



20140303000055610 1/15 \$56.00
Shelby Cnty Judge of Probate, AL
03/03/2014 08:06:18 AM FILED/CERT



20140228000174900 1/15
Bk: LR201411 Pg:10859
Jefferson County, Alabama
I certify this instrument filed on:
02/28/2014 01:47:57 PM AGREE
Judge of Probate- Alan L. King

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of the 21st day of Feb, 2014, among the undersigned CARMAX AUTO SUPERSTORES, INC., a Virginia corporation, ("CarMax", together with its successors and assigns being collectively herein referred to as "Tenant") and STEARNS INVESTMENTS, LLC, a California limited liability company ("Stearns", together with its successors and assigns being collectively herein referred to as "Borrower") and PROTECTIVE LIFE INSURANCE COMPANY, a Tennessee corporation, and its subsidiaries (such party together with its successors and assigns including, without limitation, any purchaser at any foreclosure sale of the Mortgage, defined below, being herein collectively referred to as "Lender"), whose address is: 2801 Highway 280 South, Birmingham, Alabama 35223 (Post Office Box 11289, Birmingham, Alabama 35202), Attn: Investments – Mortgage Loans.

RECITALS

A. Tenant is the lessee under the lease which together with any and all modifications and amendments thereto, is completely described on **EXHIBIT "A"** attached hereto and incorporated herein (collectively the "Lease").

B. Borrower, the lessor or successor to the lessor under the Lease, has requested Lender to make to Borrower a mortgage loan secured or to be secured by a mortgage or deed of trust from Borrower to Lender (such mortgage or deed of trust collectively together with all renewals, increases, replacements, consolidations, modifications and extensions thereof, the "Mortgage"), covering the property (the "Property") described on **EXHIBIT "B"** attached hereto and incorporated herein wherein the premises covered by the Lease are located.

C. Lender is willing to make the requested mortgage loan, provided Tenant executes this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Lender to make the requested mortgage loan, Tenant and Lender hereby agree and covenant as follows:

1. The Lease and the lien thereof are and shall at all times continue to be subject and subordinate in all respects to the lien of the Mortgage and all rights, privileges and provisions in favor of Lender thereunder. Tenant further waives all rights and claims to assert that the Lease or any provision thereof is superior to the lien or any other provision of the Mortgage.

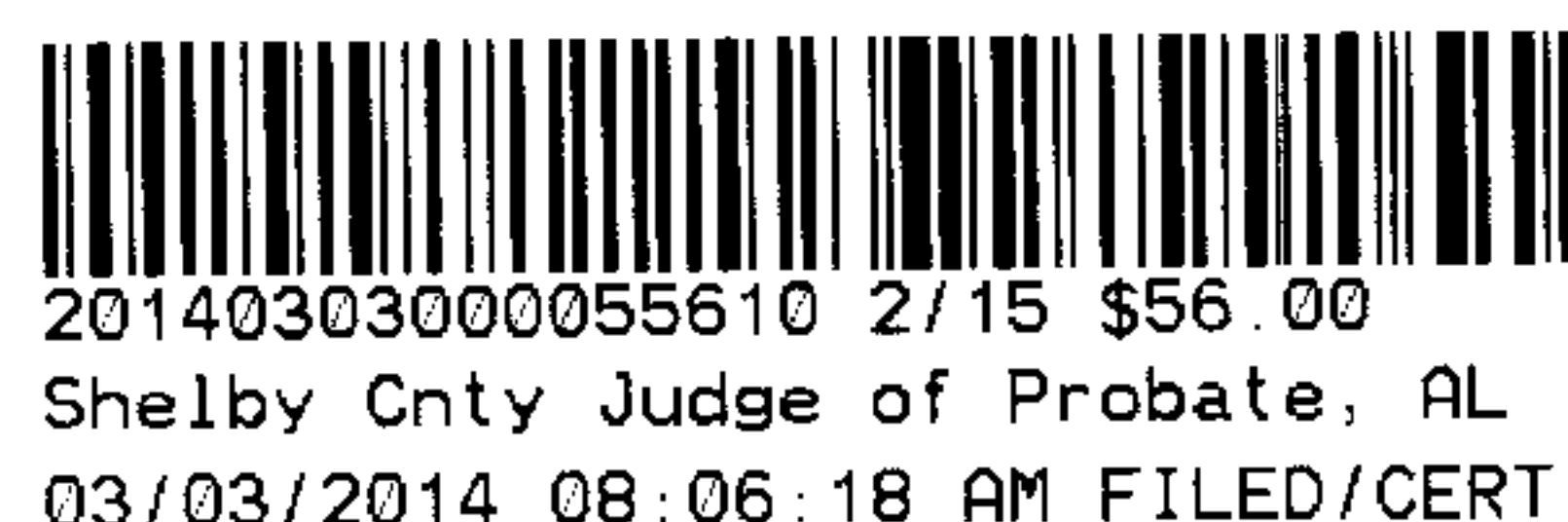
2. So long as Tenant is not in breach or default (beyond any period in the Lease given to Tenant to cure such breach or default) in the payment of rent or additional sums or in

the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession under the Lease and Tenant's rights and privileges thereunder, or under any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease, shall not be diminished or interfered with by Lender acting pursuant to the Mortgage, and Tenant's occupancy shall not be disturbed by Lender during the term of the Lease or any such extensions or renewals thereof in accordance with any extension or renewal options contained in the Lease.

3. If the interests of Borrower in the Property or the Lease shall be acquired by Lender by foreclosure, by deed in lieu of foreclosure or by any other method, and Lender succeeds to the interests of Borrower under the Lease, then provided that and so long as Tenant is not in default (beyond any period in the Lease given to Tenant to cure such breach or default) in the payment of any sums due from Tenant under the Lease or in the performance of any other obligation of Tenant under the Lease, the Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated, diminished, interfered with or disturbed except in accordance with the terms of the Lease, and except that Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease, with the same force and effect as if Lender were the original lessor under the Lease, and Tenant does hereby attorn to Lender as its lessor, said attornment to be effective and self-operative with the execution of any other instruments on the part of either party hereto immediately upon Lender's succeeding to the interest of Borrower under the Lease; provided, however, that unless otherwise required by applicable law Tenant shall be under no obligation to pay rent to Lender by virtue of this Agreement until Tenant receives written notice from Lender that Lender has succeeded to the interests of Borrower under the Lease or exercised its assignment of rents. Borrower hereby expressly authorizes Tenant to make such payments to Lender and discharges Tenant from any liability to Borrower on account of any such payments. It is the intention of the parties hereto for this purpose to incorporate the Lease into this Agreement by reference for all purposes with the same force and effect as if set forth at length herein.

4. If Lender shall succeed to the interests of Borrower under the Lease, Lender shall be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interests of Borrower under the Lease, have the same remedies against Lender for the breach or default by Lender of any agreement contained in the Lease that Tenant might have had under the Lease against Borrower for Borrower's breach or default; provided, however, that Lender shall not be:

- (a) liable for any act or omission of any prior or succeeding landlord (including Borrower); or
- (b) liable for the return of any security deposit unless actually received by Lender;
- (c) subject to any offsets or defenses which tenant might have against any prior or succeeding landlord (including Borrower);



(d) bound by any rent or additional sums which Tenant might have paid for more than one month in advance to any prior or succeeding landlord (including Borrower);

(e) bound by any agreement, amendment or modification of the Lease or any cancellation or termination of the Lease by any prior landlord (including Borrower), made without Lender's prior written consent;

(f) liable for the completion of any construction on the Property or tenant improvements to the leased premises commenced, or agreed or represented to by any prior or succeeding landlord (including Borrower); or

(g) bound by an provision of the Lease restricting the use of other properties owned by Lender, as landlord.

5. Tenant from and after the date hereof shall send a copy of any notice or statement of a breach or default (including matters which, but for the passage of time, the giving of notice, or both, would be a breach or default) under the Lease or any notices or statement of any intention to cancel or terminate the Lease by certified mail, return receipt requested to Lender at the address shown above at the same time such notice or statement is sent to Borrower. Tenant further agrees that, in the event of any act or omission by Borrower or other occurrence which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction (either actual or constructive), or in the event of any other breach or default by Borrower under the terms of the Lease, promptly thereupon, Tenant shall so notify Lender by certified mail, return receipt requested, at the address above.

6. After receipt of notice as provided in paragraph 5 above, Lender shall have the option, within the time periods given to Borrower for cure of any breach or default, to cure any such act, omission, breach, or default of Borrower described in such paragraph 5, including if necessary, the commencement and prosecution of foreclosure proceedings, and Tenant agrees to accept the performance of Lender in lieu of the performance of Borrower and that the Lease shall thereby remain in full force and effect. Tenant shall not exercise any such right to terminate or claim eviction or any other rights or remedies available at law or in equity for default or breach of the Lease or act of omission by Borrower in connection with the Lease, unless and until Tenant has notified Lender as provided in paragraph 5 hereof and until the time for Lender to commence and complete such cure has elapsed.

7. Tenant hereby agrees that for so long as the Mortgage encumbers or is a lien on the Property, or any portion thereof, and thereafter, should Lender acquire the Property, or any portion thereof, no covenant, agreement or other obligation of the Landlord which is to be performed or complied with beyond the boundaries of the Property and no act or omission or occurrence which occurs beyond the boundaries of the Property (including, without limitation, any restrictions prohibiting Landlord's or its affiliates or other related persons or entities from competing, operating or leasing in competition with Tenant or to cause or restrict certain actions or activities on other property not encumbered by the Mortgage) shall be a breach or default under the Lease nor permit Tenant to cancel or terminate the Lease or abate or reduce any rent or other sums. Nothing in this Section 7 shall prevent Tenant from seeking or obtaining a

restraining order or injunction against such breach, default, act, omission or occurrence or from obtaining a monetary judgment against Borrower or any successor landlord other than Lender for any such breach, default, act, omission or occurrence.

8. In the event, the Tenant becomes the owner of the Property or any portion thereof, there shall be no merger of the leasehold interest and the fee interest and the Lease shall remain in existence and, without limiting the foregoing, Lender shall be permitted to collect rent thereunder if a breach or default occurs under the Mortgage or any indebtedness secured thereby or any assignment of leases and/or rents by and/or executed in connection with any of the preceding. Nothing in this Agreement shall be construed to permit a transfer of Tenant's interest not expressly permitted by the Lease.

9. This Agreement may not be amended or modified orally or in any other manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns including, any applicable, heirs, administrators, legal representatives and executors.

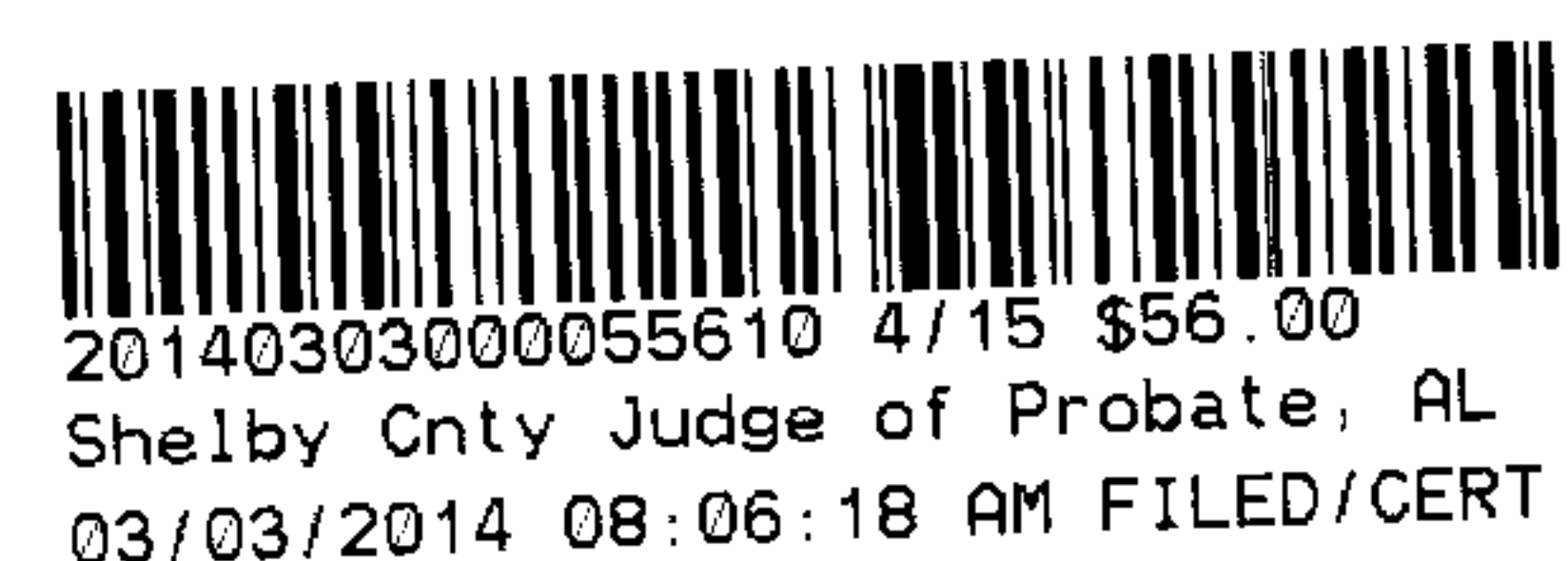
10. Tenant agrees that it will not, without the written consent of Lender, pay rent or any other sums becoming due under the Lease more than one (1) month in advance.

11. Tenant agrees that the Mortgage and the indebtedness secured thereby may be increased, rearranged, renewed, extended, consolidated and modified from time to time by agreement between Borrower and Lender, and Lender may exercise any one or more of its rights under the Mortgage from time to time at Lender's discretion, all without notice to or consent of Tenant, and this Agreement shall continue in full force and effect as to all such renewals, extensions, increases, rearrangements, consolidations and modifications and all such exercises of rights.

12. In no event shall Lender be personally liable as landlord under the Lease either by virtue of any assignment of the Lease, the exercise of any right thereunder and hereunder, the foreclosure of its lien on the Property, the acquisition of the Property or the collection of any rent or other sums under the Lease as Owner or Mortgagee and Tenant shall look solely to the real estate that is the subject of the Lease and to no other assets of Lender for satisfaction of any liability in respect of the Lease; but Tenant shall have reserved to it all other remedies available to it at law or in equity.

13. Except as otherwise described on Exhibit "A" above, the Lease has not been amended or modified and is in full force and effect as originally executed, and there are no side letters or other arrangements, whether or not constituting amendments to the Lease, for tenant inducements or otherwise.

14. The Lease is in full force and effect. Neither Borrower nor Tenant is in breach or default under any provision of the Lease nor is Tenant aware of any act, omission or occurrence which, but for the passage of time, the giving of notice, or both, which would constitute a breach or default or would permit the Tenant to terminate the Lease or reduce or abate any rent



thereunder. Borrower has complied fully and completely with all of Borrower's covenants, warranties and other obligations under the Lease to the date hereof. Tenant is fully obligated to pay, and is paying, the rent and other sums due from Tenant under the Lease, and is fully obligated to perform and is performing all of the obligations of Tenant under the Lease, without right of counterclaim, offset or other defense.

15. Where appropriate, all references to the singular shall include the plural and vice versa and all references to any gender shall include the others.

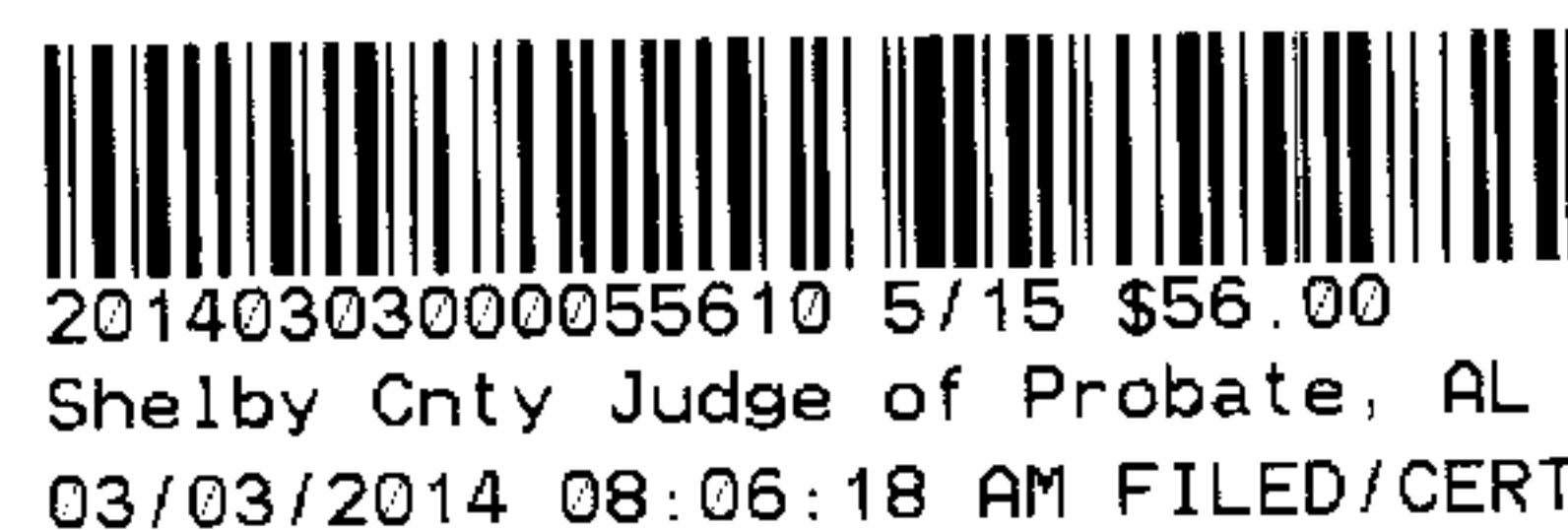
16. This Agreement may not be waived, amended or modified except by subsequent written agreement signed by the party to be bound.

17. The words "breach" or "default" are used interchangeably in this Agreement for convenience of drafting and there is no distinction between the meaning of either word.

18. This Agreement satisfies Borrower's obligation, if any, to provide a subordination, non-disturbance and attornment agreement, or similar document, pursuant to the Lease.

19. This Agreement may be executed in multiple counterparts, each of which shall be an original instrument and which, taken together, constitute one and the same agreement.


[Remainder of page intentionally left blank.]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Tenant:

CARMAX AUTO SUPERSTORES, INC.

By: 
Name: K. Douglass Moyers
Title: Vice President

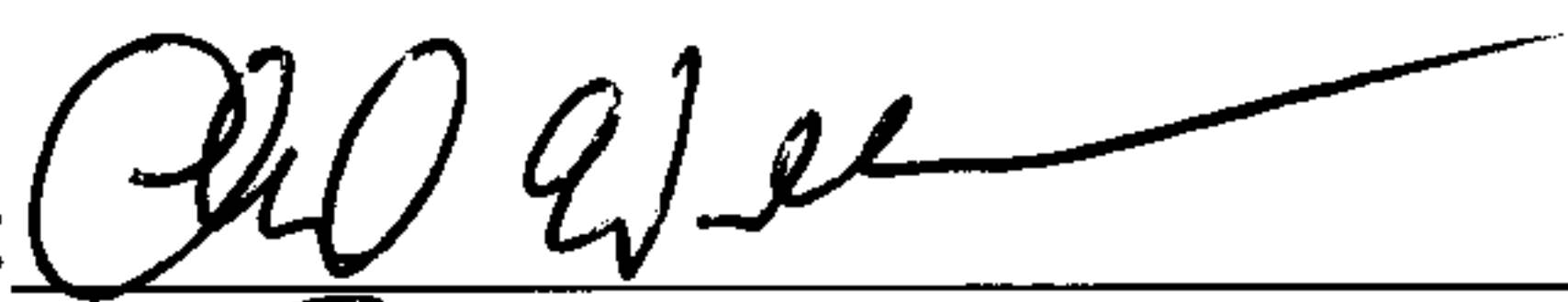
Borrower:

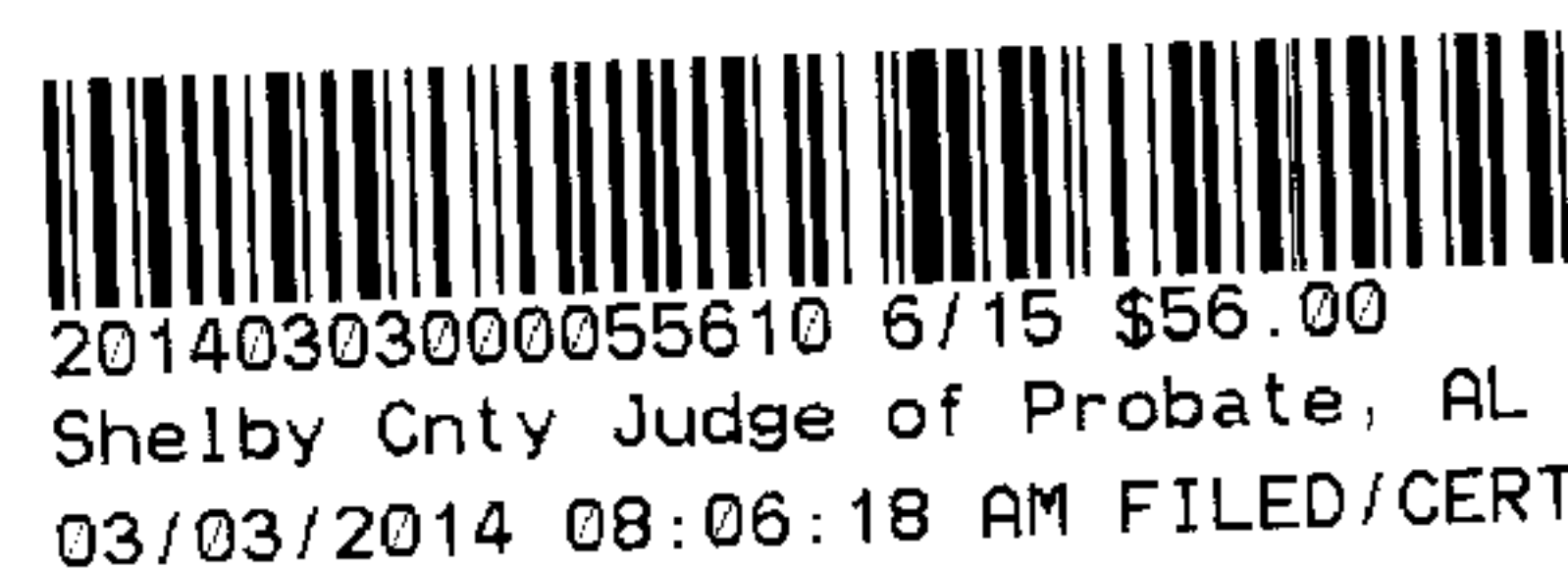
See attached signature block incorporated herein.

By: _____
Name: _____
Title: _____

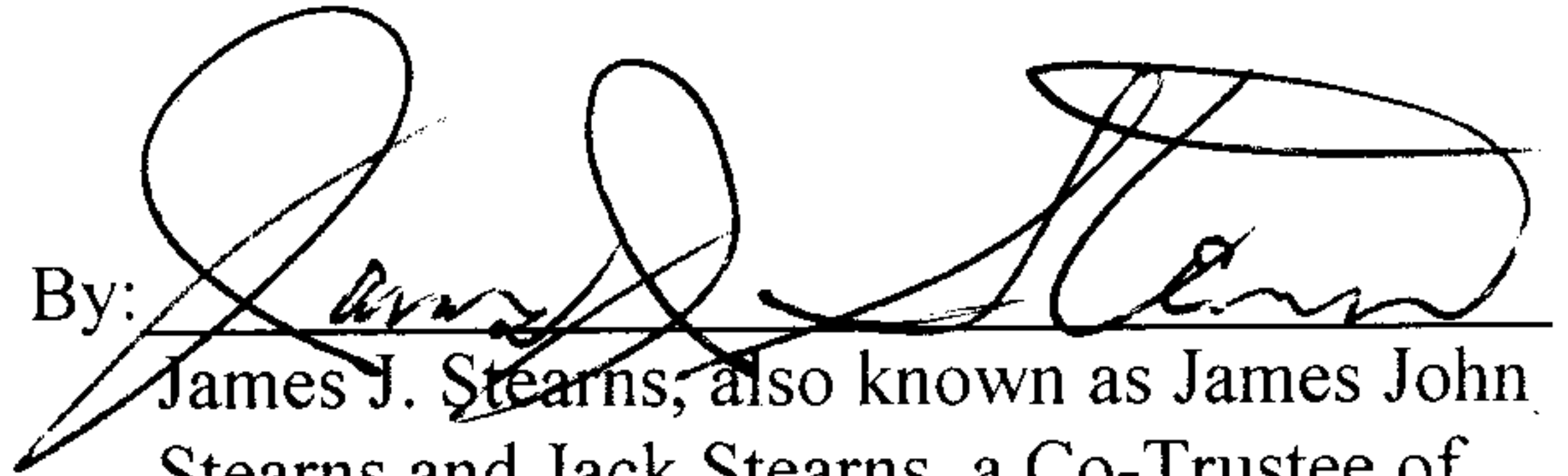
Lender:


PROTECTIVE LIFE INSURANCE COMPANY,
AND ITS SUBSIDIARIES

By: 
Name: Charles Windham
Title: Vice President



STEARNS ALABAMA, LLC,
a Delaware limited liability company

By: 
James J. Stearns, also known as James John Stearns and Jack Stearns, a Co-Trustee of THE JACK AND EDNA STEARNS 2004 FAMILY TRUST PURSUANT TO THAT CERTAIN DECLARATION OF THE JACK AND EDNA STEARNS 2004 FAMILY TRUST EXECUTED ON AUGUST 11, 2004, AS MAY HAVE BEEN AMENDED OR RESTATED,
Its Managing Member

By: 
Edna H. Stearns, also known as Edna Stearns, Co-Trustee of THE JACK AND EDNA STEARNS 2004 FAMILY TRUST PURSUANT TO THAT CERTAIN DECLARATION OF THE JACK AND EDNA STEARNS 2004 FAMILY TRUST EXECUTED ON AUGUST 11, 2004, AS MAY HAVE BEEN AMENDED OR RESTATED,
Its Managing Member



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Shelby Cnty Judge of Probate, AL
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Acknowledgement of Tenant:

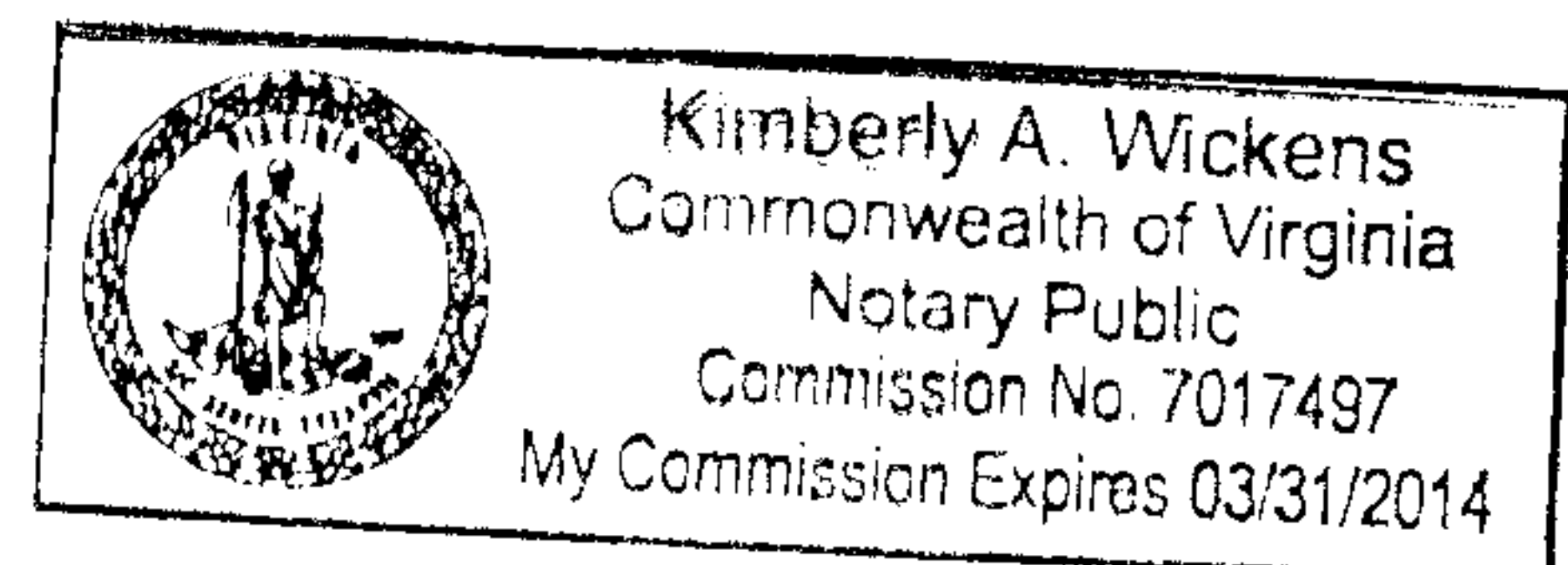
COMMONWEALTH OF VIRGINIA:

CITY/COUNTY OF Goochland:

The foregoing instrument was acknowledged before me this 4th day of February, 2014, by K. Donalass Moyers, as Vice President of CarMax Auto Superstores, Inc., a Virginia Corp., on behalf of the corporation.

Kimberly A. Wickens
Notary Public

My Commission Expires: 3/31/2014



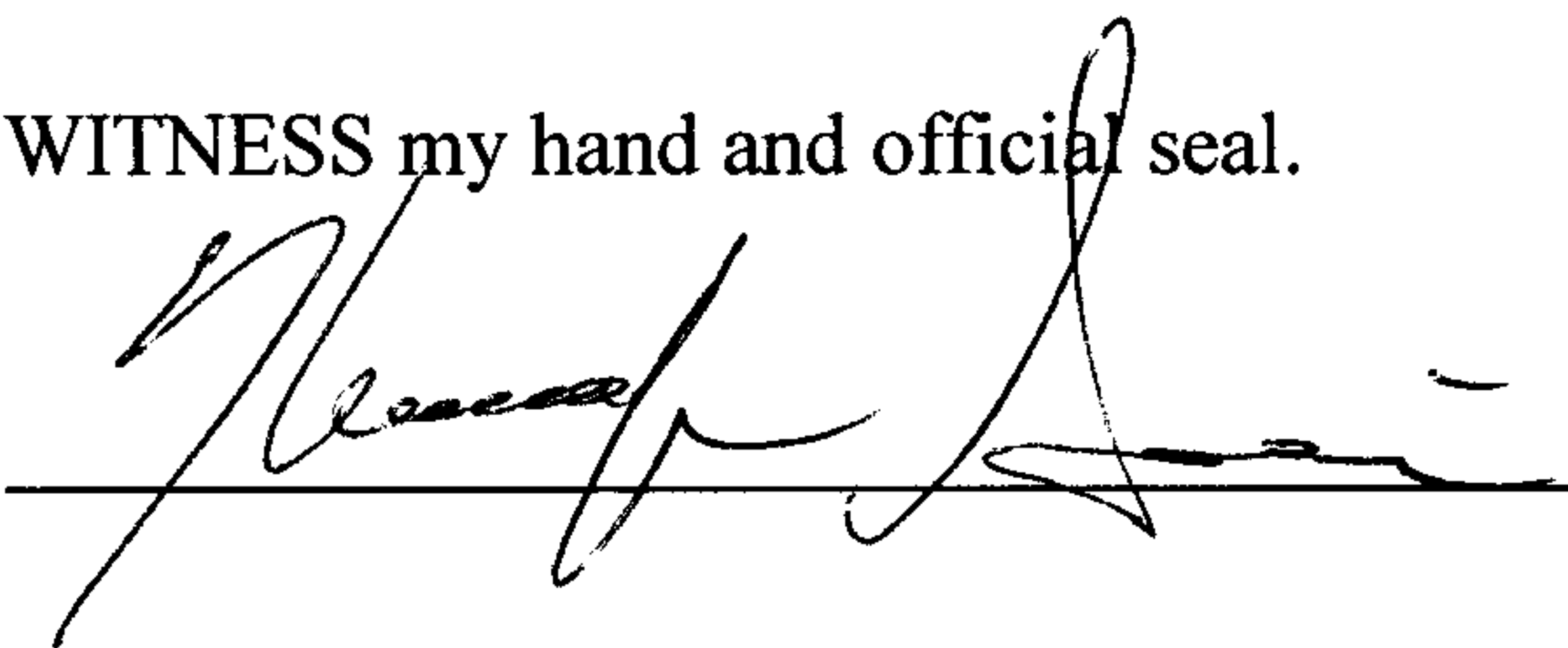
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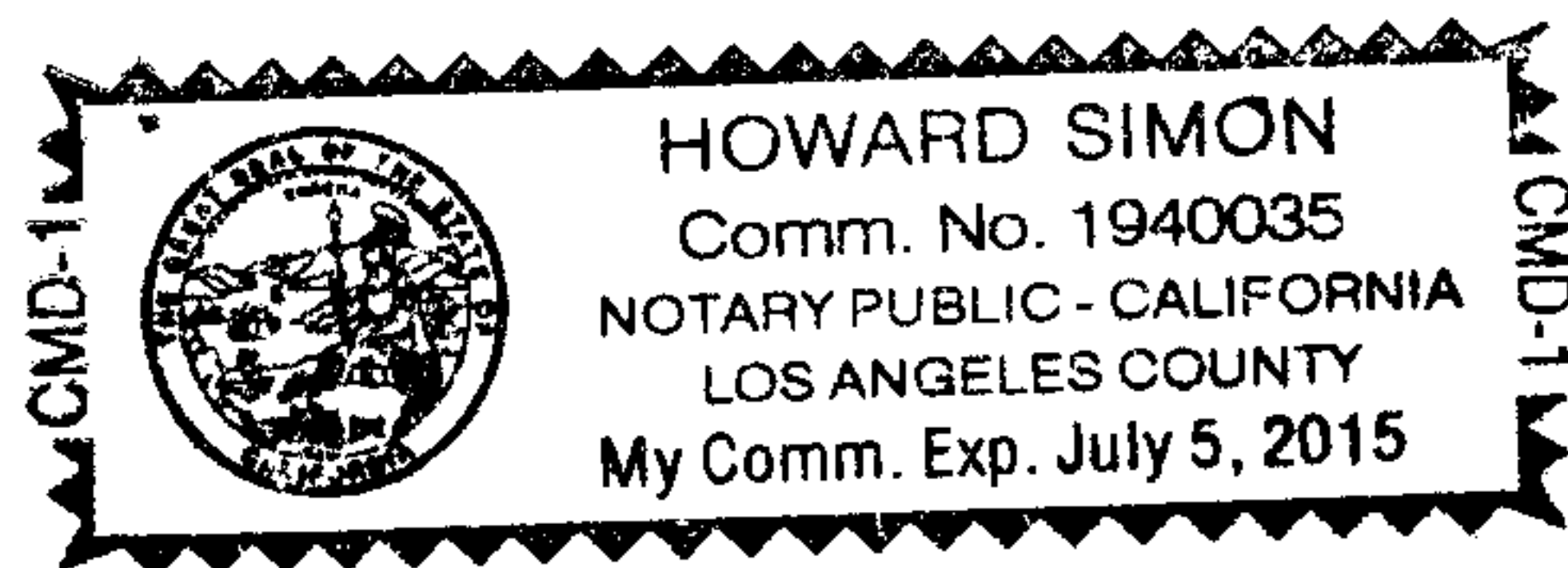
ACKNOWLEDGEMENT OF BORROWER:

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On February 25~~th~~ 2014, before me, HOWARD SIMON, the Notary Public, personally appeared James J. Stearns, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


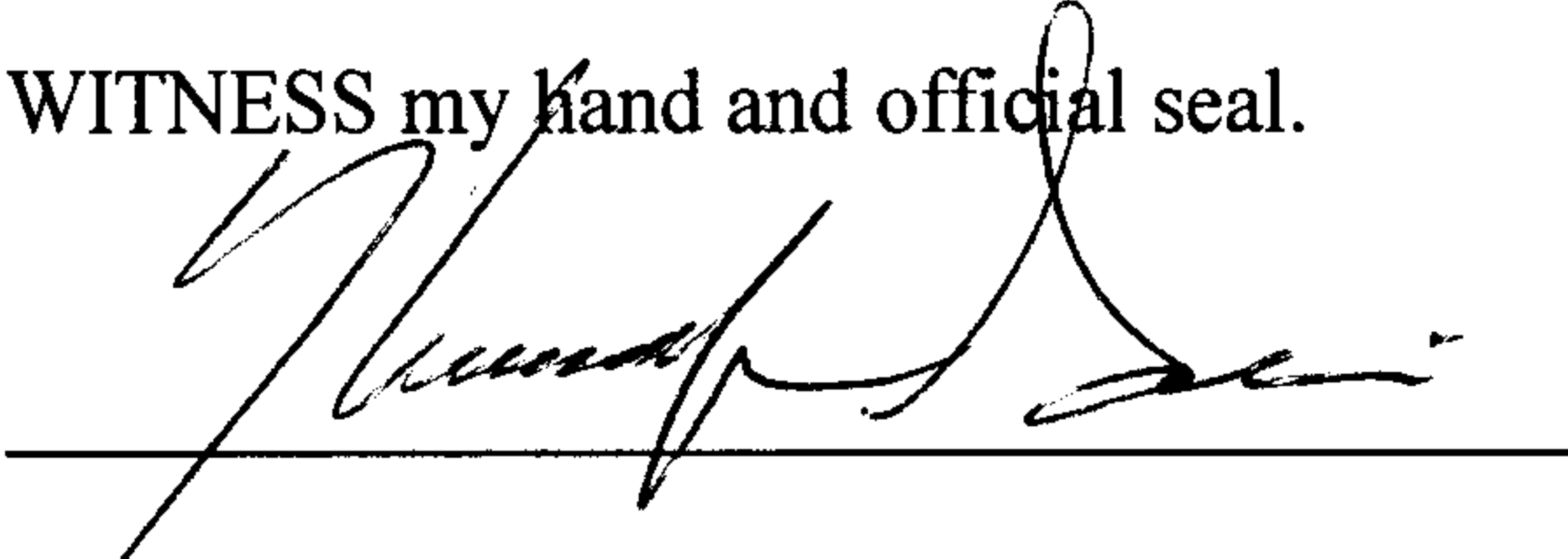


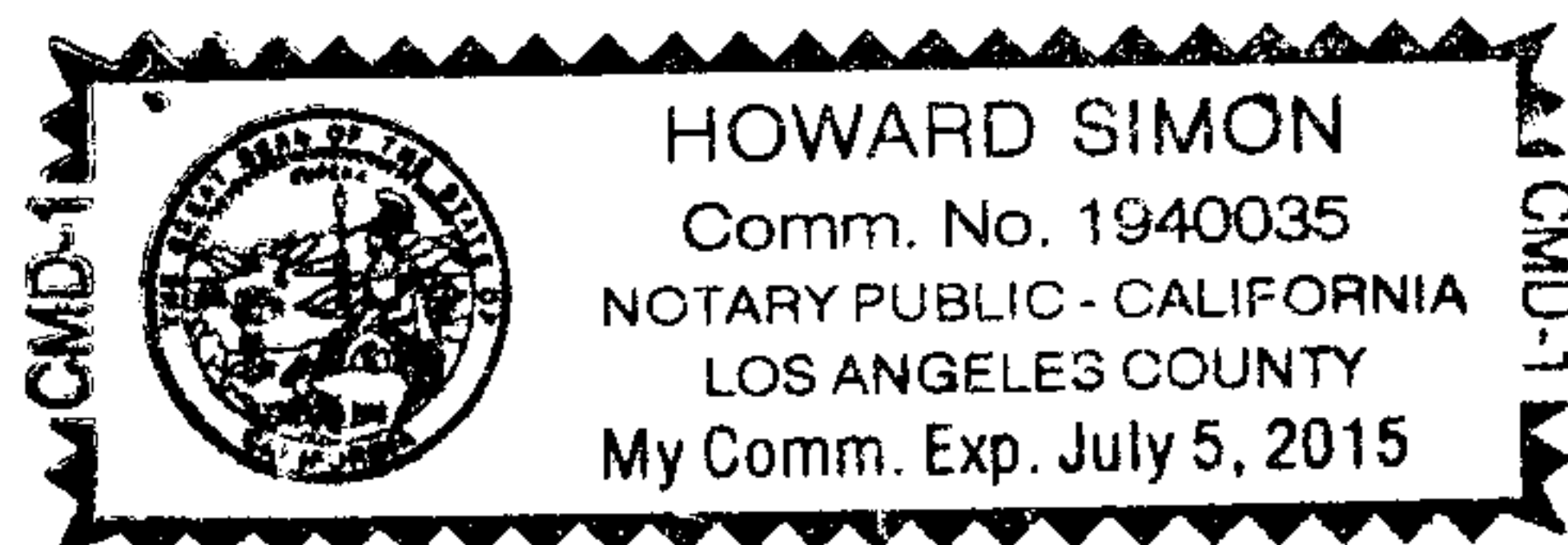
[Imprint seal]

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On February 25~~th~~ 2014, before me, HOWARD SIMON, the Notary Public, personally appeared Edna H. Stearns, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.




[Imprint seal]

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Charles W. Warden, whose name as V.P. of Protective Life Ins. Co. a TN Corp., 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 said instrument, he/she as such officer and with full authority, executed the same voluntarily for and as the act of said Corp.

GIVEN under my hand and seal, this 27th day of FEB., 2014.

[NOTARIAL SEAL]

Nancy C. Clarke
Notary Public
Print Name: Nancy C. Clarke
My Commission Expires: 10-01-2014



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Shelby Cnty Judge of Probate, AL
03/03/2014 08:06:18 AM FILED/CERT

EXHIBIT A

LEASE



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Shelby Cnty Judge of Probate, AL
03/03/2014 08:06:18 AM FILED/CERT

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Shelby Cnty Judge of Probate, AL
12/19/2003 08:06:00 FILED/CERTIFIED

Birmingham, AL

PREPARED BY AND WHEN RECORDED RETURN TO:

T. Craig Harmon
McGuireWoods LLP
One James Center
901 E. Cary Street
Richmond, VA 23219

Jeff. Co. 13%
Shelby Co 87%

14,343.50
14,355.50

annual rent
\$1,251,000⁰⁰

Taxable Rent 14,343,336.00
20 years
MEMORANDUM OF LEASE

(4)
This Memorandum of Lease made as of this 25th day of November, 2003, by and between VAL T. ORTON, solely in his capacity as Co-Trustee of the GECBAF Cascade Trust, a Utah trust established by Trust Agreement dated as of October 28, 2003, and not in his individual capacity ("Landlord"), and CARMAX AUTO SUPERSTORES, INC., a Virginia corporation, having its principal office at 4900 Cox Road, Glen Allen, Virginia 23060 ("Tenant").

WITNESSETH

That in consideration of the rents, covenants and conditions more particularly set forth in a certain lease between Landlord and Tenant of even date herewith (the "Lease"), Landlord and Tenant do hereby covenant, promise and agree as follows:

1. **Leased Premises.** Landlord does demise unto Tenant and Tenant does take from Landlord for the term (as hereinafter defined) the Land described in Exhibit A attached hereto and made a part hereof, and the Improvements (excepting therefrom the Tenant's Trade Fixtures).

2. **Term.** The term of the Lease shall commence on November 25, 2003 and shall terminate on November 30, 2023, provided, however, that the term of the Lease may be extended by Tenant for for four (4) renewal terms of five (5) years each, as set forth in the Lease. Notwithstanding the foregoing, Tenant shall have the right to extend the Initial Term of the Lease at any time within the first five (5) years of the Initial Term by the period of time necessary to make the then remaining Initial Term extend for twenty (20) years from the date of Tenant's exercise of the Extension Option.

3. **Effect of Memorandum.** The sole purpose of this instrument is to give notice of the Lease and its terms, covenants and conditions to the same extent as if the Lease were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or determine the intent of the parties under the Lease.

4. **Defined Terms.** The defined terms used herein shall have the meanings set forth in the Lease.

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IN WITNESS WHEREOF, the Landlord and the Tenant have hereunto caused the execution hereof as of the date first above written.

Val T. Orton

VAL T. ORTON, solely in his capacity as Co-Trustee of the GECBAF Cascade Trust, a Utah trust established by Trust Agreement dated as of October 28, 2003, and not in his individual capacity

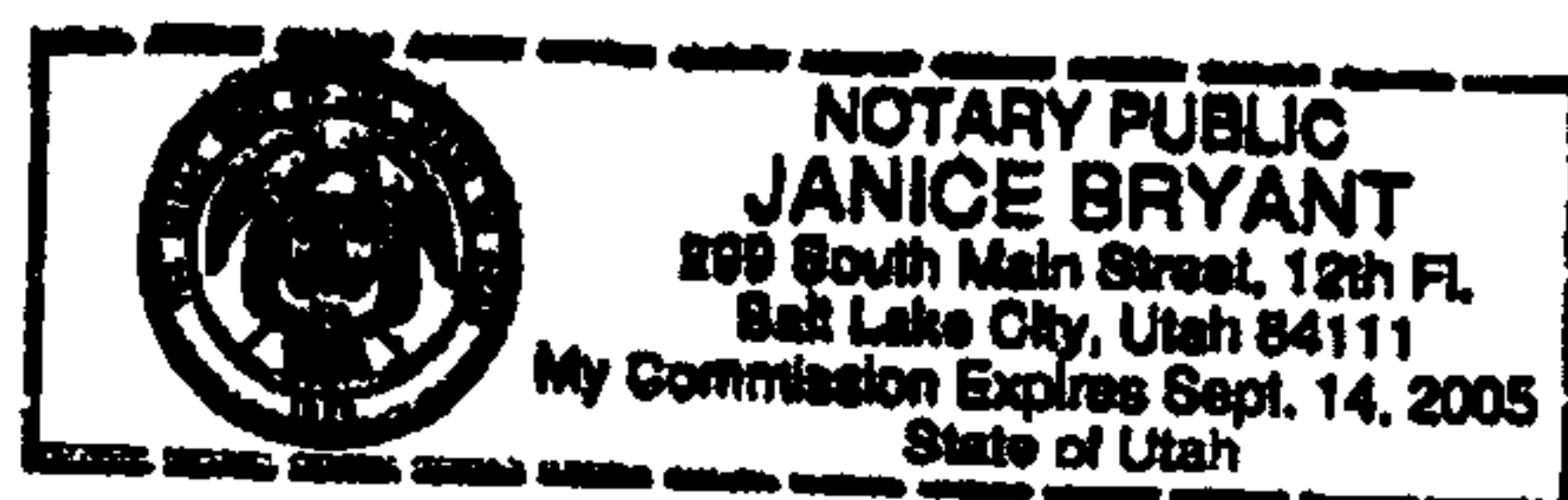
STATE OF UTAH

~~CITY~~/COUNTY OF Salt Lake

I, Janice Bryant, a Notary Public in and for said County, in said State, hereby certify that VAL T. ORTON, solely in his capacity as Co-Trustee of the GECBAF Cascade Trust, a Utah trust established by Trust Agreement dated as of October 28, 2003, and not in his individual capacity, and not in his individual capacity whose name 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 such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said trust.

Given under my hand this 25th day of November, 2003.

[NOTARIAL SEAL]



Janice Bryant
NOTARY PUBLIC

NAME: Janice Bryant
[Print or Type]

My Commission Expires:

CARMAX AUTO SUPERSTORES, INC.

ATTEST OR WITNESS:

James Wilson

By:

TL W My

Name:

Thomas W. Reedy

Title:

Treasurer

COMMONWEALTH OF VIRGINIA

COUNTY OF HENRICO

I, Leslie D. Frame, a Notary Public in and for said County, in said State, hereby certify that Thomas W. Reedy, whose name as Treasurer of CarMax Auto Superstores, Inc., a Virginia corporation, 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 such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 24 day of November, 2003.

Leslie D. Frame

NOTARY PUBLIC

[NOTARIAL SEAL]

NAME: Leslie D. Frame
[Print or Type]


My Commission Expires: September 30, 2006


Birmingham, AL

EXHIBIT A
LEGAL DESCRIPTION

Lots 1 and 2, according to the Survey of Carmax Auto Super Store, as recorded in Map Book 30, page 140, in the Probate Office of Shelby County, Alabama, and recorded in Map Book 37, page 59, in the Probate Office of Jefferson County, Alabama.

\\REALESTATE\rmbrugh\vl-Memo_of_Lease_-_AL.DOC(#192817)\v. 1

State of Alabama - Jefferson County
I certify this instrument filed on:
2003 DEC 11 A.M. 07:59
Recorded and \$ 14,343.50 Mtg. Tax
and \$ 12.00 Deed Tax and Fee Amt
\$ 14,355.50 Total \$
MICHAEL F. BOLIN, Judge of Probate

200364/5640 BESS


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Bk: LR201411 Pg: 10859
Jefferson County, Alabama
02/28/2014 01:47:57 PM AGREE
Fee - \$58.00

Total of Fees and Taxes-\$58.00
LMCDUFFIE