

Recording requested by and
when recorded mail to:

Emily E. Smith-Sulfaro, Esq.
Ford Motor Credit Company
The American Road
P. O. Box 6044
Dearborn, Michigan 48121-6044

WHEN RECORDED SEND TO:
Tomeika J. Poe
Chicago Title Insurance Co.
171 N. Clark St., MLC 04ND
Chicago, IL 60601

Inst # 1999-36235

08/30/1999-36235
09:28 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 HHS 28.50

STATE OF ALABAMA

COUNTY OF SHELBY

(Space above this line for recorder's use)

ASSIGNMENT OF LEASES, RENTS AND PROFITS

THIS ASSIGNMENT OF LEASES, RENTS AND PROFITS (this "Assignment") dated August 13, 1999, is from MMR HOLDINGS, L.L.C., a North Carolina limited liability company, whose address is c/o Capital Automotive L.P., 1420 Spring Hill Road, Suite 525, McLean, Virginia 22102, (hereinafter referred to as "Assignor") to FORD MOTOR CREDIT COMPANY, a Delaware corporation, whose address is 1000 Abernathy Road NE, Suite 180 Building 400, Atlanta, Georgia 30328 ("Lender").

WHEREAS, Assignor is the owner of certain premises in **Shelby County, Alabama**, more particularly described in Schedule A attached hereto and made a part hereof (the "Premises");

WHEREAS, Assignor, MMR Tennessee, L.L.C., a North Carolina limited liability company and MMR Viking Investment Associates, L.P., a Texas limited partnership (collectively, "Borrower") have requested Lender to amend that certain loan to Borrower (the "Loan"), as evidenced by a Promissory Note dated November 19, 1998, in the principal amount of \$150,000,000.00 (the "Original Note"), in accordance with that certain First Amended and Restated Promissory Note dated as of even date herewith (the "Amended Note"; collectively, the Original Note and the Amended Note are referred to as the "Note");

WHEREAS, Assignor, in connection with the Loan, has executed the Mortgage and Assignment of Leases and Rents and Security Agreement (the "Original Mortgage") dated April 23, 1999, recorded on May 17, 1999, in the Probate Office of Shelby County, Alabama, in Instrument No. 1999-20585, in favor of Lender, as mortgagee, covering the Premises, which Original Mortgage is amended as of even date herewith by that certain First Amendment to Mortgage (the "Amendment"; collectively, the Original Mortgage and the Amendment are referred to as the "Mortgage");

WHEREAS, also in connection with the Loan, Borrower has executed an Unsecured Indemnity Agreement of even date herewith; all of the foregoing documents, together with the Note, Mortgage, and any other documents or agreements in existence or now or hereafter

executed in connection with the Loan are hereafter collectively referred to as the "Loan Documents"; and

WHEREAS, to induce Lender to amend the Loan to Borrower, Assignor is executing and delivering this Assignment and Lender has requested this Assignment as a condition of Lender's entering into the amendment to the Loan.

NOW, THEREFORE, in consideration of the amendment to the Loan from Lender to Borrower and in consideration of the mutual promises contained herein, Assignor does hereby grant, transfer and assign to Lender all of Assignor's right, title and interest in and to (1) any and all existing and future leases and tenancies, whether written or oral, covering or affecting all or any part of the Premises, including, but not limited to, any lease of the Premises to **SONIC - WILLIAMS CADILLAC, INC., an Alabama corporation**, together with any and all extensions, modifications and renewals thereof (all of which are collectively referred to as the "Leases"), and (2) all rents, issues, proceeds, profits and other income or payments of any kind due or to become due or payable to Borrower as the result of any use, possession, or occupancy of all or any portion of the Premises, or any lease or agreement relating to personal property to which Borrower is a party, and including all cash or security deposited thereunder (all of which are collectively referred to as "Rents"), whether the Rents accrue before or after foreclosure of the Mortgage. Assignor further covenants and agrees with Lender as follows:

1. License. Except at any time that there exists an Event of Default under the Mortgage, Assignor shall have and is hereby granted a license to collect and retain the Rents; provided however, immediately upon the occurrence of such Event of Default and at all times during the continuance of the same, Assignor's license to collect the Rents shall immediately terminate. This Assignment constitutes a perfected, absolute, and present assignment, subject only to the foregoing license of Assignor to collect and retain Rents so long as no Event of Default exists under the Mortgage.

2. Performance of Leases. Assignor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which it becomes liable to observe or perform under any existing or future Lease, and, at its sole cost and expense, enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the tenant under each and every Lease. Assignor will observe and comply in all material respects with all provisions of law applicable to the operation and ownership of the Premises. Assignor will give prompt written notice to Lender or its designated assignee of any defaults under such Leases and will also, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Assignor or any tenant pursuant to any Lease.

3. Protection of Lender's Rights. Should Assignor fail to perform or observe any covenant or agreement contained in this Assignment, beyond any notice and cure period applicable thereto, then Lender may, without obligation to do so and without releasing Assignor from any obligation of any kind, make or do the same in such manner and to such extent as Lender deems appropriate to protect or enforce its rights hereunder evidenced by this Assignment, including specifically and without limitation, the right to commence, appear in, and to defend any action or proceeding purporting to affect the Premises, or the right or powers of

Assignor, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor contained in the Leases, and in exercising any such powers to pay necessary costs and expenses, employ counsel and pay reasonable attorneys' fees. Assignor promises to pay immediately upon demand all sums expended by Lender hereunder, together with interest thereon at the Defaulted Interest Rate (as defined in the Mortgage).

4. Default Remedies. Upon the occurrence of any Event of Default Lender may, at its option, at any time thereafter during the continuance of any Event of Default, and without further notice to Assignor and without regard to the adequacy of any security for the indebtedness of Borrower to Lender:

(a) Subject to the terms of the Leases and any other written agreements(s) between Lender and any tenant, enter upon, manage and operate the Premises or retain the services of one or more authorized agents or independent contractors to manage and operate all or any part of the Premises; make, enforce, modify and accept surrender of the Leases; obtain or evict tenants, collect, sue for, fix or modify the Rents and enforce all rights of Assignor under the Leases; and perform any and all other acts that may be necessary or proper to protect Lender's rights under this Assignment.

(b) With or without exercising the rights set forth in subparagraph (a) above, give or require Assignor to give notice to any or all tenants under the Leases authorizing and directing the tenants to pay all Rents under the Leases directly to Lender.

(c) Without regard to waste of the Premises or solvency of Assignor, apply for the appointment of a receiver regarding the Premises, whether or not foreclosure proceedings are pending under the Mortgage, and if such proceedings were commenced, whether or not a foreclosure sale has occurred. Assignor consents to such application.

The exercise of any of the foregoing rights or remedies and the application of the Rents shall not cure or waive any event of default, or notice of default, hereunder or under any of the Loan Documents or invalidate any act done pursuant to such notice.

5. Application of Rents. All Rents collected by Lender, its authorized agent or independent contractor, or any judicially appointed receiver shall be applied first to payment of the costs of management and preservation of the Premises and collection of Rents, including without limitation, receiver's fees, taxes, insurance premiums or bonds and reasonable attorneys' fees and expenses, then to the sums owing to Lender from Borrower under the Note, and then to any sums owing to Lender from Borrower under any of the other Loan Documents, and then to the party legally entitled to the same. Any such party shall be liable to account only for the Rents actually received.

6. Lender Not To Become Liable. Lender is not obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligation, duty or liability of Assignor under the Leases. This Assignment shall not operate to place upon Lender responsibility for the control, care, management or repair of the Premises or for the performance of any of the terms and conditions of the Leases. Lender is not responsible or liable for any waste committed on the Premises, for any dangerous or defective condition of the Premises, for any

negligence in the management, upkeep, repair or control of the Premises or for failure to collect the Rents.

7. Indemnity. Except with regard to damages the proximate cause of which is the gross negligence or willful misconduct of Lender, Assignor hereby agrees to indemnify and to hold Lender harmless of and from any and all claims, demands, liability, loss or damage, including all costs, expenses and reasonable attorneys' fees asserted against, imposed on or incurred by Lender in connection with or as a result of this Assignment or the exercise of any rights or remedies under this Assignment or under the Leases or by reason of any alleged obligations or undertakings of Lender to perform or discharge any of the terms, covenants or agreements contained in the Leases. In the event Lender incurs any such liability, the proximate cause of which is not its own gross negligence or willful misconduct, the amount thereof, together with interest thereon at the Defaulted Interest Rate, shall be due and payable, and Assignor shall reimburse Lender therefor immediately upon demand.

8. Authorization to Tenant. Upon notice from Lender that it is exercising any remedy set forth in this Assignment, the tenants under the Leases are hereby irrevocably authorized and directed to pay to Lender all sums then due under the Leases, and Assignor hereby consents and directs that said sums shall be paid to Lender without the necessity for a judicial determination that an Event of Default has occurred or that Lender is entitled to exercise its rights pursuant to this Assignment, and to the extent such sums are paid to Lender, Assignor agrees that the tenant has no further liability to Assignor for the same. The signature of Lender alone is sufficient for the exercise of any rights under this Assignment and the receipt by Lender alone of any sums received is a full discharge and release of any such tenant or occupant of the Premises. Checks for all or any part of the Rents collected under this Assignment shall upon notice from Lender be drawn to the exclusive order of Lender.

9. Satisfaction. Upon the payment in full of all indebtedness owing from Borrower to Lender, this Assignment becomes, without the need for any further satisfaction or release, null and void and of no further effect; provided, however, that Lender shall, at Borrower's expense, promptly release this Assignment as a matter of record, if required by the title company insuring title to the Premises.

10. Power of Attorney. Assignor hereby irrevocably appoints Lender and its successors and assigns as its agent and attorney-in-fact coupled with an interest, and with the right but not the duty to exercise any rights or remedies granted by this Assignment and to execute and deliver during the term of this Assignment any such instruments as Lender may deem appropriate to make this Assignment and any further assignment effective, including, without limitation, the right to endorse on behalf of and in the name of Assignor all checks from tenants in payment of Rents; provided, however, that Lender agrees not to exercise any rights or take any action in its capacity as Assignor's agent and attorney-in-fact so long as no Event of Default exists.

11. Lender Not a Mortgagee In Possession. Nothing contained herein and no actions taken pursuant to this Assignment shall be construed as constituting Lender as a mortgagee in possession.

12. Unenforceable Provisions Severable. All rights, powers and remedies provided in this Assignment are intended to be exercised only to the extent that such exercise does not violate any applicable provision of law, and are intended to be limited to the extent necessary not to render this Assignment invalid, unenforceable or unreasonable under any applicable law. If any term of this Assignment is held to be invalid, illegal or unenforceable, the validity of other terms are intended to remain unaffected.

13. Successors And Assigns. The covenants and agreements herein contained shall be binding upon, and the rights hereunder shall inure to, the respective successors and assigns of Assignor and Lender, including any purchaser at a foreclosure sale.

14. Captions; Amendments; Notices. The captions and headings of paragraphs of this Assignment are for convenience only and are not intended to interpret or define the provisions of this Assignment. This Assignment can be amended only in writing signed by Assignor and Lender. All notices given under this Assignment must be in writing and will be effective upon personal delivery or, if mailed, on the third (3rd) day following posting, when deposited in first class, certified or registered United States mail, postage prepaid, sent to the address of the party listed below, or such other address as any party may designate in writing to the other party.

If to Assignor:

c/o Capital Automotive L.P.
c/o Capital Automotive REIT
1420 Spring Hill Road
Suite 525
McLean, Virginia 22102
Attention: Chief Financial Officer

With a copy to:

Capital Automotive REIT
1420 Spring Hill Road
Suite 525
McLean, Virginia 22102
Attention: General Counsel

With a copy to:

Shaw Pittman
2300 N Street, N.W.
Washington, D. C. 20037
Attention: Richard F. Williamson, Esq.

If to Lender:

Ford Motor Credit Company
1000 Abernathy Road NE
Suite 180 Building 400
Atlanta, Georgia 30328
Attention: Branch Manager, Atlanta-North Branch

With a copy to:

Ford Motor Credit Company
1455 Lincoln Parkway
Suite 400

Atlanta, Georgia 30346
Attention: National Account Manager

With a copy to:

Ford Motor Credit Company
Legal Office
The American Road
Dearborn, MI 48121
Attention: Emily E. Smith-Sulfaro, Esq.

15. Joint and Several Liability. The obligations, representations and warranties of all persons signing this Assignment, where more than one, shall be joint and several, and all singular references to the undersigned shall, as appropriate, be read as plural.

16. Construction. The provisions of this Assignment do not supersede, but are supplemental to, the Mortgage and other Loan Documents, the intent being that Lender enjoy all of the benefits and protections of the various provisions of this Assignment and the Mortgage; provided, however, that in the event of direct inconsistency, it is intended that this Assignment control the Mortgage with regard to the various provisions herein contained, but only to the extent such control does not impede the enforceability or security of the Mortgage.

17. Governing Law. This Assignment and any instruments or documents executed in connection with this Assignment shall be governed by and construed in accordance with the laws of the jurisdiction in which the Premises are located.

18. Receipt. ASSIGNOR ACKNOWLEDGES RECEIPT OF A TRUE COPY OF THIS ASSIGNMENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES TO FOLLOW ON SUCCEEDING PAGE]

IN WITNESS WHEREOF, Assignor has executed this Assignment under seal, the day and year first above written.

Signed, sealed and delivered
in the presence of:

MMR HOLDINGS, L.L.C.,
a North Carolina limited liability company (Seal)

By: CAR MMR L.L.C., a Delaware limited liability
company, its Managing Member

By: CAPITAL AUTOMOTIVE L.P.,
a Delaware limited partnership, its
Managing Member

By: Capital Automotive REIT, a
Maryland real estate investment
trust, its General Partner

Deborah J. Crouse

Print Name: Deborah J. Crouse

By: Peter C. Staaf (Seal)
Peter C. Staaf
Its: Vice President and Treasurer

David Metzger

Print Name: David Metzger

DISTRICT OF COLUMBIA

)
) SS.
)

On August 13, 1999, before me, the undersigned, a Notary Public in and for the District of Columbia, personally appeared Peter C. Staaf, the Vice President and Treasurer of Capital Automotive REIT, a Maryland real estate investment trust, known to me (or proved to me on the basis of satisfactory evidence) to be the general partner of Capital Automotive L.P., a Delaware limited partnership, the Managing Member of CAR MMR L.L.C., a Delaware limited liability company, the Managing Member of MMR Holdings, L.L.C., a North Carolina limited liability company, and acknowledged the execution thereof to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned and on oath stated that he was authorized to execute the said instrument on behalf of said limited liability company.

WITNESS my hand and official seal.

(SEAL)

Margaret S. Kimbrough
Notary Public in and for the
District of Columbia

My Commission Expires June 30, 2000

My commission expires: _____

SCHEDULE A

PARCEL 38

LAND IN SHELBY COUNTY, ALABAMA, DESCRIBED AS FOLLOWS:

**LOT 1-BB, ACCORDING TO A RESURVEY OF LOT 1-B OF RESURVEY OF LOT 1-A, OF
RESURVEY OF LOT 1, B & S SUBDIVISION, AS RECORDED IN MAP BOOK 13, PAGE 143,
IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.**

**AL
Parcel 38**

Inst # 1999-36235

**08/30/1999-36235
09:28 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 MMS 28.50**