings, water heaters, air conditioning apparatus and systems, window screens, awnings, gas dispensing equipment and pumps, oil and gas tanks, and signage, whenever acquired by Mortgagor and now or hereafter located in, upon or under the Land, together with all additions and accessions thereto and replacements and proceeds thereof (the "**Improvements**");

(c) All right, title and interest of Mortgagor in and to the minerals, shrubs, timber and other emblements now or hereafter located on the Land, or under or above the same;

(d) All leases, rents, issues, profits, royalties, income and other benefits derived from the Land and the Improvements ("**Rents**"), subject to the right, power and authority hereinafter given to Mortgagor to collect and apply such Rents, and the proceeds from any insurance or condemnation award relating to the Land and the Improvements;

(e) All easements, rights-of-way and rights used in connection with the Land and the Improvements or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto;

(f) All proceeds, products, replacements, additions, substitutions, renewals and accessions of or to any of the foregoing; and



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(g) All the rights, interest and privileges which Mortgagor as lessor has or may have in the leases now existing or hereafter made and affecting the Land or the Improvements or any part thereof, as said leases may have been or may from time to time be hereafter modified, extended and renewed, together with any and all guarantees of any leases affecting all or any part of the Land or the Improvements and all security deposits received in respect of any leases (the “**Security Deposits**”) subject to the right, power and authority hereinafter given to Mortgagor to collect and apply such Rents, and the proceeds from any insurance or condemnation award relating to the Land and the Improvements.

TO HAVE AND TO HOLD the Premises and collateral described herein, with all the rights, privileges and appurtenances thereunto belonging or appertaining, to Bank, its successors and assigns, forever.

And Mortgagor covenants with Bank that Mortgagor is seized of the Premises in fee and has the right to mortgage and convey the same in fee simple; that the same are free and clear of all encumbrances except for Permitted Liens (as defined in the Loan Agreement); that Mortgagor has done no act to encumber the Premises beyond as set forth in the Permitted Liens and, that Mortgagor will warrant and defend the title to the same against the lawful claims of all persons whomsoever, and that Mortgagor will execute such further issuances of said Land as may be required.

This Mortgage is intended (i) to constitute a security agreement for purposes of the Uniform Commercial Code of Alabama and (ii) to operate and is to be construed as a mortgage encumbering title to the Premises in favor of the Bank and is made under those provisions of the existing laws of the State of Alabama relating to mortgages, and is given to secure the payment of the following described indebtedness:

(i) The debt evidenced by the Note, with interest on the outstanding principal at the rates provided for in the Note, with the final payment being due not later than December 1, 2022, the terms of which are described further in the Loan Documents; and

(j) Any and all additional advances made by the Bank to protect or preserve the Premises or the security interest created hereby in the Premises, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Mortgagor’s obligations hereunder or for any other purpose provided herein (whether or not the original Mortgagor remains the owner of the Premises at the time of such advances); and

(k) Any and all costs, expenses, charges, liabilities, commissions and attorneys’ fees now or hereafter chargeable to or incurred by, or disbursed by, the Bank as provided for herein, or by applicable law; and

(l) Any and all other indebtedness now or hereafter owing by Mortgagor to the Bank under the Loan Documents.

Should Mortgagor pay the Obligations in accordance with the terms of the Loan Documents and comply with all the covenants, terms and conditions of this Mortgage, this



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conveyance shall be surrendered, released and cancelled of record. Mortgagor hereby further covenants and agrees with Bank as follows:

Section 1. Loan Documents. The terms and provisions of the Loan Documents are incorporated herein by reference, to the extent in compliance with applicable law. An Event of Default under the Loan Documents shall for all purposes constitute a default hereunder. Upon the occurrence of an Event of Default, Bank may, at its option, defer the sale of the Premises and may take action under and invoke such other rights and remedies as may be provided in the Loan Documents, in this Mortgage or in any other document or instrument evidencing or securing the Obligations. If there is any conflict between the Loan Agreement and this Mortgage, then the Loan Agreement shall control.

Section 2. Payment and Performance of Obligations; Impositions. Mortgagor will pay and perform, as and when due, the Obligations and pay all material real and personal property taxes and assessments, general and special, and all other material taxes and assessments of any kind or nature whatsoever, including without limitation non-governmental levies or assessments (hereinafter referred to as “**Impositions**”), such as owner association dues or charges or fees and maintenance charges which are assessed or imposed upon the Premises. If at any time after the date hereof, there shall be assessed or imposed (the following hereafter referenced to as the “**Additional Impositions**”) (a) a material tax or assessment on the Premises in lieu of or in addition to the Impositions payable by Mortgagor or (b) a material license fee, tax or assessment imposed on Bank and measured by or based in whole or in part upon the amount of the outstanding Obligations secured hereby, Mortgagor shall pay and discharge all such taxes, assessments or fees before they become delinquent. In the event Mortgagor fails to timely pay or dispute any Impositions or Additional Impositions, and such failure continues for ten (10) days after written notice thereof from Mortgagor, Bank may, at its option, pay any such Impositions or Additional Impositions of which payment, amount and validity thereof the official receipt shall be conclusive evidence, and any amounts so expended shall immediately become debts due by Mortgagor, shall bear interest at the rate specified in the Loan Agreement, and such payment shall be secured by this Mortgage. Notwithstanding the foregoing, Mortgagor shall not be required to pay any such Impositions or Additional Impositions, the payment of which is being contested in good faith by appropriate proceedings, if Mortgagor has established and maintained adequate reserves with respect thereto as are in accordance with Generally Accepted Accounting Principles (as defined in the Loan Agreement).

Section 3. Insurance; Casualty.

(a) Insurance. Mortgagor will self insure, or otherwise maintain with financially sound and reputable carriers insurance, in such amounts and against such liabilities as customarily self-insured or maintained by other companies operating similar businesses. Without limiting the foregoing, Mortgagor will maintain commercial liability insurance (i) issued by a commercially reasonable carrier that insures reasonably prudent companies operating in businesses similar to Mortgagor’s business and (ii) at any time in an amount not less than fifteen percent (15%) of the aggregate principal amount of the Loan outstanding at

such time (or such lesser amount as is agreed by Bank (which agreement will not be unreasonably withheld) in the event Mortgagor is unable to obtain such insurance at reasonable expense due to conditions in the liability insurance market). Upon the occurrence and during the continuance of an Event of Default, Mortgagor shall obtain and maintain property and casualty insurance coverage with respect to the Improvements, issued by insurance carriers and in amounts reasonably approved by Bank, and in the event of Mortgagor's failure or refusal to obtain and maintain such insurance, Bank may obtain such insurance without prejudice to its right to foreclose hereunder by reason of default.

If any portion of the Improvements is located in a special flood hazard area according to the Federal Emergency Management Agency ("FEMA"), then Mortgagor must maintain a flood insurance policy in the lesser amount of (a) the replacement value of the Improvements located in such special flood hazard area, and (b) \$500,000. If at any time during the term of the Loan Documents, the Improvements are classified by FEMA as being located in a special flood hazard area, flood insurance will be mandatory. Should this occur, federal law requires Bank to notify Mortgagor of the reclassification. If, within forty-five (45) days of receipt of notification from Bank that any portion of the Improvements has been reclassified by the FEMA as being located in a special flood hazard area, Mortgagor has not provided sufficient evidence of flood insurance, Bank is mandated under federal law to purchase flood insurance on behalf of Mortgagor, and any amounts so expended shall immediately become debts of Mortgagor, shall bear interest at the Default Rate specified in the Loan Agreement, and payment thereof shall be secured by this Mortgage. Mortgagor's obligation to maintain flood insurance upon a determination that the Premises is located in a flood hazard area shall be subject to its right to contest any such determination in good faith and upon a reasonable basis by appropriate proceedings.

(b) Casualty. In the event of damage to or destruction of the Premises, Mortgagor shall take one of the following actions: (x) within ninety (90) days of the occurrence of such damage to or destruction of the Premises, fully pay the pro rata portion (such proration being determined by dividing (i) the Appraised Value of the damaged parcel of Land (as designated in the Loan Agreement) by (ii) the total Appraised Value of all Land securing the Loan) of the unpaid balance of the Obligations evidenced by the Note, together with any other sums advanced under the Loan Documents or any other document now or hereafter evidencing, securing or in any way relating to the Obligations; or (y) within one hundred eighty (180) days of the occurrence of such damage or destruction, cause the Premises to be repaired or rebuilt to the same condition and value as existed prior to such damage or destruction and to Bank's reasonable satisfaction; or (z) within ninety (90) days of the occurrence of such damage to or destruction of the Premises, furnish Bank with a perfectible and enforceable first mortgage lien in substitute collateral having the same Appraised Value as the Appraised Value of the damaged parcel of Land (as determined at the time of Loan's inception) and which is otherwise acceptable to Bank in Bank's reasonable discretion. In the event of damage or destruction which renders the Premises untenable for its intended use as a gasoline station/convenience store, Mortgagor shall notify Bank of such damage or destruction within ten (10) days of such occurrence.

Section 4. Maintenance of Premises; Compliance With Laws. Mortgagor will (a) maintain and keep its material property at the Land in good working order and condition (normal wear and tear excepted) and repair (except to the extent that any such property is obsolete or is being replaced); and (b) comply in all material respects with all applicable laws, ordinances, rules, regulations and requirements of any Governmental Authority (including, without limitation, all Environmental Laws), unless noncompliance would not have a Material Adverse Effect (as such capitalized terms are defined in the Loan Agreement). Mortgagor will not make material changes to the Premises (except for the remodeling thereof in the ordinary course of Mortgagor's business or reconstruction in the event of a casualty), change the principal use of the Premises, or consent to a change in zoning of the Premises that would prohibit Mortgagor's use of the Premises as a gas station or convenience store, without Bank's prior written consent. Mortgagor shall immediately provide notice of such proposed zoning changes to Bank.

Section 5. Conveyance of Premises. Except for Permitted Liens (as defined in the Loan Agreement) Mortgagor will not sell, convey, transfer or encumber the Premises, or any part thereof or interest therein, legal or equitable, without the prior written consent of Bank; *provided, however*, that Mortgagor may, without Bank's consent, (a) dispose of, free and clear of the security interest granted herein and the lien hereof, any personal property or fixtures which, in the reasonable judgment of Mortgagor, have become obsolete or unfit for use or which are no longer useful in Mortgagor's operations, on the condition that Mortgagor shall replace such personal property or fixtures by, or substitute for the same, other personal property or fixtures (not necessarily of the same character) owned by Mortgagor, which shall (i) be of at least equal value to the personal property or fixtures disposed of and (ii) perform a function or serve a purpose the same as, similar to or related to that of the personal property or fixtures disposed of, and/or (b) grant or dedicate a portion of the Land to a governmental authority or utility provider for use as a public right of way or public utility facilities, provided such does not impact any improvements on the Land and does not materially diminish the value of the Premises. Any such replacement personal property or fixtures shall forthwith, without further action, become subject to the security interest granted in, and the lien created by, this Mortgage, and such security interest is hereby granted by Mortgagor. Except for Permitted Liens and for transactions permitted by this **Section 5 or Section 6.5** of the Loan Agreement, Bank's consent to any conveyance or encumbrance may be conditioned upon an increase in the interest rate(s) or fees specified in the Loan Documents, an extension or curtailment of the maturity of the Obligations, or other modification of the Loan Documents, including this Mortgage. For purposes of this Section, a change of ownership or a material change in the structure of Mortgagor, including, without limitation, a change in the principal stockholders, members, managers, trustees, beneficiaries or their respective interests, except as permitted under the Loan Agreement, shall be deemed a conveyance or transfer of the Premises

Section 6. Hazardous Material.

(a) Incorporation of Environmental Representations, Warranties and Covenants. The representations, warranties and covenants regarding environmental compliance and hazardous material set forth in **Sections 4.12 and 6.8** of the Loan Agreement are hereby

incorporated by reference. The definitions of “**Hazardous Material**” and “**Environmental Law**” set forth in **Section 1.1** of the Loan Agreement are hereby incorporated by reference.

(b) Inspections and Audits. Upon the occurrence and during the continuance of an Event of Default, Bank shall have the right at any time during the term of this Mortgage, with reasonable notice, to conduct or cause to be conducted an environmental inspection or audit of the Premises by itself or by a qualified environmental consultant or engineer selected by Bank; and Mortgagor hereby grants to Bank and its employees, agents and independent contractors (hereinafter collectively called “**Bank and its Representatives**”), the right to enter the Premises upon reasonable notice and during the continuance of an Event of Default for the purpose of conducting, whether before or after default, any inspection, audit or tests, making soil borings, extracting samples, installing monitoring wells and conducting such other procedures as Bank and its Representatives deem necessary or desirable in connection with such inspection or audit. At any time during the term of this Mortgage, provided Bank has a reasonable basis (based upon objective evidence or indicia, which Bank will share with Mortgagor before taking any action) for doing so in respect of any materially adverse condition involving Hazardous Materials or a violation of Environmental Law, Bank may require Mortgagor to cause to be performed, at the expense of Mortgagor, for the benefit of Mortgagor and Bank, an inspection or audit of the Premises by an environmental consultant or engineer chosen by Mortgagor and reasonably acceptable to Bank, and Mortgagor shall furnish to Bank, at no cost to Bank, the written inspection or audit report certifying as to the presence or absence of Hazardous Material (as hereinafter defined) on, at or under the Premises. Bank may require that all inspection reports be submitted to governmental entities or agencies if, based upon the advice of Bank’s counsel, submittals are or may be required by law or regulations, provided that Bank gives Mortgagor written notice of such requirement and cooperates (at no out of pocket cost to Bank) with Mortgagor in seeking confidential treatment.

(c) Indemnification. Mortgagor shall indemnify and hold harmless Bank from and against all losses, expenses (including, without limitation, reasonable attorneys’ fees) and claims of every kind suffered by or asserted against Bank as a direct or indirect result of (i) the presence on or release from the Premises of any Hazardous Material in excess of applicable standards, whether or not caused by Mortgagor, (ii) the violation of Environmental Laws applicable to the Premises, whether or not caused by Mortgagor, (iii) the failure of Mortgagor to comply with any requirement to conduct any remediation of Hazardous Material from the Premises which requirement is properly issued by an appropriate governmental agency with proper jurisdiction over such matters, (iv) the failure by Mortgagor to comply fully with the terms and provisions of this Section, or (v) any warranty or representation made by Mortgagor in this Section being false or untrue in any material respect. Notwithstanding the foregoing, Mortgagor shall not be liable for any of the foregoing to the extent such are caused by or arise out of (a) any negligence of Bank directly arising out of the entry by Bank or its agents, employees, contractors or representatives onto the Premises pursuant to **Section 6(b)**, or the willful misconduct of Bank or its agents, employees, contractors or representatives, or (b) the acts or omissions of any party other than Mortgagor first occurring during Bank’s taking possession of or operation of the Premises or first occurring following the foreclosure or exercise of power of sale under this Mortgage.

(d) Survival of Provisions. Mortgagor's obligations under this Section shall survive the repayment of the Obligations, a foreclosure of or exercise of power of sale under this Mortgage, a delivery of a deed in lieu of foreclosure, a cancellation or termination of record of this Mortgage, and the transfer of the Premises.

Section 7. Assignment of Rents; Leases.

(a) Assignment. As further security for the payment and performance of the Obligations and for the faithful performance of all the covenants, agreements, terms and provisions of this Mortgage, Mortgagor hereby sells, transfers and assigns unto Bank all the right, title and interest of Mortgagor in and to the Rents, and to that end Mortgagor hereby assigns and sets over unto Bank all leases of the Premises (collectively, the "Leases") now made, executed or delivered, whether written or verbal, or hereafter made, whether written or verbal, and Mortgagor does hereby authorize and empower Bank to collect the Rents when due, and does hereby direct each tenant of the Premises to pay the Rents to Bank, upon demand for payment thereof by Bank; it being understood and agreed, however, that no such demand shall be made absent the occurrence of an Event of Default hereunder; and until such demand is made, Mortgagor is authorized to (i) collect or continue collecting the Rents, and (ii) modify, amend or terminate any existing Lease(s) or enter into new Leases and to otherwise deal with the Leases in its ordinary course of business; such privilege to collect or continue collecting the Rents by Mortgagor shall not operate, however, to permit the collection of any Rents more than thirty (30) days in advance of their due date unless required under the Leases. Subject to transactions permitted by **Section 6.5** of the Loan Agreement, this assignment is unconditional, irrevocable and absolute and shall become perfected and enforceable upon recordation of this Mortgage and without any further act by Bank or any other holder of the debt hereby secured, including, but not limited to, without obtaining possession of the Premises, without impounding the Rents, or without securing the appointment of a receiver. Mortgagor's right to collect Rents on behalf of Bank or any other holder of the debt hereby secured and to deal with its Leases, as described above, may at any time after the occurrence and during the continuance of an Event of Default hereunder be revoked by notice of revocation given to Mortgagor by Bank or any other holder of the debt hereby secured; provided, Mortgagor's privilege to modify, amend or terminate any existing Lease(s) or enter into new Leases and to otherwise deal with the Leases in its ordinary course of business shall be restored automatically upon the curing of such Event of Default, provided no other Event of Default then exists.

It is intended that the assignment set forth above be an absolute, present assignment from Mortgagor to Bank and not merely the passing of a security interest. The rents, issues, income and profits are hereby assigned absolutely by Mortgagor to Bank contingent only upon the occurrence of an Event of Default. Immediately upon the occurrence of an Event of Default, Mortgagor's right to collect the rents, income and profits from the Leases and to retain, use and enjoy the same shall at Bank's option immediately cease and terminate, and Bank's absolute, present and continuing right to collect the rents, issues, income and profits shall continue in full force and effect, and Bank shall be entitled at its option to collect such rents, issues, income and profits without taking possession of the Premises, without the

appointment of a receiver and without any further act whatsoever. There shall be no condition precedent, other than the occurrence of an Event of Default, to Bank's right to collect such rents, issues, income and profits. Mortgagor may apply in writing to Bank for a reinstatement of Mortgagor's right to collect the rents, income and profits from the Leases and to retain, use and enjoy the same; however, Bank shall be under no obligation to do so.

Anything to the contrary notwithstanding, Mortgagor hereby assigns to Bank any award made hereafter to it in any court procedure involving any of the Leases in any bankruptcy, insolvency, or reorganization proceedings in any state or Federal court and any and all payments made by lessees in lieu of rent; provided, no demand for any such award shall be made absent a continuing Event of Default and, so long as no demand has been made, Mortgagor may receive and retain any such award in its ordinary course of business. Mortgagor appoints Bank as its irrevocable attorney in fact to appear in any action and/or to collect any such award or payment. Mortgagor hereby assigns to Bank all Security Deposits received by Mortgagor or any agent in respect of any Leases, upon the same terms and conditions set forth above. After the occurrence and during the continuance of an Event of Default and upon demand by Bank, Mortgagor shall deliver the Security Deposits to Bank or its designee. Upon delivery of the Security Deposits to Bank, Bank shall hold such deposits pursuant to the terms of the Leases in respect of which such deposits were obtained by Mortgagor; *provided, however*, in no event shall Bank be liable under any Lease of any part of the Premises for the return of any Security Deposit in any amount in excess of the amount delivered to Bank by Mortgagor. Any Security Deposits delivered to and held by Bank shall not bear interest. Bank shall be entitled to exercise its rights under this Section 7 to the fullest extent permitted by law, without the need for the commencement or foreclosure action hereunder or the undertaking of any other remedy available at law or equity. Bank shall return the amount of Security Deposits delivered by Mortgagor hereunder upon the curing of all existing Events of Default.

(b) Leases Affecting Premises. Mortgagor will promptly and fully keep, perform and comply in all material respects with all the terms and covenants imposed upon or assumed by Mortgagor as landlord under the Leases. Mortgagor, if requested by Bank, shall furnish promptly to Bank executed copies of all Leases, renewals, or amendments now existing or hereafter created.

(c) Separate Assignment of Leases. Mortgagor will, upon request of Bank, execute a separate assignment of any Lease affecting any part of the Land or Improvements in substance consistent with this **Section 7**. A default under any separate assignment of Mortgagor's interest in leases given as additional security for the Obligations that is not cured within thirty (30) days of notice of such default shall constitute an Event of Default hereunder.

(d) Other Representations and Covenants. Mortgagor covenants and represents that:

(i) Mortgagor has full right and title to assign the Leases and the rents, issues, income and profits due or to become due thereunder;

(ii) No other assignment of any interest in the Leases has been made;

(iii) It is understood that if Pepperwood is or becomes the lessee of the Premises, and during the term of such Lease, Mortgagor may agree to any amendments to or any termination of such Lease. It is further understood and agreed that, so long as no Event of Default has occurred and is continuing, Mortgagor may modify, terminate, extend or amend any existing Lease affecting the Premises or enter into new Leases affecting the Premises, so long as any such modification, extension, or amendment of an existing Lease, or any such new lease, does not affect the Mortgagor's ability to terminate any such lease within ninety (90) days after the Bank's acceleration of the indebtedness secured hereby;

(iv) No rent for any period subsequent to the date of this Mortgage has been collected more than one month in advance of the time when the same is due under the terms of the Leases; and

(v) Mortgagor shall notify Bank in writing of any default hereunder, promptly upon any senior corporate officer's obtaining knowledge thereof.

Section 8. Right to Cure; Protection of Security. Upon the occurrence of an Event of Default, Bank may (but shall not be obligated to) take any reasonable action Bank deems necessary or desirable to cure any such default. In such event, Bank shall have the right to enter upon the Premises to such extent and as often as Bank, in its sole discretion, deems necessary or desirable in order to cure any such default. In addition, in such event, if any legal proceeding (such as bankruptcy, condemnation, forfeiture or other legal or regulatory proceeding) that may affect Bank's rights or interests in the Premises (or any part thereof) is commenced, Bank may reasonably act to protect or preserve such rights or interests (including, without limitation, the employment of an attorney or other professional(s)). Bank may expend such sums of money as Bank, in its reasonable discretion, deems necessary for any such purpose, and Mortgagor hereby agrees to pay to Bank, immediately upon demand, all sums so expended by Bank, together with interest thereon from the date of each such payment at the Default Rate provided for in the Loan Agreement. All sums so expended by Bank, and the interest thereon, shall be added to and secured by the lien of this Mortgage.

Section 9. Condemnation. Upon condemnation of the Premises or any part thereof, this Mortgage shall become a lien, charge and encumbrance upon Mortgagor's proceeds or award realized as a result of any such proceeding or of any settlement or payment made in lieu of any such proceeding (the "**Condemnation Proceeds**"). Mortgagor hereby grants to Bank a security interest in any Condemnation Proceeds and hereby agrees to execute such further assignments of the Condemnation Proceeds as Bank may require. All Condemnation Proceeds shall be applied as follows:

In the event that either the entire Premises or, if the Premises consists of multiple, separate "**Tracts**" of real property identified on Exhibit A, an entire Tract shall be taken by condemnation or in settlement of any threat of condemnation, then any Condemnation Proceeds

up to an amount equal to the Appraised Value of the parcel of Land (as designated in the Loan Agreement) taken by condemnation shall be used by Mortgagor to discharge any pending or future Obligations in respect of interest on the Loan, or as otherwise as agreed by the parties, and so long as no Event of Default has occurred and is continuing, Mortgagor may retain any Condemnation Proceeds in excess of such Appraised Value (it being understood that if the amount of Condemnation Proceeds are less than such Appraised Value, Mortgagor shall either (a) repay the outstanding principal and interest balance of the Loan in the amount of such deficiency, or (b) provide Bank with additional collateral satisfactory to Bank and with a value equal to or greater than the amount of such deficiency); provided, however, that Condemnation Proceeds may be used by Mortgagor to effect a tax-free exchange or swap or otherwise invest in other real or personal property so long as (i) the real or personal property acquired by Mortgagor in connection therewith (the “**Acquired Property**”) is pledged to Bank as security for the Obligations pursuant to a newly executed Mortgage or other documents reasonably requested by Mortgagor in connection therewith; and (ii) the Acquired Property shall be of a value equal to or greater than the Premises or portion thereof (as applicable) disposed of in connection with such condemnation (unless Mortgagor shall have delivered to Bank additional collateral with a value equal to or greater than the amount of such deficiency).

In the event of a partial taking of the Premises, and provided that such partial taking does not constitute the taking of an entire “Tract”, as addressed in the preceding paragraph, the Condemnation Proceeds shall be used first to restore the Premises as provided below and then to discharge any pending or future Obligations in respect of interest on the Loan, or otherwise as agreed by the parties. Upon any partial taking of the Premises, this Mortgage shall continue in full force as security for the unpaid portion of the Obligations secured hereby. Upon any partial taking of the Premises, Mortgagor covenants with Bank to restore the Premises as nearly as possible to the condition thereof immediately prior to such taking and to apply Mortgagor’s portion of any Condemnation Proceeds together with any other necessary funds to complete and pay for the costs of restoration. Any amounts applied to principal of the Obligations shall be applied to principal last maturing thereon.

Section 10. Inspection. Bank may inspect the Premises at all reasonable times and following written notice to Mortgagor, and access thereto shall be permitted for that purpose to Bank and its Representatives.

Section 11. Events of Default. The following shall constitute defaults or events of default hereunder (“**Events of Default**”):

(a) Failure by Mortgagor to observe, perform or comply with any of the terms, provisions, conditions or covenants contained in this Mortgage, which failure is not cured within thirty (30) days after Mortgagor receives notice of Bank’s demand of cure thereof.

(b) An event of default or “Event of Default” as defined in any Loan Document shall occur and be continuing (after giving effect to any cure or grace period provided for therein).



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(c) Any attempted forfeiture action or enforcement of or realization upon any security interest, lien, encumbrance, charge or judgment affecting the Premises or any part thereof, whether prior to or subordinate to the lien of this Mortgage, unless dismissed within thirty (30) days after the instituting thereof or unless Mortgagor shall have paid to Bank, to be held as additional security for the Obligations, an amount equal to the amount secured by such security interest, lien, encumbrance, charge or judgment (it being understood that upon the satisfaction of such security interest, lien, encumbrance, charge or judgment by Mortgagor, such additional funds shall be returned to Mortgagor).

(d) Any actual or threatened demolition or injury or waste to the Premises which may materially impair the value of the Premises, unless Mortgagor promptly shall have either (i) cured such demolition, injury or waste or restored the Premises to its previous condition within thirty (30) days of receipt of written notice thereof, or (ii) provided Bank with additional collateral that is satisfactory to Bank and that has a value equal to or greater than the amount of the diminution of the Premises resulting from such demolition, injury or waste.

Section 12. **Acceleration.** If an Event of Default shall have occurred, the entire balance of the Note and any or all of the other Obligations, including, without limitation, all accrued interest, shall, at the option of Bank, immediately become due and payable without further notice or demand, time being of the essence, of this Mortgage; and no omission on the part of Bank to exercise any such option when entitled to do so shall be construed as a waiver of such right; *provided that* with respect to any Hedge Agreements or other interest rate hedge agreement with Bank or an Affiliate of Bank shall be governed by the default and termination provisions of each such Hedge Agreement.

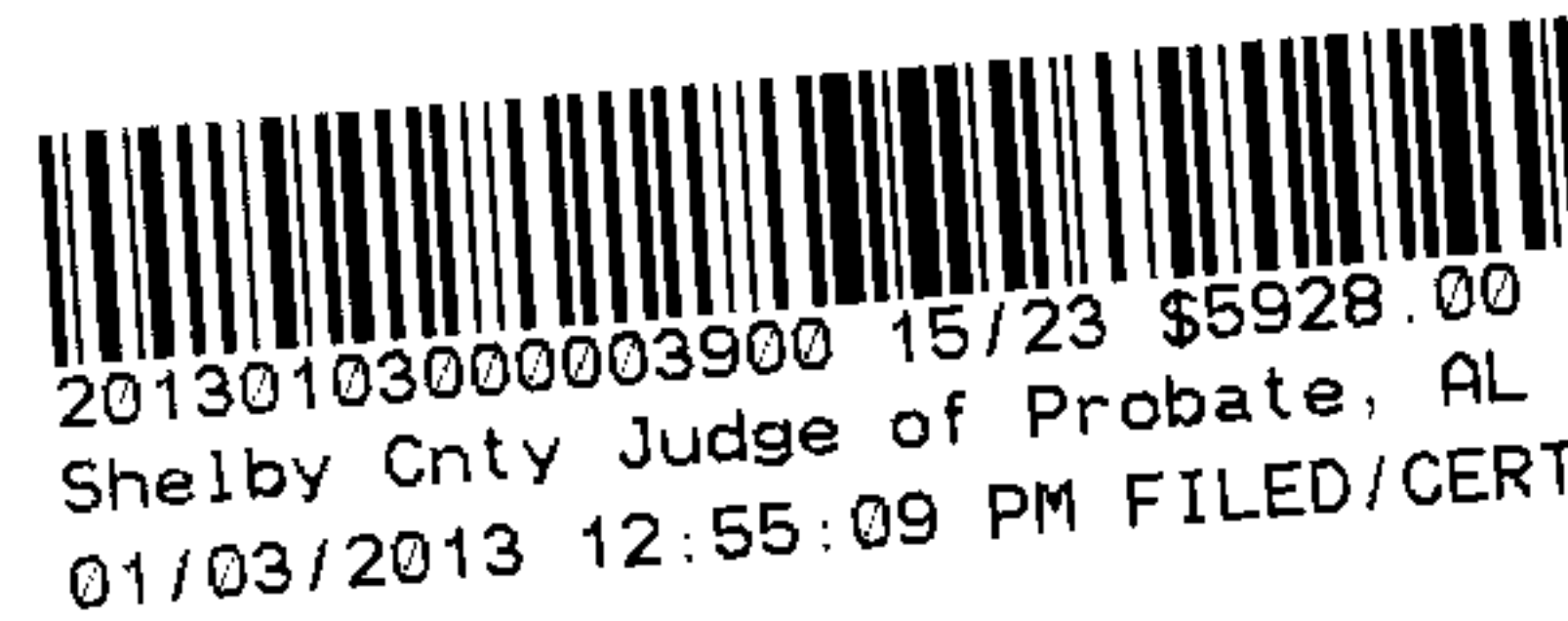
Section 13. **Remedies; Power of Sale.**

(a) Upon the occurrence of any Event of Default, Bank may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Premises, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Bank may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Bank: (1) declare the entire unpaid Obligations to be immediately due and payable; or (2) notify all tenants of the Premises and all others obligated on leases of any part of the Premises that all rents and other sums owing on leases have been assigned to Bank and are to be paid directly to Bank, and to enforce payment of all obligations owing on leases, by suit, ejectment, cancellation, releasing, reletting or otherwise, whether or not Bank has taken possession of the Premises, and to exercise whatever rights and remedies Bank may have under any assignment of rents and leases; or (3) institute proceedings for the complete foreclosure of this Mortgage either at law, in equity or pursuant to Section 2.02(b) herein, in which case the Premises may be sold for cash or upon credit in one or more parcels; or (4) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable (if Bank shall have elected not to declare the entire Obligations to be immediately due and owing), subject to the continuing lien of this Mortgage

for the balance of the Obligations not then due; or (5) sell for cash or upon credit the Premises or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Premises, this Mortgage shall continue as a lien on the remaining portion of the Premises; or (6) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Loan Agreement or the Note; or (7) recover judgment on the Loan Agreement or the Note either before, during or after any proceedings for the enforcement of this Mortgage; or (8) apply for the appointment of a trustee, receiver, liquidator or conservator of the Premises, without regard for the adequacy of the security for the Obligations and without regard for the solvency of Mortgagor, or any other person, firm or other entity liable for the payment of the Indebtedness; or (9) pursue such other remedies as Bank may have under applicable law, in equity or under the Note, the Loan Agreement, this Mortgage or any of the other Loan Documents; or (10) pursue any remedy available to Bank under any other note

(b) Upon the occurrence of an Event of Default, Bank, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Premises, to sue Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Bank shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to Mortgagor or any other party, of a receiver of the rents, issues and profits of the Premises, with power to lease and control the Premises and with such other powers as may be deemed necessary.

(c) Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Bank shall be authorized, at its option, whether or not possession of the Premises is taken, after giving twenty-one (21) days' notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Premises or any part thereof is located, to sell the Premises (or such part or parts thereof as Bank may from time to time elect to sell) in front or such county's courthouse door, at public outcry, to the highest bidder for cash. Bank, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Premises, or any part thereof, if the highest bidder therefor. 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 Premises, 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, Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case Bank, in the exercise of the power of sale herein given, elects to sell the Premises 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 Premises not previously sold shall have been sold or all the Indebtedness secured hereby shall have been paid in full.

(d) [RESERVED].

(f) Mortgagor hereby authorizes and empowers Bank or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Premises sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(g) Upon the occurrence of any Event of Default or at any time thereafter, Bank shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring the whole Obligations due. Any such sale may be made subject to the unmaturing part of the Obligations secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmaturing part of the Obligations secured by this Mortgage, but as to such unmaturing part of the Obligations this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Obligations whether then matured or unmaturing, the purpose hereof being to provide for a foreclosure and sale of the Premises for any matured part of the Obligations without exhausting any power of foreclosure and the power to sell the Premises for any other part of the Obligations, whether matured at the time or subsequently maturing.

(h) Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws not existing or hereafter enacted providing for (i) any appraisal before sale of any portion of the Premises (commonly known as appraisal law), or (ii) any extension of time for the enforcement of the collection of the Indebtedness or any creation or extension of a period of redemption from any sale made in collecting the Indebtedness (commonly known as stay laws and redemption laws).

(i) The Premises may be sold in such parcels or lots without regard to principles of marshaling and may be sold at one sale or in multiple sales, all as determined by Bank. A previous exercise of the power of sale hereunder by Bank shall not be deemed to extinguish the power of sale which power of sale shall continue in full force and effect until all the Premises shall have been finally sold and properly conveyed to the purchasers at the sale or until all Obligations have been satisfied. Mortgagor's duties and responsibilities under the Loan Documents, including this Mortgage, shall continue until the Obligations are fully paid and performed, notwithstanding any partial foreclosure of the Premises. Bank shall be entitled to a reasonable commission for a completed or uncompleted foreclosure.

Section 14. Appointment of Receiver. Bank shall have the right, after the occurrence of an Event of Default, to the appointment of a receiver to collect the Rents from the Premises and to operate and manage the Premises (under a name other than "Racetrac" or

“Raceway”) without further notice to Mortgagor or any other, party (Mortgagor hereby waiving any right to such notice) and without consideration of the value of the Premises or the solvency of any person liable for the payment of the amounts then owing, and all amounts collected by the receiver shall, after reasonable expenses of the receivership, be applied to the payment of the Obligations, and Bank, at its option, in lieu of an appointment of a receiver, also shall have the right to take all actions set forth in the previous sentence. If such receiver should be appointed, or if there should be a sale of the Premises, as provided in **Section 13**, Mortgagor, or any person in possession of the Premises thereunder, as tenant or otherwise, shall become a tenant at will of the receiver or of the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

Section 15. Possession of Premises. If an Event of Default shall have occurred and be continuing, Mortgagor, upon written demand of Bank, shall forthwith surrender to Bank the actual possession of Premises, and, to the extent permitted by law, Bank may enter and take possession of the Premises and may exclude Mortgagor and Mortgagor’s agents and employees wholly therefrom (except to the extent access to the Premises by Mortgagor is necessary in order for Mortgagor to comply with applicable environmental laws). If Mortgagor shall for any reason fail to surrender or deliver the Premises or any part thereof after Bank’s demand, Bank may obtain a judgment or decree conferring on Bank the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Premises to Bank, and, to the extent permitted by applicable law, Mortgagor hereby specifically consents to the entry of such judgment or decree. Mortgagor shall pay to Bank, upon demand, all reasonable costs and expenses of obtaining such judgment or decree (including reasonable attorneys’ fees actually incurred), and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage. Upon every such entering and taking of possession, Bank may hold, store, use, operate, manage, control and maintain the Premises and conduct the business thereof (under a name other than “Racetrac” or “Raceway”), and from time to time, (i) make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and when necessary and proper purchase or otherwise acquire additional fixtures, personalty and other property, (ii) insure or keep the Premises insured, (iii) manage and operate the Premises and exercise all the rights and powers of Mortgagor, in Mortgagor’s name or otherwise with respect to the same, and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Bank, all as Bank may from time to time reasonably determine to be to its best advantage; and Bank may collect and receive all of the income, rents, profits, issues and revenues of the Premises, including those past due as well as those accruing thereafter and, after deducting (a) all reasonable expenses of taking, holding, managing and operating the Premises (including compensation for the services of all persons employed for such purposes), (b) the reasonable cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, (c) the reasonable cost of insurance, (d) such taxes, assessments and other charges as Bank may determine to pay, (e) other reasonable charges upon the Premises or any part thereof as Bank shall determine to pay, and (f) the reasonable compensation and expenses actually incurred by Bank for attorneys and agents of Bank, the remainder of the money so received by Bank shall be applied first to the payment of late fees, and then accrued interest on and then to the payment of principal of the Obligations or other

indebtedness secured hereby. For the purpose of carrying out the provisions of this Section, Mortgagor hereby constitutes and appoints Bank the true and lawful attorney-in-fact of Mortgagor to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney-in-fact. Whenever all such Events of Default have been cured and satisfied, Bank shall surrender possession of the Premises to Mortgagor, provided that the right of Bank to take possession from time to time pursuant to this Section shall exist if any subsequent Event of Default shall occur and be continuing.

Section 16. Delay Not to Operate as Waiver; Indemnification of Bank. No delay or forbearance by Bank in exercising any rights hereunder or otherwise afforded by law shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder, and all such rights shall be cumulative. In case Bank voluntarily or otherwise shall become a party to any suit or legal proceeding to protect the Premises or the lien of this Mortgage, Bank shall be saved harmless and reimbursed by Mortgagor for any reasonable amounts paid, including all reasonable costs, charges and attorneys' fees actually incurred in any such suit or proceeding, which obligations shall be secured by this Mortgage. No right, power or remedy conferred upon or reserved to Bank by this Mortgage, or the Obligations, any loan agreement or any separate assignment of rents and leases is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. No act of Bank shall be construed as a waiver or as an election to proceed under any provision herein or under the other documents evidencing the loan or securing same to the exclusion of any other provisions, and Bank shall be entitled to enforce all remedies severally or concurrently as it shall see fit. No release or subordination by Bank of any part of the Premises or any other property, collateral or obligation securing the Obligations or any other indebtedness secured by this Mortgage shall release or impair the lien or title of unreleased property.

Section 17. Bank's Powers. Without affecting the liability of any other person liable for the payment of the Obligations, and without affecting the lien or charge of this Mortgage upon any portion of the Premises not then or theretofore released as security for the Obligations, Bank may, from time to time and without notice, (i) release any person so liable, (ii) extend the maturity or alter any of the terms of the Obligations (it being understood that this provision does not entitle Bank to amend terms of the Obligations unilaterally), (iii) grant other indulgences, (iv) release or reconvey (or cause to be released or reconveyed at any time at Bank's option) any part or all of the Premises, (v) take or release any other or additional security for the Obligations, (vi) make compositions or other arrangements with debtors in relation thereto, or (vii) advance additional funds to protect the security hereof or pay or discharge the obligations of Mortgagor hereunder, or under the other Loan Documents or any document executed in connection with or securing the Loan Documents, and all amounts so advanced, with interest thereon at the Default Rate set forth in the Loan Agreement, shall be secured hereby.

Section 18. Waivers. To the extent permitted by law, Mortgagor hereby waives any rights or remedies on account of any extensions of time, releases granted or other dealings between Bank and any subsequent owner of the Premises. The foregoing waiver shall not be construed as affecting or otherwise amending the covenants of Mortgagor contained in **Section 5** hereof. Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisalment before sale of any portion of the Premises and (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or any of the other Obligations. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption) appraisalment, valuation, stay, extension, redemption, or extension and Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Premises, to the extent permitted by law, hereby waive and release all rights of valuation, appraisalment, redemption, stay of execution, notice of election to mature or declare due the whole of the Obligations and marshalling in the event of foreclosure of the liens hereby created. Mortgagor further waives any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations (it being understood that Mortgagor does not waive the notice contemplated by Section 11(a) or any notice specifically contemplated in the Loan Documents).

Section 19. Interest Not to Exceed Maximum Allowed by Law. The parties hereto shall in no event be deemed to have contracted for a greater rate of interest than the maximum rate permitted by law. Should a greater amount be collected, it shall be construed as a mutual mistake of the parties and the excess shall be returned to the party paying same.

Section 20. Restoration to Former Positions. In case Bank shall have proceeded to enforce any right or remedy under this Mortgage by suit, receiver, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, then and in every such case, Mortgagor and Bank shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Bank shall continue as if no such proceeding had been taken.

Section 21. Security Agreement.

(a) Security Agreement. This Mortgage shall constitute a security agreement pursuant to the UCC for any items constituting a part of the Premises which, under applicable law, may be subjected to a security interest pursuant to the UCC (collectively, the "**Collateral**"). Mortgagor hereby grants Bank a security interest in the Collateral as security for the payment and performance when due of the Obligations. Without the prior written consent of Bank, Mortgagor shall not create or suffer to be created any other security interest in such items, including replacements and additions thereto, except Permitted Liens. In exercising its remedies hereunder, Bank may proceed against the real property and personal property described herein separately or together and in any order whatsoever, without in any way affecting the availability of Bank's remedies under the UCC or herein. For purposes of complying with the requirements of Section 9-502 of the Alabama Uniform Commercial Code,

the name of Mortgagor, as Debtor, and Bank, as Secured Party, and the respective addresses of Mortgagor, as Debtor, and Bank, as Secured Party, are set forth on the first page of this Mortgage; the types or items of Collateral are described in this Section and in the definition of the “Premises” appearing in the granting clauses of this Mortgage; and the description of the Land is set forth on **EXHIBIT A** attached hereto. **The Collateral is or includes fixtures.**

(b) Remedies. If any Event of Default shall have occurred and be continuing beyond any applicable cure period therefor, Bank shall have, in addition to all other rights and remedies given to it by this Mortgage, those allowed by law, and the rights and remedies of a secured party under the Uniform Commercial Code as enacted and in effect in the applicable jurisdiction, and, without limiting the generality of the foregoing, Bank may immediately, without demand or performance and without other notice (except as set forth in the Loan Documents, this Mortgage or other documents executed and delivered pursuant thereto or in connection therewith) or demand whatsoever to Mortgagor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon in the county where the Premises are located, or elsewhere, the whole or, from time to time, any part of the Collateral, or any interest which Mortgagor may have therein, and, after deducting from the proceeds of sale or other disposition of the Collateral all reasonable expenses (including all reasonable expenses for legal services actually incurred), shall apply the residue of such proceeds towards the satisfaction of the Obligations and any other sums secured by this Mortgage. The remainder, if any, of the proceeds after satisfaction in full of the Obligations and any other sums secured by this Mortgage shall be paid to Mortgagor. Notice of any sale or other disposition shall be given to Mortgagor at least ten days before the time of any intended public sale or the time any intended private sale or other disposition of the Collateral is to be made, which Mortgagor hereby agrees shall be reasonable notice of sale or other disposition. Mortgagor agrees to assemble, or cause to be assembled, at its own expense, the Collateral at such place or places as Bank shall designate by written notice. At any such sale or disposition, Bank may, to the extent permissible under applicable law, purchase the whole or any part of the Collateral sold, free from any right of redemption on the part of Mortgagor, which right is hereby waived and released. Without limiting the generality of any rights and remedies conferred upon Bank under this **Section 21(b)**, upon the occurrence of an Event of Default, Bank may, to the full extent permitted by law: (i) enter upon the Premises, exclude therefrom Mortgagor or any affiliate thereof, and take immediate possession of the Collateral, either personally or by means of a receiver appointed by a court of competent jurisdiction, using all lawful, necessary force to do so; (ii) use, operate, manage and control the Collateral in any lawful manner; (iii) collect and receive all rents, income, revenue, earnings, issues and profits therefrom; and (iv) maintain, repair, renovate, alter or remove the Collateral as Bank may determine in its discretion, and any monies so collected or received by Bank shall be applied to, or may be accumulated for application upon, satisfaction of the Obligations or any other sums secured by this Mortgage.

(c) Filings; Further Assurances. Mortgagor agrees to execute and deliver to Bank Uniform Commercial Code financing statements and such other documents, instruments, supplemental security agreements and chattel mortgages as Bank may reasonably deem necessary, proper or desirable to obtain the benefits of this Mortgage, and Mortgagor

authorizes Bank, upon failure of Mortgagor to do so at the request of Bank, to effect any filing or recording of any such financing statement or statements relating to the Collateral or amendments thereto without the signature of Mortgagor, where lawful, and hereby appoints Bank as its attorney in fact (without requiring Bank to act as such) to execute any such financing or other statement or statements in the name of Mortgagor, and to perform all other acts which Bank deems appropriate to perfect and continue the security interest in, and to protect and preserve, the Collateral. The power herein conferred upon Bank is coupled with an interest and is irrevocable. Mortgagor further agrees to assign to Bank its rights in or under any financing statements relating to the Collateral filed in favor of Mortgagor.

Section 22. **Notices.** All notices and other communications required under this Mortgage shall be in writing and shall be deemed to have been properly given, if given in accordance with the provisions of Section 10.5 of the Loan Agreement,

Section 23. **Successors and Assigns.** The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the term "**Bank**" shall include any payee of the Obligations and any transferee or assignee thereof, whether by operation of law or otherwise.

Section 24. **Governing Law.** This Mortgage shall be governed by and construed in accordance with the laws of the State of Alabama without regard to principles of conflicts of laws.

Section 25. **Expenses.** Mortgagor shall pay or reimburse Bank for all reasonable costs, charges and expenses, including reasonable attorneys' fees actually incurred and disbursements, to the extent provided in the Loan Agreement.

Section 26. **Severability.** If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent under applicable law, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 27. **Greater Estate.** In the event that Mortgagor is the owner of a leasehold estate with respect to any portion of the Premises and Mortgagor obtains a fee estate in such portions of the Premises, then, such fee estate shall automatically, and without further action of any kind on the part of Mortgagor, be and become subject to the security title and lien hereof.

Section 28. **Headings.** The headings of the sections, paragraphs, and subparagraphs of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

Section 29. **Time of Essence.** Time is of the essence with respect to all provisions hereof.

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[
IN WITNESS WHEREOF, Mortgagor, pursuant to duly adopted resolutions of Mortgagor's board of directors, has caused this Mortgage, Security Agreement and Financing Statement to be executed under seal as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

MORTGAGOR:

RACETRAC PETROLEUM, INC., a Georgia
corporation

Judy Bradley
Witness

By: R. J. Dumbacher
Robert J. Dumbacher,
Chief Financial Officer

Mason
Witness

ACKNOWLEDGMENT

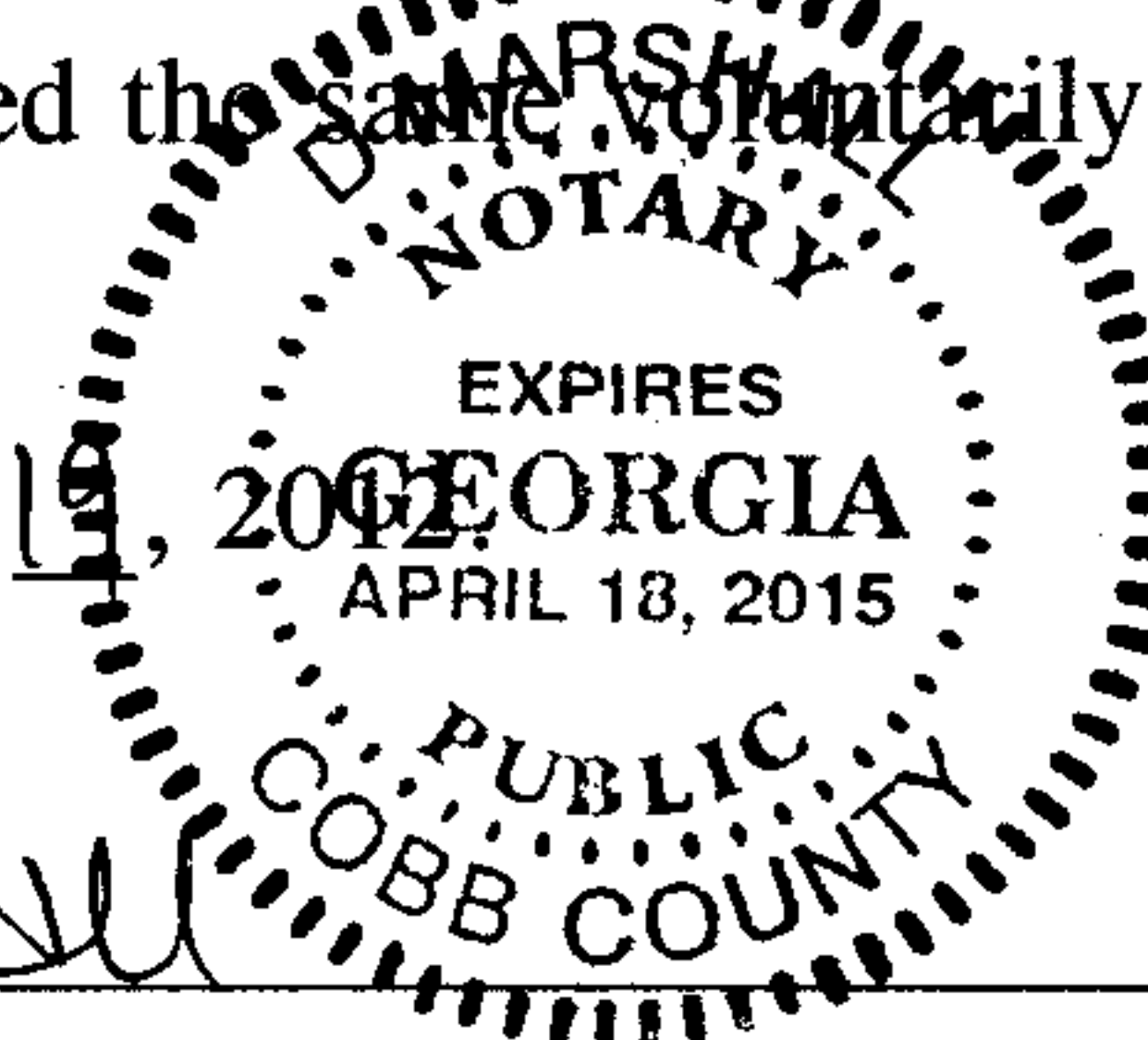
STATE OF GEORGIA)


COBB
COUNTY OF ~~FULTON~~)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Robert J. Dumbacher, whose name as an officer of RACETRAC PETROLEUM, INC., a Georgia corporation, is signed to the foregoing Mortgage, Assignment of Rents and Security Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, Assignment of Rents and Security Agreement, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said RACETRAC PETROLEUM, INC.

Given under my hand and official seal, this December 19, 2011,

D. Marshall
Notary Public
My Commission Expires: 4/18/15




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5349 Hwy 280 South, Shelby County, AL

EXHIBIT "A" - LEGAL DESCRIPTION

Parcel I:

Commence at the Northeast corner of the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West, in Shelby County, Alabama, thence run South along the East line of said 1/4 - 1/4 section for 756.98 feet; thence 90° 00' right and run west for 66.0 feet to the point of beginning of the property herein described; thence continue West along the last stated course for 200.0 feet; thence 90° 00' left and run South for 410.27 feet to a point on the North right of way line of U. S. Highway #280 as now constructed; thence 94° 00' left and run Easterly along said right of way line for 134.32 feet to an angle point in said right of way line said point is opposite station 1/4 plus 34.40 and 80.0 feet north of the center line of said highway; thence 16° 20' left and run Northeasterly along said right of way line for 70.37 feet; thence 69° 40' left and run North, running parallel to the East line of said 1/4 - 1/4 section for 376.44 feet to the point of beginning.

Less and except any portion of subject property lying within a road right of way.

NOTE: The above described property is one and the same as property described in Shelby Real 129, Page 748.

Parcel II:

Begin at the NE corner of the NE 1/4 of SE 1/4 of section 31, Township 18, Range 1 West, and run south along east line 756.98 feet; thence turn an angle to the right of 90° 00' and run west 66 feet to point of beginning; thence run south and parallel with east line of said 1/4 - 1/4 to the north right of way line of Highway 280 as now constructed; thence turn angle to left and run Easterly along north right of way line of said Highway a distance of 5 feet; thence turn an angle to the left and run north and parallel with east line of said 1/4 - 1/4 to a point 5 feet east of the point of beginning; thence turn angle to left and run west 5 feet to the point of beginning. Situated in Shelby County, Alabama.

Less and except any portion of subject property lying within a road right of way.