

PREPARED BY:
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 2525 SOUTH SHORE BLVD., SUITE 203
 LEAGUE CITY, TEXAS 77573

STATE OF ALABAMA)

COUNTIES OF JEFFERSON AND SHELBY)

MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

\$ 10,430,000.00

This Mortgage, Security Agreement and Financing Statement (hereinafter termed "Agreement") is entered into 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 and **GECBAF Cascade Trust**, a Utah trust ("Maker") whose mailing address is 10900 NE 4th Street, Suite 500, Bellevue, Washington 98004-5853 in favor of **American National Insurance Company**, whose mailing address is Attn: Mortgage and Real Estate Investment Department, One Moody Plaza, Galveston, Texas 77550 (hereinafter termed "Noteholder").

I. DEFINITIONS

1.1 The term "Indebtedness" shall mean and include:

(1) Any and all sums becoming due and payable pursuant to the Note, as hereinafter defined;

(2) Any and all other sums becoming due and payable by Maker to Noteholder pursuant to this Agreement including such sums as may hereafter be borrowed by Maker from Noteholder (it being contemplated that such future indebtedness may be incurred),

and including, but not limited to, advancements made by Noteholder pursuant to the terms and conditions of this Agreement or any other instrument securing, executed in connection with or otherwise relating to the Note; and

(3) Any and all obligations, covenants, agreements and duties of any kind or character of Maker now or hereafter existing, known or unknown, arising out of or in connection with the Note, this Agreement, or any other document evidencing, securing or relating to the Note.

(4) All renewals, extensions, modifications, increases, consolidations and rearrangements of any or all of the obligations, covenants, agreements and duties of Maker defined herein under the term Indebtedness, whether or not Maker executes any renewal, extension, modification, increase, consolidation or rearrangement.

1.2 The term "Collateral" shall mean and include all of Maker's right, title and interest in and

1370 Jefferson
 8790 Shelby

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 15712.00



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to (a) all of the goods, articles of personal property, accounts, general intangibles, instruments, documents, furniture, furnishings, equipment and/or fixtures of every kind and nature whatever (including, without limitation, the items described in subsection (b) - (f) below) now or hereafter owned by Maker, in or hereafter placed in, or used or which may become used, in connection with or in the operation of the Mortgaged Premises, together with all additions thereto, replacements thereof, substitutions therefor and all proceeds thereof; (b) all rents, rentals, payments, compensations, revenues, profits, incomes, leases, licenses, concession agreements, insurance policies, plans and specifications, contract rights, accounts, escrowed funds, and general intangibles in any way relating to the Mortgaged Property or used or useful in the use, enjoyment, ownership or operation of the Mortgaged Property; (c) all names, trade names, signs, marks, and trademarks under which the Mortgaged Property, or any part thereof, is known or operated and all of Maker's rights to carry on the business of Maker under all such name or names and any variant or variance thereof; (d) all deposits, awards, damages, payments, escrowed monies, insurance proceeds, condemnation awards or other compensation, and interests, fees, charges or payments accruing on or received from or to be received on any of the foregoing in any way relating to the Mortgaged Property, or the ownership, enjoyment or operation of the Mortgaged Property together with all proceeds of the foregoing described in this Section 1.2; and (e) all products, proceeds, substitutions, and replacements of any of the above described collateral.

1.3 The term "Mortgaged Premises" shall mean and include (a) the real property situated in the Counties of Shelby and Jefferson, State of Alabama, described in **Exhibit "A"** which is attached hereto and incorporated herein for all purposes; together with all of Maker's right, title and interest in and to all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials now or hereafter placed thereon intended for construction, reconstruction, alteration and repairs of such buildings and improvements, all of which materials shall be deemed to be included as a part of said real property immediately upon the delivery thereof to said real property; (b) all fixtures now or hereafter owned by Maker and attached to, contained in or used in connection with said real property, and all renewals and replacements thereof, including but not limited to (i) all equipment, apparatus, machinery, motors, elevators, fittings and radiators, (ii) all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment; (iii) all awnings, storm windows and doors, mantels, cabinets, computer flooring, rugs, carpeting, linoleum, stoves, shades, draperies, blinds and water heaters; (iv) such other goods and chattels and personal property as are usually furnished by landlords in letting an unfurnished building, or which shall be attached to said buildings and improvements by nails, screws, bolts, pipe connections, masonry or in any other manner; and (v) all built-in equipment as may be shown by plans and specifications.

1.4 The term "Mortgaged Property" shall mean the Mortgaged Premises and Collateral.

1.5 The term "Note" shall mean that certain Promissory Note of even date herewith in the principal sum of \$10,430,000.00 executed by Maker and payable on or before March 1, 2014 to the order of Noteholder, payable with interest in installments as stipulated therein and providing for the right to declare the unpaid principal balance due and payable upon the occurrence of an Event of Default and otherwise as provided therein and providing for the reasonable attorneys' fees, and all notes given in renewal, extension, modification, increase, consolidation or rearrangement of said Promissory Note or any portion thereof.

II. GRANTING CLAUSE

In consideration of Ten Dollars (\$10.00) cash in hand paid, of Noteholder's advancing or extending to Maker the funds or credit constituting a part of the Indebtedness, and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Maker hereby grants, bargains, sells and conveys to Noteholder the above-described Mortgaged Property for the purpose of securing the Indebtedness, and the full and complete performance of each and every obligation, covenant, duty and agreement of Maker contained herein or in the Note or any other document executed by Maker pertaining to the Note or as security therefor; TO HAVE AND TO HOLD the Mortgaged Property, together with the rights, privileges and appurtenances thereto belonging unto the Noteholder and its successors and assigns forever, and Maker is hereby bound to warrant and forever defend the Noteholder and its successors and assigns against the claims of all persons claiming any interest in the Mortgaged Property or any part thereof save and except only these items identified on **Exhibit "B"** attached hereto and incorporated herein for all purposes (the "Permitted Exceptions").

THIS INSTRUMENT ALSO IS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT WHICH IS BEING FILED AS A FIXTURE FILING IN ACCORDANCE WITH SECTION 47-9A-502. GECBAF CASCADE TRUST IS THE RECORD OWNER OF THE REAL ESTATE. THE COLLATERAL IS DESCRIBED IN THIS INSTRUMENT AND SOME OF THE COLLATERAL DESCRIBED HEREIN IS OR IS TO BECOME FIXTURES ON THE REAL ESTATE DESCRIBED HEREIN.

III. ADDITIONAL SECURITY

As further security for the Indebtedness and the full and complete performance of each and every obligation, covenant, agreement and duty of Maker contained herein or contained in any other document executed by Maker pertaining to the Note or the security therefor:

A. Security Interest. Maker hereby grants and conveys to Noteholder a security interest in and lien on all of the Collateral. This Agreement shall serve as a Security Agreement created pursuant to the Alabama Uniform Commercial Code, and Noteholder shall have and may exercise all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code. Maker hereby represents, warrants and covenants that (1) Maker is the owner and holder of the Collateral free and clear of any adverse claim, security interest or encumbrance, except those created herein; (2) it will defend the Collateral, and the priority of the security interest created herein as a valid first security interest against all claims and demands of any person at any time claiming the same or any interest therein; (3) there are no financing statements executed by the Maker, as Debtor, now on file in any public office except those financing statements which are being released contemporaneously with the delivery of this transaction or which have been authorized by Noteholder; (4) authorizes Noteholder to file or record such other and further agreements, financing statements and assignments in such offices and at such times as it is deemed by Noteholder to be necessary or desirable; and (5) it will execute and deliver to Noteholder such other and further agreements, financing statements and assignments as Noteholder may request.

This Agreement is intended to constitute a fixture filing in accordance with the applicable provisions of the Alabama Uniform Commercial Code. The debtor is the Maker and the secured party is the Noteholder and their addresses are those set forth at the beginning of this Agreement. Certain of the Mortgaged Property is or will become "fixtures" (as that term is defined in the Alabama

Uniform Commercial Code), and this Agreement, upon being filed for record in the real estate records of the county wherein the Mortgaged Premises are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the Alabama Uniform Commercial Code upon such Mortgaged Property that is or may become fixtures.

The Maker hereby irrevocably authorizes the Noteholder at any time to file financing statements covering the Collateral, or any portion thereof, and containing such other information as the Noteholder deems appropriate in the office of any public official, as the Noteholder may deem necessary or desirable to perfect or continue any security interest granted to Noteholder herein. The Maker agrees to pay the cost of filing all financing statements.

B. Assignment of Condemnation Awards. To the extent of the full amount of the Indebtedness secured hereby and of the cost and expenses (including reasonable attorneys' fees) incurred by Noteholder in the collection of any award or payment, Maker hereby assigns to Noteholder any and all awards or payments, including all interest thereon, together with the right to receive the same, which may be made with respect to the Mortgaged Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street, or (c) any other injury to or decreased value in the Mortgaged Property, as well as the right, but not the obligation, to, at Maker's expense, participate in and make decisions concerning the progress of any proceeding involving any such award or payment. Maker shall give Noteholder written notice of any such action or proceeding immediately upon Maker's becoming aware of same. All such damages, condemnation proceeds and consideration shall be paid directly and solely to Noteholder whether or not an Event of Default has at such time occurred, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by Noteholder in obtaining such sums, Noteholder may, at its option, apply the balance on the Indebtedness, in any order and whether or not then due, without prepayment or penalty, or to the restoration of the Mortgaged Property, or release the balance to Maker. Said application or release shall not cure or waive any default.

IV. ABSOLUTE ASSIGNMENT OF RENTS

In further consideration for the indebtedness evidenced by the Note, Maker hereby absolutely and unconditionally assigns to Noteholder all rents, revenues, profits and incomes from the Mortgaged Property or any portion thereof. Provided, however, so long as no Event of Default has occurred, Maker is hereby granted a license to collect and retain the currently accruing rents, income and profits from the Mortgaged Property, but in no event for more than one (1) month in advance of such collection. If an Event of Default shall occur, however, thereupon, and at any time thereafter such default is continuing, Noteholder may terminate such license and may, without any liability to Maker, take possession and control of the Mortgaged Property and/or receive and collect all rents, revenues, profits and income, accrued or accruing thereafter so long as any of the Indebtedness remains unpaid, applying so much thereof as may be collected first to the expenses incident to taking possession and/or the collection thereof, and second to the payment of the Indebtedness other than the Note and then to the amount of the Note then remaining unpaid, at Noteholder's discretion, either principal or interest, in any order, and whether then matured or not, paying the balance, if any, to the Maker. It is intended by Maker and Noteholder that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only and that Noteholder shall be entitled to exercise its rights hereunder whether or not Noteholder is in possession of the Mortgaged Premises at such time. Maker agrees to fulfill or perform each and every covenant of any and all leases and guaranties of leases of the Mortgaged Property so as to keep them at all times in full force and effect,

and not to enter into any new lease and not to make any modification, consent to any modification of, or cancel, terminate or consent to the surrender of any lease of all or any part of the Mortgaged Property or any guaranty of such lease after such lease or guaranty has been executed by Maker and the lessee or guarantor, as applicable, without the prior written consent of Noteholder; the failure to fulfill or perform any such covenant or the making of or consent to any such modification or cancellation, termination or surrender shall be an Event of Default. Nothing contained in this Agreement or in any other document securing, evidencing or relating to the Indebtedness shall preclude Noteholder from taking any action to cure or remedy any default of the Landlord under any lease of all or any portion of the Mortgaged Property or any guaranty of lease, or any act, omission or occurrence which but for the passage of time, the giving of notice, or both, would be a default under any such lease or guaranty of lease or take any other action in connection therewith and any amounts expended by Noteholder in connection with such cure or remediation including, without limitation, reasonable attorneys fees and expenses, shall be an advance under and secured by this Agreement and shall be included in the Indebtedness and shall be paid by Maker to Noteholder on demand. The preceding sentence shall not be construed to obligate Noteholder to cure any such actual or potential lease defaults or any guaranty of lease defaults.

V. MAKER'S REPRESENTATIONS AND WARRANTIES

In order to induce Noteholder to lend the funds evidenced by the Note, Maker represents and warrants that:

A. Accurate Loan Information. To the best of Maker's knowledge, all information and financial statements furnished or to be furnished to Noteholder by or on behalf of Maker in connection with the Indebtedness secured by this Agreement is or at the time of delivery will be complete and accurate in all material respects.

B. Valid Title. Maker is the lawful owner of the Mortgaged Property and has good right and lawful authority to mortgage and pledge the same.

C. Freedom from Encumbrances. The Mortgaged Property is free from any and all liens and encumbrances save and except only the Permitted Exceptions, and Maker does warrant and will defend title to the Mortgaged Property against all claims or demand by third parties whatsoever save and except only the Permitted Exceptions.

D. Maintenance of Lien Priority. Maker shall take all steps reasonably necessary to preserve and protect the validity and priority of the liens on the Mortgaged Property created hereby. Maker shall execute, acknowledge and deliver such additional documents as may be reasonably necessary in order to preserve, protect, continue, extend or maintain the liens and security interests created hereby as first liens on the Mortgaged Property. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the security interest and the liens herein created as valid first and subsisting liens shall be paid by Maker.

E. Value of the Mortgaged Property. Maker acknowledges that the value of the Mortgaged Property, as established by an appraisal submitted to Maker, is substantially in excess of the Indebtedness secured hereby. Maker acknowledges but for the Mortgaged Property having a value in excess of the amount of the Indebtedness, Noteholder would not make the loan evidenced by the Note and advance the funds hereunder. Maker agrees that Noteholder shall at all times have the

benefit of the Mortgaged Property as the security for the Indebtedness even though the value thereof may now or in the future exceed the amount of the Indebtedness secured hereby.

F. Representations, Warranties and Covenants of Maker. Maker hereby represents, warrants and covenants that:

(1) Maker is a Utah trust established under instrument dated October 28, 2003 as supplemented on October 28, 2003, and there are no other trust instruments or amendments thereto.

(2) The sole co-trustees of Maker are Val T. Orton, and Wells Fargo Bank Northwest, N.A., a national banking association.

(3) The sole beneficiary of Maker is General Electric Capital Business Asset Funding Corporation ("GECBAF").

(4) Except as may be expressly provided elsewhere in this Mortgage, Maker will not modify, amend or terminate the trust instrument(s) described in paragraph (1) above, nor permit any interest of any beneficiary or the trust to be sold, transferred, conveyed or encumbered.

(5) Val T. Orton, as co-trustee of Maker, is authorized to execute and deliver the Note, this Agreement, and all other instruments which Mortgagee may now or from time to time hereafter require to be executed on behalf of Maker in connection with the Note, this Mortgage, or the Indebtedness, including but not limited to renewals, extensions and modifications of the Note and this Mortgage, and no signature or any other action of any other person or entity shall be required to bind Maker.

G. Intentionally Deleted.

H. Hazardous Waste. Maker hereby represents and warrants that Maker is not aware of any facts or circumstances which may give rise to any litigation, proceedings, investigations, citations or notices of violations resulting from the use, presence, generation, manufacture, storage, discovery or disposition of, on, under or about the Mortgaged Property or the transport to or from the Mortgaged Property of any Hazardous Materials, defined below. Maker hereby represents and warrants that to its actual knowledge, the Mortgaged Property is not in violation of and Maker covenants and agrees not to use or permit the use of the Mortgaged Property for any purpose which would be in violation of, any federal, state or local health or environmental statute, regulation, ordinance or publication which is presently in effect or that may be promulgated in the future, as such statutes, regulations, ordinances and publications may be amended from time to time relating to Hazardous Materials, including, without limitation, with respect to industrial hygiene or to health or environmental conditions on, under, or about the Mortgaged Property (including, but not limited to, soil and ground water conditions) or with respect to the owner's or occupant's thereof. The foregoing representations and warranties shall survive foreclosure under this Agreement and shall constitute continuing representations and warranties to Noteholder, its successors and assigns (excluding purchasers after a foreclosure sale of the Mortgage Property), as to conditions existing prior to foreclosure or in deed in lieu of foreclosure only. The term "Hazardous Materials", as used in this Agreement, shall include but not be limited to:

(i) petroleum, petroleum based products and oil;

- (ii) asbestos of any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls (sometimes known as a “pcb”);
- (iii) tanks, whether empty, filled or partially filled with any substance, material, chemical or other waste;
- (iv) any substance, material, chemical or other waste including, without limitation any explosive, flammable substances, explosives or radioactive materials, hazardous or toxic waste, hazardous or toxic materials, hazardous, toxic or radioactive substances, contaminants or pollutants and any of the preceding which are defined as or included in the definition of “Hazardous Substance”, “Hazardous Waste”, “Hazardous Material” or “Toxic Substance” or other similar or related terms under any applicable local, state or federal statute, regulation, ordinance or publication including but not limited to:
 - (1) Resource Conservation and Recovery Act of 1976 (commonly referred to as the Solid Waste Disposal Act), 42 U.S.C. 6901 et seq.
 - (2) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq.
 - (3) Clean Air Act, 42 U.S.C. Sections 7401 et seq.
 - (4) The Water Pollution and Prevention and Control Act (commonly referred to as the Clean Water Act) 33 U.S.C. Sections 1251-et seq.
 - (5) Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq.
 - (6) Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq.
 - (7) Toxic Substances Control Act, 15 U.S.C. 2601 et seq.
 - (8) Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.
 - (9) Alabama Water Pollution Control Act, §§22-22-1 through 22-22-14 Ala. Code 1975.
 - (10) Solid Wastes Disposal Act, §§22-27-1 through 22-27-49 Ala. Code 1975.
 - (11) Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23 Ala. Code 1975.
 - (12) Hazardous Wastes Management and Minimization Act, §§22-30-1 through 22-30-24 Ala. Code 1975.
 - (13) Alabama Underground Storage Tank and Wellhead Protection Act, §§22-36-1

through 22-36-10 Ala. Code 1975.

as such statutes, regulations, ordinances and publications may be amended from time to time;

- (v) any other material, substance, chemical or other waste, exposure to which is prohibited, limited or regulated as a hazardous substance from time to time by any federal, state or local statute, regulation, ordinance or publication or may pose a hazard to the health and/or safety of the occupants of the Mortgaged Property or any other adjacent or nearby property.

NOTWITHSTANDING ANY NON-RECOURSE LANGUAGE OF THE NOTE OR THIS AGREEMENT, Maker hereby agrees to INDEMNIFY AND HOLD HARMLESS Noteholder, its directors, officers, employees, attorneys, contractors and agents, and any successors and assigns, their directors, officers, employees, and agents (individually and collectively the "Indemnitees"), from and against any and all loss, damage, expense or liability (including reasonable attorneys fees and investigatory expenses) incurred arising out of the use, occurrence, generation, storage, transportation or disposal of Hazardous Materials on or about the Mortgaged Property by Maker, its present tenants or any future tenants, any prior owner, operator or tenant of the Mortgaged Property, or any third party, including, without limitation, (i) all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, occurrence, generation, storage, transportation or disposal of Hazardous Materials by Maker, past, present or future tenants, owners or operators of the Mortgaged Property, or any third party, and (ii) the cost of any required or necessary repair, cleanup or detoxification, claimed, threatened or asserted against any such Indemnitee; SUCH INDEMNITY AND HOLD HARMLESS SPECIFICALLY INCLUDES ANY LOSS, DAMAGE, EXPENSE OR LIABILITY CAUSED BY OR ATTRIBUTABLE TO THE ORDINARY OR SIMPLE NEGLIGENCE, AS OPPOSED TO THE GROSS NEGLIGENCE, OF AN INDEMNITEE AND FOR ANY ACTION OR OCCURRENCE FOR WHICH THE INDEMNITEE MAY INCUR STRICT LIABILITY, but such indemnity and hold harmless shall not apply with respect to any Hazardous Substances which first occurred on the Mortgaged Property after any foreclosure of this Agreement or conveyance in lieu thereof or to the extent that such loss, damage, expense or liability is caused by or attributable to such Indemnitee's gross negligence or willful misconduct. Maker's obligations pursuant to the foregoing indemnity and hold harmless shall survive any termination of the estate created by this Agreement whether as a result of the exercise by Noteholder of any default remedies available to it at law or in equity or otherwise. Maker acknowledges and agrees that as a condition precedent to making the loan to Maker evidenced by the Note secured by this Agreement, Noteholder has required that Maker provide to the Indemnitees the indemnity set forth herein and that Noteholder would not consummate the loan without this indemnity and hold harmless and that the indemnity and harmless contained herein is a material inducement for Noteholder's agreement to make the loan. Further, Maker agrees that the foregoing indemnification is separate, independent of and in addition to its undertakings as Maker under the Note, as Maker under this Agreement, as Assignor under the Absolute Assignment of Leases and Rents and any and all other documents, agreements and undertakings executed by Maker in favor of Noteholder pursuant to the Note. Maker agrees that a separate action may be brought to enforce the provisions of this indemnification and hold harmless, which shall in no way be deemed to be an action on the Note or under this Agreement, whether or not Noteholder would be entitled to a deficiency judgment following a foreclosure sale of the Mortgaged Property.

VI. ADDITIONAL COVENANTS OF MAKER

As long as any of the Indebtedness remains unpaid, Maker covenants and agrees that:

A. Payment of Indebtedness. Maker will pay the Indebtedness promptly when due and payable.

B. Payment of Taxes and Other Assessments. Maker will pay all taxes, assessments and other governmental, municipal or other public dues, charges, fines, or impositions imposed or levied upon the Mortgaged Property or on the interest created by this Agreement, or any tax or excise on rents or other tax, however described, assessed or levied by any state, federal or local taxing authority as a substitute, in whole or in part, for taxes assessed or imposed on the Mortgaged Property or on the interest created by this Agreement prior to delinquency. If any tax or assessment is levied, assessed or imposed on Noteholder as a legal holder of the Note or any interest in the documents securing, evidencing or relating to the Note by any governmental authority, then unless all such taxes are paid by Maker as they become due and payable and in the opinion of General Counsel of Noteholder, such payment by Maker is lawful and does not place Noteholder in violation of any law, Noteholder may, at its option, declare the Indebtedness immediately due and payable, but in this event no prepayment premium shall be due or payable.

C. Insurance. Maker shall keep the Mortgaged Property insured against loss or damage by fire, windstorm, extended coverage perils, flood (in the event any of the Mortgaged Premises is within a 100-year flood plain and flood insurance is available pursuant to the United States Flood Disaster Protection Act of 1973 or any similar or successor statute or successor governmental authority), vandalism, malicious mischief and such other hazards, casualties or other contingencies and in such amounts (but in no event less than the greater of the amount of the Indebtedness from time to time secured hereby or the full replacement value thereof) as from time to time may be required by Noteholder, and maintain rents or rental value insurance coverage, in an amount at least adequate to cover twelve (12) months' principal and interest installments on the Note and together with twelve (12) months' property taxes and insurance premiums, with respect to the Mortgaged Property covering the risk of loss due to the occurrence of any of the foregoing hazards, in each case and in such amounts, in such manner and in such companies as the Noteholder may approve, and all such policies shall contain a waiver of subrogation and provide that any losses payable thereunder shall (pursuant to standard mortgagee clauses without contribution, including one providing that such insurance as to the interest of Noteholder shall not be invalidated by any act or omission or neglect of Maker, to be attached to each policy) be payable to Noteholder. Maker shall cause evidence of any and all such insurance policies to be deposited with Noteholder. Maker will also carry public liability insurance, in such form, amounts and with such companies as Noteholder may from time to time reasonably require, with Noteholder included thereon as a named insured. Any or all of such policies may be provided under a blanket policy or policies provided such blanket policies allocate the amount of insurance required hereunder to the Mortgaged Property. Maker shall cause duplicate originals of any and all such insurance policies to be deposited with Noteholder, or certificates of the insurers under such policies evidencing same. Prior to the date the premiums on each such policy or policies shall become due and payable, Maker shall furnish to Noteholder evidence of the payment of such premiums. Each of such policies shall contain an agreement by the insurer that the same shall not be canceled or modified without at least ten (10) days' prior written notice to Noteholder. In the event of loss under any such policy, Maker shall give immediate written notice to the insurance carrier and to Noteholder. With respect to all insurance policies except public liability insurance, Noteholder is

hereby authorized, but not required, on behalf of and at the expense of Maker, whether or not an Event of Default has then occurred, to make proof of loss, to collect for, adjust or compromise any losses under any insurance policy on the Mortgaged Property, to appear in and prosecute any action arising from any of such insurance policies, and to apply, at Noteholder's option, the loss proceeds (less expenses of collection) on the Indebtedness, in any order and whether due or not, or to the restoration of the Mortgaged Property, or to be released to Maker, but any such application or release shall not cure or waive any default. In case of a sale pursuant to the foreclosure provision hereunder, or any conveyance of all or any part of the Mortgaged Property in extinguishment of the Indebtedness, complete title to all insurance policies on or related to the Mortgaged Property, and the unearned premiums of same shall pass to and vest in the purchaser or grantee of the Mortgaged Property. Notwithstanding anything contained in this Agreement to the contrary, and so long as Maker is not in default hereunder, insurance proceeds shall be made available in accordance with that lease dated November 25, 2003 by and between Carmax Auto Superstores, Inc., as tenant, and Val T. Orton, solely in his capacity as Co-Trustee of the GECBAF Cascade Trust, a Utah trust, as landlord (the "Lease").

D. Escrow for Taxes and Insurance. Maker shall pay, in addition to the installments payable under the Note, on the same day as such installments are due and payable, a sum equal to 1/12th of the estimated annual taxes, hazard and rental insurance premiums, and special assessments, if any, next due on the Mortgaged Property. If the amount so paid is not sufficient to pay such taxes, insurance premiums and assessments when due, then Maker will immediately deposit with Noteholder amounts sufficient to pay the same. Funds deposited by Maker pursuant to this provision shall be used to pay such taxes, insurance premiums and assessments when due, provided that Maker has furnished Noteholder with all tax statements, premium notices and other such notices at least thirty (30) days prior to the date that any such taxes, premiums and assessments may be due. If there is a default under the provisions of the Note or of this Agreement, Noteholder may elect, at any time during an uncured default, to apply the funds accumulated under this provision against the Indebtedness in any manner or order. No interest shall accrue or be allowed on any payments under the provisions of this paragraph. Noteholder shall not be required to deposit or hold monies in an account special or separate from its general funds. Maker expressly releases Noteholder from any liability to Maker arising out of the maintenance by Noteholder of an escrow as provided herein or for payment of any sums out of such escrow. Maker further indemnifies Noteholder against claims arising out of payment of taxes or insurance premiums where Maker has failed to provide Noteholder with tax statements and premium notices as required hereby. The maintenance by Noteholder of an escrow for taxes and insurance shall not relieve Maker of its obligations under this Agreement respecting taxes and insurance on the Mortgaged Property.

E. Waste, Demolition, Alteration or Replacement. Maker will cause the Mortgaged Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, will not commit or permit waste thereon, will not remove, demolish or alter the design or structural character of any building now or hereafter erected on the Mortgaged Premises if such alteration will result in a material diminution of value of the Mortgaged Premises or will impair the structural integrity of the Improvements, without the prior written consent of Noteholder, and will comply with all laws and regulations of any governmental authority with reference to the Mortgaged Property and the manner and use of the same, and will from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Maker agrees not to remove any of the fixtures or personal property owned by Maker included in the Mortgaged Property without the prior written consent of Noteholder and unless immediately replaced with like property of at least equal value. Maker shall act in good faith to continue or cause the continuance of such income producing activity as is presently conducted upon or contemplated for the Mortgaged Property.

F. Inventory of Personal Property. Upon request of Noteholder, Maker shall deliver to Noteholder an inventory describing and showing the make, model, serial number and location of all fixtures and personal property owned by Maker and from time to time used in the management, maintenance and operation of the Mortgaged Property (other than inventory or property, if any, expressly excluded from the operation of this Agreement by separate written agreement) with a certification by Maker that said inventory is a true and complete schedule of such fixtures and personal property owned by Maker and used in the management, maintenance and operation of the Mortgaged Property. Maker hereby grants to Noteholder a security interest in all such items of fixtures and personal property owned by Maker under the terms and conditions of this Agreement.

G. Financial Statement. Maker will furnish to Noteholder within one hundred twenty (120) days after the first day of each and every January (the "Financial Statement Due Date") until the Indebtedness secured hereby has been fully paid, the annual audited financial statements of Maker covering the operation of the Mortgaged Property, each such statement prepared in accordance with generally accepted accounting principles and each such statement prepared and signed by an independent certified public accountant approved by and acceptable to Noteholder. The financial statements shall contain the Maker's certification that, during the period of time covered by the particular statement, to Maker's knowledge, (i) no activity has been conducted upon the Mortgaged Property in violation of any state, federal or local law, ordinance or regulation pertaining to Hazardous Materials, industrial hygiene or environmental conditions, and (ii) the Mortgaged Property complies with the Americans With Disabilities Act.

If Maker does not deliver the financial statements as and when required by this paragraph, there shall be added to the Indebtedness and Maker agrees to pay upon demand Two Hundred Dollars (\$200.00) for each calendar month or part thereof following the Financial Statement Due Date until the required financial statements are delivered to Noteholder.

H. Restrictions upon Sale, Transfer or Mortgaging the Mortgaged Property or the Interest in Maker. Maker acknowledges that Noteholder is relying on the credit worthiness and skill of Maker in advancing sums secured hereby. Except for a natural person's transfer by will or applicable state intestacy laws or a transfer of the Mortgaged Property to an entity which is wholly owned or controlled by GECBAF or a trust in which GECBAF is the sole beneficiary (collectively, together with any other matters specifically defined below, "Permitted Transfers"): (i) if the Maker should sell,

trade, convey, transfer, mortgage, assign, exchange, pledge or encumber (including, without limiting these provisions or any similar references in this Agreement, the granting of a security interest in) all or any part of the Mortgaged Property, or any interest of Maker therein, absolutely or as security for a debt or other obligation, whether done in a direct or indirect method or enter into any contractual arrangements to do so, or (ii) if a shareholder, partner, member, trustee or beneficiary of Maker (sometimes, a "Tier Two Owner") or if any shareholder, partner, member, trustee or beneficiary of any shareholder, partner, trustee or beneficiary of a Tier Two Owner (any and all of the preceding a "Constituent Owner") should sell, trade, convey, transfer, mortgage, assign, exchange, pledge or encumber (including, without limiting these provisions or any similar references in this Agreement, the granting of a security interest in) all or any part of its interest in Maker or if such shareholder, partner, member, trustee or beneficiary in or of Maker shall otherwise be diluted, or (iii) if Maker shall in any way, voluntarily or involuntarily be divested of title or of any interest in the Mortgaged Property, then the Noteholder, at its option, may elect to accelerate the maturity of the Note and declare the entire amount of the Indebtedness immediately due and payable whereupon Maker shall have thirty (30) days to pay the full sum of the Indebtedness including, without limitation, principal and interest, whether or not any such sale, trade, conveyance, transfer, mortgage, assignment, exchange, pledge, or encumbrance might diminish the value of the security for the Indebtedness or increase the likelihood of an Event of Default or increase the likelihood of the Noteholder having to resort to any other security for the Indebtedness after default or add or remove liability of any party for payment or performance of the Indebtedness. Maker further agrees that the foregoing restriction shall be effective and remain in full force and effect throughout the term of this Agreement and shall be applicable to Maker, each shareholder, partner, member, trustee and beneficiary and each Constituent Owner and their respective heirs, executors, administrators, successors and assigns. The consent by the Noteholder to any one such sale, trade, conveyance, transfer, mortgage, assignment, exchange, pledge, or encumbrance (one or more of the preceding a "Transaction") shall not waive or forfeit the right of Noteholder to elect to accelerate the Indebtedness to maturity as to any other Transaction. Maker further covenants and agrees to give written notice to Noteholder in the event there occurs any Transaction which would violate the terms and conditions of this provision. The term "Transaction" shall include any voluntary or involuntary act or omission of Maker. Nothing herein contained shall prevent Noteholder from accelerating the Note at any time in the event Maker enters into such a transaction and does not notify Noteholder of same.

No Transaction pursuant to the foregoing provisions of this Subsection H, defined as a Permitted Transfer or described in Section 8.1(5) below shall in any way release Maker or any other party liable on any of the Indebtedness or liable under any document securing, evidencing or relating to the Indebtedness from any such liability unless expressly provided in this Agreement.

In addition and notwithstanding the above provisions of subsection H or Section 8.1 (5), Maker shall be permitted to make one sale (and only one sale) of all of the Mortgaged Property, subject to the approval of Noteholder, not to be unreasonably withheld, provided all of the following occur prior to such sale (the occurrence of all of the following prior to such sale shall be a "Permitted Transfer"):

- (1) Noteholder approves and agrees in writing that the proposed transferee has both the financial capacity (including, without limitation, clear credit histories and an aggregate net worth of not less than \$5,000,000.00 with liquid assets of not less than \$1,000,000.00);

- (2) The proposed transferee's partners, members or shareholders, as applicable have demonstrated successful retail property management experience for not less than five consecutive years preceding such proposal transfer;
- (3) The net income debt coverage ratio (including all financing on the Mortgaged Property) at the time of the sale is not less than 1.20x to 1 as evidenced by operating statements satisfactory to Noteholder as to both form and substance (and which shall include, in addition to the actual expenses incurred or accrued during the preceding year, any projected additional and ad valorem taxes to be assessed as a result to such transfer of the Mortgaged Property);
- (4) The proposed transferee executes an assumption agreement (subject to the limitations on recourse provided in the loan documents), financing statements and any other agreements as may be reasonably required by Noteholder;
- (5) Pays to Noteholder a transfer fee equal to one percent (1%) of the then outstanding principal balance of the Note, which one percent (1%) fee will be waived in the event sale occurs within one (1) year from the date of this Agreement; and
- (6) Pays Noteholder's reasonable attorney's fees and all other reasonably related expenses incurred in connection with such sale.

I. Intentionally Left Blank.

J. Delivery of Substitute Note. Maker will, if the Note is mutilated, destroyed, lost or stolen, deliver to Noteholder, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued but unpaid interest. Maker shall be furnished with satisfactory evidence of the mutilation, destruction, loss or theft of the Note, and also such security or indemnity as may be reasonably requested by Maker; provided, however, that if the original noteholder named herein is the then noteholder under this Agreement, an unqualified indemnity from the original noteholder named herein shall be deemed to be satisfactory security or indemnification.

K. Compliance with Covenants, Conditions, Restrictions and Recorded Documents. Maker shall, and shall cause the Mortgaged Property, to fully and timely comply with all restrictions covenants, conditions and agreements benefitting, burdening or imposed on the Mortgaged Property or any portion thereof or the owner of all or such portion of the Mortgaged Property.

VII. DEFEASANCE

This Mortgage is made upon the condition that if the Maker pays the Indebtedness, as defined in this Mortgage, if the Noteholder has no further obligation or commitment to advance funds, incur obligations or give value to the Maker, and if the Maker fulfills all of its other obligations under this Mortgage, the Note and each other document securing, evidencing, or relating to the Indebtedness, this conveyance shall be null and void.

VIII. EVENTS OF DEFAULT

8.1 Acts Constituting Default. Maker will be in default under this Agreement upon the happening of any of the following events or conditions, or the happening of any other Event of Default as defined elsewhere in this Agreement (herein collectively referred to as an “Event of Default”):

(1) Maker fails to make when due any payment of principal or interest or installment of principal and interest under the Indebtedness.

(2) Maker fails to keep or perform any of the covenants, conditions or stipulations contained in this Agreement, the Note or in any other documents securing, evidencing or relating to the Indebtedness other than any event or condition specified in Section 8.1(1), 8.1(3), 8.1(4), 8.1(5), 8.1(6), 8.1(7) or 8.1(8) within 30 days after written notice to Maker.

(3) Any warranty or representation made in this Agreement by Maker is determined by Noteholder to be untrue in any material respect.

(4) Any person, corporation or other entity that (a) owns all or any part of the Mortgaged Property, (b) is liable for the payment of all or any part of the Indebtedness, or (c) is a guarantor of all or any part of the Indebtedness (i) admits in writing its inability to pay its debts generally as they become due, (ii) files a petition or answer in bankruptcy as a Debtor or seeking reorganization or an arrangement or otherwise to take advantage of any State or Federal bankruptcy or insolvency law, (iii) makes an assignment for the benefit of creditors, (iv) files a petition for or consents to the appointment of a receiver for its assets or any part thereof, or (v) without its consent has a petition filed in any bankruptcy or insolvency proceeding or an order, decree or judgment entered by a court of competent jurisdiction appointing a receiver of the Mortgaged Property or approving a petition filed against it seeking reorganization or an arrangement of it or its assets or debts under any bankruptcy or insolvency law and such petition, order, decree or judgment is not dismissed, vacated, set aside or stayed within sixty (60) days from the date of entry.

(5) Except for Permitted Transfers, Maker sells, trades, conveys, transfers, mortgages, assigns, exchanges, pledges or encumbers (including, without limiting these provisions or any similar references in this Agreement, the granting of a security interest in) the Mortgaged Property, the Collateral or any portion thereof or interest therein, or, except for Permitted Transfers, Maker or any shareholder, partner, member, trustee or beneficiary of Maker or a Constituent Owner sells, trades, conveys, transfers, mortgages, assigns, exchanges, pledges or encumbers (including, without limiting any of the provisions of this subparagraph, the granting of a security interest in) any part of its interest in Maker or any Constituent Owner, except for Permitted Transfers, or any such event occurs involuntarily to Maker or such shareholder, partner, member, trustee or beneficiary of Maker or any shareholder, partner, member, trustee or beneficiary of any Constituent Owner, all without the prior written consent of Noteholder.

(6) The authority and right of Maker to do business in the State of Alabama is terminated, withdrawn, cancelled or modified.

(7) GECBAF sells, trades, conveys, transfers, mortgages, assigns, exchanges, pledges or encumbers (including, without limiting these provisions or any similar references in this Agreement, the granting of a security interest in) their ownership interest in Maker which results in or may result in GE owning less than 75% of the beneficial interest in Maker.

(8) Maker's existence as a trust for any reason, by operation of law or otherwise, is modified in any way adverse to Noteholder or terminates and is not reinstated within sixty (60) days thereafter.

IX. RIGHTS OF NOTEHOLDER UPON DEFAULT

9.1 **Acceleration of Indebtedness.** Upon occurrence of an Event of Default or at any time thereafter, Noteholder may at its option and without demand or notice to Maker, accelerate the maturity of the Note and declare the Indebtedness secured hereby immediately due and payable. Unless otherwise provided herein, Maker hereby waives presentment for payment, protest and demand, notice of protest, demand, dishonor and default, notice of intent to declare the Indebtedness immediately due and payable and notice of the declaration that the Indebtedness is immediately due and payable, and any and all rights Maker may have to a hearing before any judicial authority prior to the exercise by Noteholder of any of its rights under this Agreement or any other agreements securing or executed in connection with the Indebtedness, all to the extent authorized by law.

9.2 **Operation of Property by Noteholder.** Upon the occurrence of an Event of Default, or at any time thereafter, in addition to all other rights herein conferred on the Noteholder, the Noteholder (or any person, firm or corporation designated by the Noteholder) may, but will not be obligated to, enter upon and take possession of any or all of the Mortgaged Property, exclude Maker therefrom, and hold, use, administer, manage and operate the same to the extent that Maker could do so. If the Mortgaged Property includes any type of business enterprise, the Noteholder may operate and manage such business without any liability of Noteholder to Maker resulting therefrom (excepting failure to use ordinary care in the operation and management of the Mortgaged Property); and the Noteholder or Noteholder's designee may collect, receive and receipt for all proceeds accruing from such operation and management, and, at Maker's expense, make repairs and purchase needed additional property, and exercise every power, right and privilege of Maker with respect to the Mortgaged Property. When and if the expenses of such operation and management have been paid and the Indebtedness has been paid, the Mortgaged Property shall be returned to Maker (providing there has been no foreclosure sale). This provision is a right created by this Agreement and cumulative of, and is not in any way to affect, the right of the Noteholder to the appointment of a receiver given the Noteholder by law.

9.3 **Judicial Proceedings.** Upon the occurrence of an Event of Default, or at any time thereafter, or upon the breach of any covenant, term or condition herein contained, Noteholder, in lieu of or in addition to exercising the power of sale hereafter given, may proceed by suit for a foreclosure of its lien on the Mortgaged Property, or to sue Maker for damages on, 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.

9.4 Foreclosure Sale.

(1) **Mechanics of Sale.** Upon the occurrence of an 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 the Noteholder shall be authorized, at its option, whether or not possession of the Property is taken, after giving twenty-one days notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale, together with a description of the Mortgaged Property to be sold, by publication in some newspaper published in each county wherein

the Property or any part thereof is located, to sell the Property (or such part or parts thereof as the Noteholder may from time to time elect to sell) in front of the front or main door to the courthouse of the county where the Mortgaged Property or a substantial and material part thereof, is located at public outcry, to the highest bidder for cash. The Noteholder, its successors and assigns, may bid at any sale or sales under the terms of this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefore. 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 Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Maker hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Noteholder, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Indebtedness secured hereby shall have been paid in full.

(2) Collateral. On the happening of any Event of Default or at any time thereafter, Noteholder shall have and may exercise with respect to the Collateral all rights, remedies and powers of a Secured Party under the Alabama Uniform Commercial Code with reference to the Collateral or any other items in which a security interest has been granted herein, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default by Maker without regard to preservation of the Collateral or its value and without the necessity of a court order, and apply the proceeds thereof first toward the payment of all costs and expenses and reasonable attorneys' fees incurred by Noteholder or Noteholder, and the balance toward the payment of the Indebtedness whether or not then due, and in such order or manner as Noteholder may elect. In the Event of Default, Noteholder shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same, without being guilty of trespass and without liability for damages occasioned thereby, and to take any action deemed appropriate or desirable by Noteholder, at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale or lease or other use or disposition as authorized herein. To the extent permitted by law, Maker expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of Maker or the formalities prescribed by law relative to the sale or disposition of the Collateral or to the exercise of any other right or remedy of Noteholder existing after default. To the extent that such notice is required and cannot be waived, Maker agrees that if such notice is mailed postage prepaid to Maker at the address shown herein at least ten (10) days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

(3) Maker's Warranties After Sale. Maker hereby authorizes and empowers the Noteholder, on behalf, and in the name of, Maker to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold in foreclosure sales good and sufficient deeds of conveyance thereto by fee simple title, with covenants of general warranty, subject to Permitted Exceptions and the title of such purchaser or purchasers when so made by the Noteholder, Maker binds itself to warrant and forever defend.

(4) Application of Proceeds. The proceeds of any and all foreclosure sales of the Mortgaged

Property shall be applied as follows: (i) to the payment of all necessary actions and expenses incident to the execution of said sale or sales, (ii) to the payment of the Indebtedness in such order as determined by Noteholder, to the amount of the accrued interest and principal legally due thereon and all other sums secured hereby, and to the payment of attorneys' fees as in the Note provided, and (iii) the remainder, if any, shall be paid to Maker or such other person or persons entitled thereto by law.

(5) Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, the Noteholder shall have the option to proceed with foreclosure in satisfaction of said Event of Default, either through the courts or by power of sale as provided for in this Agreement, but without declaring the whole Indebtedness due, and provided that if any sale is made because of such Event of Default, such sale may be made subject to the unmatured part of the Note and Indebtedness secured by this Agreement, and such sale, if so made, shall not in any manner affect the unmatured part of the Indebtedness secured by this Agreement, but as to such unmatured part of the Indebtedness this Agreement 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 Indebtedness whether then matured or unmatured, the purpose hereof to provide for a foreclosure and sale of the Mortgaged Property for any matured part of the Indebtedness without exhausting any power of foreclosure and the power to sell the Mortgaged Property for any other part of the Indebtedness, whether matured at the time or subsequently maturing.

(6) Waiver of Appraisement Laws. Maker waives the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Mortgaged Property (commonly known as Appraisement Laws), 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).

(7) Prerequisites of Sales. In case of any foreclosure sale of the Mortgaged Property, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder, all statements of facts, or other recitals therein made as to the nonpayment of money secured, or as to the advertisement of sale, or time, place and manner of sale, or as to any other preliminary fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

X. USE OF INSURANCE PROCEEDS

10.1 Holding of Proceeds. Notwithstanding the provisions of Article VI, Section C, any insurance proceeds paid to Noteholder will be first applied in payment of the expenses, if any, incurred by Noteholder in the collection of said insurance proceeds and the balance, if any, will be held and disbursed by Noteholder in accordance with the following provisions:

A. (1) Should there exist an Event of Default at the time of the casualty or should there occur at any time thereafter an Event of Default; (2) should either the tenant of any portion of the Mortgaged Property or the Maker terminate a lease as a result of said damage, or, whether or not a result of such damages, at any time prior to the commencement of reconstruction; (3) should any insurance proceeds be remaining after the completion of all restoration work; or (4) should Maker fail to comply with the requirements for disbursing the insurance proceeds, then in any of the said events, Noteholder may, at its option, apply the insurance proceeds on the Indebtedness, in any order and

whether due or not, or to the restoration of the Mortgaged Property, or to be released to Maker, but any such application or release shall not cure or waive any default.

B. If the insurance proceeds have not been disbursed under the provisions of subparagraph A hereof, or if under subparagraph A Noteholder elects to permit the insurance proceeds to be used for restoration of the Mortgaged Property, the proceeds will be held and disbursed in accordance with the Lease or, if the Lease has terminated, as follows:

(1) Should the insurance proceeds be less than \$25,000.00, Maker shall immediately commence and complete the work of restoring the damaged property and Noteholder will disburse the portion of the insurance proceeds to pay actual costs to replace, repair and restore the damaged property to Maker upon (i) completion of the restoration work to a condition satisfactory to Noteholder, (ii) submission of a written report by Maker that all restoration work has been completed, and (iii) receipt by Noteholder of such evidence as Noteholder may require that all mechanics and materialmen performing work or supplying materials for the restoration work have been fully paid.

(2) Should the insurance proceeds equal or be in excess of \$25,000.00, Maker shall cause plans and specifications ("Plans") for the restoration of the damaged property to be submitted to Noteholder for approval. Upon receipt of Noteholder's approval, Maker shall forthwith commence and complete the restoration of the damaged property in accordance with the approved Plans. Noteholder will disburse the portion of the insurance proceeds to pay the actual costs to repair and restore the damaged property to Maker upon (i) completion of the restoration work to a condition satisfactory to Noteholder, (ii) submission of a written report by Maker that all restoration work has been completed, and (iii) receipt by Noteholder of such evidence as Noteholder may require that all mechanics and materialmen performing work or supplying materials for the restoration work have been completely paid.

(3) If the insurance proceeds are equal or in excess of \$100,000.00: (a) Plans for the restoration of the damaged property and a cost estimate will both be prepared by an architect employed by Maker and acceptable to Noteholder. The Plans and cost estimates will be submitted to Noteholder for approval. Upon receipt of Noteholder's approval, Maker will promptly commence and diligently pursue the restoration work in accordance with the approved Plans. (b) If prior to the commencement of, or at any time during the restoration work, Noteholder shall determine that the total cost of the restoration work shall exceed the balance of the insurance proceeds held in its possession, Maker shall immediately pay, in cash, to Noteholder the amount of such excess costs. Until the amount of said excess costs is paid to Noteholder, Noteholder shall not be obligated to disburse any of the insurance proceeds held by it. The insurance proceeds and the amount of excess costs paid by Maker are hereinafter called "Construction Funds". The amount of such excess costs paid by Maker shall be disbursed prior to the disbursement of any of the insurance proceeds held by Noteholder. (c) The Construction Funds will be made available to Maker as restoration repair work progresses pursuant to certificates of the architect approved by Noteholder, submitted not more than once every thirty (30) days. There shall be delivered to Noteholder such other evidences as Noteholder may reasonably request, from time to time, during the restoration work, as to the progress of the work, the compliance with the approved Plans, the total cost of restoration work to date of request, the total cost needed to complete the restoration work, lien waivers or evidence of no liens against the Mortgaged Property. If at any time during the course of the restoration work, Noteholder learns of facts concerning the restoration work which is materially adverse to Noteholder, or payment

or nonpayment of mechanics and materialmen, or inaccuracy of any information furnished with respect to it, Noteholder may withhold the disbursement of funds until such time as it is prudent to continue to disburse the Construction Funds or may determine not to make any further disbursements of the Construction Funds and instead to apply all such funds remaining to the payment of the Indebtedness then outstanding, whether due or not at such time, without any prepayment premium, and in such order as determined by Noteholder.

C. Noteholder shall not be required to hold any funds received by it described in this Article X in any account special or separate from Noteholder's general account. No such funds shall be required to be placed in any interest bearing account, and any interest earned thereon shall constitute additional insurance proceeds to be applied as provided in this Agreement.

XI. SPECIAL CONDITIONS

This document is expressly made subject to the following special conditions.

11.1 Intentionally Omitted.

11.2 Waiver and Election. The exercise of any right or remedy by Noteholder shall not be considered as a waiver of any right or remedy nor shall any acceptance by Noteholder of Maker's partial payment or partial performance of obligations under the Note or hereunder, nor shall any failure or delay by Noteholder in exercising any of its rights or remedies as to any Event of Default which may occur, operate as a waiver by Noteholder of its rights or remedies with respect to the occurrence of any other or further Event of Default or to the recurrence of the same Event of Default. The filing of a suit to foreclose this Agreement either on any matured portion of the Indebtedness or for the whole of the Indebtedness, shall never be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the filing of the necessary notices for foreclosure, as provided in this Agreement, preclude the exercise by Noteholder of any other right or remedy including, without limitation, the prosecution of a later suit thereon.

11.3 Landlord-Tenant Relationship. Any sale of the Mortgaged Property under this Agreement shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and Maker and any person or entity claiming an interest in the Mortgaged Property through Maker or otherwise occupying any of the Mortgaged Property, upon failure to surrender possession thereof, Maker and all such persons and entities may be removed by any appropriate judicial proceeding brought by the purchaser.

11.4 Usury. Notwithstanding any provision in this Agreement to the contrary, it is expressly provided that in no case or event should the aggregate amounts, which by applicable law are deemed to be interest with respect to this Agreement, the Note or any document securing the Note ever exceed the "Maximum Effective Rate" (as defined in the Note). In this connection, it is expressly stipulated and agreed that it is the intention of Noteholder and the Maker to contract in strict compliance with applicable usury laws of the State of Alabama and/or of the United States (whichever permits the higher rate of interest) from time to time in effect. Nothing in this Agreement, the Note or any document securing the Note shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the Maximum Effective Rate. If under any circumstances the aggregate amounts contracted for, charged or paid with respect to the Note which by applicable law are deemed to be interest, would produce an

interest rate greater than the Maximum Effective Rate, the Maker and any other person obligated to pay the Note, stipulates that the amounts will be deemed to have been paid, charged or contracted for as a result of an error on the part of Maker, any other person obligated for the payment of the Note and the Noteholder and upon discovery of the error or upon notice thereof from the Maker or the party making such payment, the Noteholder or the party receiving such excess payment shall, at its option, refund the amount of such excess payment or credit the excess payment against any other amount due under the Note. In addition, all sums paid or agreed to be paid to the holder of the Note for the use, forbearance or detention of monies shall be, to the extent permitted by applicable law, amortized, prorated, allocated and spread through the term of the Note.

11.5 Enforceability. If any provision hereof is presently or at any time becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Noteholder to effectuate the provisions hereof.

11.6 Application of Payments. If the lien or liens created by this Agreement are invalid or unenforceable as to any part of the Indebtedness or if such lien or liens are invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially unsecured portion of the Indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Indebtedness and all payments made on the Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Indebtedness which is not secured or not fully secured by the lien or liens created herein.

11.7 Meaning of Particular Terms. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders. The words "Maker" and "Noteholder" shall include their heirs, executors, administrators, successors and assigns. For convenience of drafting the following groups of words, and derivations thereof, are used interchangeably and any reference to one or more shall include the others notwithstanding anything seemingly to the contrary: (a) the words "act", "omission" and "occurrence"; and (b) "instrument" and "document".

11.8 Advances by Noteholder. If Maker shall fail to comply with the provisions with respect to the securing of insurance, payment of taxes, assessments, and other charges, the keeping of the Mortgaged Property in repair, or any other term or covenant herein contained, Noteholder may, but shall not be obligated to, incur such expenses as deemed necessary by Noteholder, and make advances to perform such provisions, terms or covenants, and where necessary enter the Mortgaged Property for the purpose of performing any such term or covenant. Noteholder is further empowered, but not obligated, to make advances for any expenditure deemed advisable by Noteholder for the preservation of the Mortgaged Property or for the continuation of the operation thereof. Maker agrees to repay all sums so advanced or expended, and all expenses incurred by Noteholder in connection with the exercise of any of its rights under this Agreement, upon demand, with interest from the date such advances or expenditures are made, determined on the same basis as matured principal in the Note and all sums so advanced or expended, with interest, shall be secured hereby.

11.9 Release or Extension by Noteholder. Noteholder, without notice, may release any part of the Mortgaged Property or any person liable for the Indebtedness without in any way affecting the liens hereof on any part of the Mortgaged Property not expressly released and may agree in writing with any party with an interest in the Mortgaged Property to extend the time for payment of all or any

part of the Indebtedness or to waive the prompt and full performance of any term, condition or covenant of any document securing, evidencing or relating to the Indebtedness.

11.10 Partial Payments. Acceptance by Noteholder of any payment of less than the amount due on the Indebtedness shall be deemed acceptance on account only and the failure to pay the entire amount then due shall be and continue to be a default; and at any time thereafter and until the entire amount due on the Indebtedness has been paid, Noteholder shall be entitled to exercise all rights conferred on it by the terms of this Agreement upon the occurrence of an Event of Default.

11.11 Titles not to be Considered. All section, subsection, paragraph or other titles contained in this Agreement are for reference purposes only and this Agreement shall be construed without reference to said titles.

11.12 Construction of Agreement. This Agreement may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and the purposes and agreements herein set forth.

11.13 Additional Taxes and Indemnification. Maker agrees that if any state, federal or municipal government, or any of its subdivisions having jurisdiction, shall levy, assess or charge any tax, assessment or imposition upon this Agreement or the credit or indebtedness secured hereby or the Note or the interest of Noteholder in the Mortgaged Premises or upon Noteholder by reason of any of the foregoing (excepting therefrom any income tax on interest payments on the principal portion of the Indebtedness secured hereby) then, Maker shall pay all such taxes to or for Noteholder as they become due and payable, and provided further that in the event of passage of any law or regulation permitting, authorizing or requiring the tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits Maker from paying the tax, assessment or imposition, to or for Noteholder, then all sums hereby secured shall become immediately due and payable at the option of the Noteholder. Maker agrees to exhibit to Noteholder at any time upon request, official receipts showing payment of all taxes, assessments and charges which Maker is required or elects to pay hereunder. Maker agrees that if the United States Government or any department or bureau thereof shall at any time require revenue stamps to be affixed to the Note or this Agreement, Maker will upon demand pay for stamps in the required amount and deliver them to Noteholder and Maker agrees to INDEMNIFY and HOLD HARMLESS Noteholder against loss, damage, liability or expense (including reasonable attorney's fees and investigatory expenses) on account of such revenue stamps, whether such loss, damage, liability or expense arises before or after payment of the Note and any termination of the estate created by this Agreement whether as a result of the exercise by Noteholder of any default remedies available to it at law or in equity or otherwise; SUCH INDEMNITY AND HOLD HARMLESS SPECIFICALLY INCLUDES ANY LOSS, DAMAGE, EXPENSE OR LIABILITY CAUSED BY OR ATTRIBUTABLE TO THE ORDINARY OR SIMPLE NEGLIGENCE, AS OPPOSED TO THE GROSS NEGLIGENCE, OF AN INDEMNITEE, but such indemnity and hold harmless shall not apply to the extent that such loss, damage, expense or liability is caused by or attributable to Noteholder's gross negligence or willful misconduct.

11.14 Indemnification. MAKER AGREES TO INDEMNIFY AND HOLD HARMLESS NOTEHOLDER FROM ALL LOSS, DAMAGE AND EXPENSE, INCLUDING REASONABLE ATTORNEYS' FEES AND INVESTIGATORY EXPENSES, INCURRED IN CONNECTION

WITH ANY SUIT OR PROCEEDING IN OR TO WHICH NOTEHOLDER MAY BE MADE A PARTY FOR THE PURPOSE OF PROTECTING THE LIEN OF THIS AGREEMENT, EVEN IF SUCH LOSS, COST, LIABILITY OR EXPENSE RESULT FROM OR ARE ATTRIBUTABLE TO THE NEGLIGENCE OF NOTEHOLDER, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF NOTEHOLDER, but such indemnity and hold harmless shall not apply to the extent that such loss, damage, expense or liability is caused by or attributable to Noteholder's gross negligence or willful misconduct. Maker's obligations pursuant to the foregoing indemnity and hold harmless shall survive any termination of the estate created by this Agreement whether as a result of the exercise by Noteholder of any default remedies available to it at law or in equity or otherwise.

11.15 Additional Documents. Maker agrees that upon request of Noteholder it will from time to time execute, acknowledge and deliver all such additional documents and further assurances of title and will do or cause to be done all such further acts and things as may be reasonably necessary fully to effectuate the intent of this Agreement. The Maker within ten (10) days upon request in person or by mail will furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Agreement, the date to which interest has been paid and stating either that no offsets or defenses exist against the debt secured hereby, or, if such offsets or defenses are alleged to exist, the nature thereof.

11.16 Disclosure. Maker agrees to disclose to Noteholder upon request, the then ownership of the beneficial interest in any trust which then holds legal title to the Mortgaged Property and shall cause the owner(s) of such beneficial interest to furnish sufficient evidence to Noteholder for it to determine the identity of all of the parties which compose such owner(s).

11.17 Subrogation. In the event the Note is given for money advanced in the payment of a sum owing upon another note or indebtedness, Maker hereby acknowledges that it has requested and does hereby request Noteholder to advance the money necessary to pay such note or indebtedness, whether or not a release or transfer of said other note or indebtedness has been or will be executed by the owner and holder thereof, and Maker hereby agrees that Noteholder and Noteholder's assigns shall be, and are hereby, subrogated to any and all the rights, liens, remedies, equities, superior title and benefits held, owned, possessed or enjoyed at any time by any owner or holder of said other note or indebtedness, to secure payment to Noteholder of the Note hereby secured and, accordingly, any such other note and indebtedness, and all liens securing same are hereby extended to the maturity date of the Note hereby secured in order to additionally secure such Note. Nothing in this Section 11.17 shall alter any obligation of maker hereunder or under the Note.

11.18. Time. Time is of the essence of this Agreement.

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

11.20 Selection of Law. This Agreement shall be governed and construed in accordance with laws of the State of Alabama, without giving effect to conflicts of law provisions thereof.

XII. LIMITATION OF LIABILITY

Except as otherwise specifically provided herein, in the event of a default in the payment of the Note by Maker, or any default under this Agreement or any other document securing, evidencing or relating to the Note, Noteholder's sole recourse shall be against the Mortgaged Property described in this Agreement and such other documents securing, evidencing or relating to the Note, and Noteholder shall not be entitled to recover any deficiency judgment against Maker if the foreclosure or recovery of such Mortgaged Property is not sufficient to pay the amount owed by Maker hereunder. Notwithstanding the foregoing limitation of liability, Maker shall be fully liable (a) for fraud or misrepresentation made in or in connection with the Note or any document securing, evidencing or relating to the payment of the Note or the apparent purpose of which is to deprive Noteholder of the security for the Note; (b) for failure to pay taxes, assessments, charges for labor or materials or any other charges which can create liens on any portion of the Mortgaged Property; (c) for the misapplication of (i) proceeds of insurance covering any portion of the Mortgaged Property, or (ii) proceeds of the sale or condemnation of any portion of the Mortgaged Property, or (iii) rentals and security deposits received by or on behalf of Maker subsequent to the date on which Noteholder gives written notice of the posting of foreclosure notices or the exercise of Noteholder's assignment of rents; (d) for failure to maintain, repair or restore the Mortgaged Property in accordance with any document securing, evidencing or relating to the payment of the Note; (e) for any act or omission knowingly or intentionally committed or permitted by Maker which results in the waste, damage or destruction to the Mortgaged Property, but only to the extent such events are not covered by insurance proceeds which are received by Noteholder; (f) for the return to Noteholder of all unearned advance rentals and security deposits paid by tenants of the Mortgaged Property or any guarantors of the leases of such tenants which are not rightfully refunded to or which are forfeited by such tenants or guarantors; (g) for the return of, or reimbursement for, all personal property owned by Maker taken from the Mortgaged Property by or on behalf of Maker; (h) for any liability of Maker pursuant to the provision contained in this Agreement pertaining to hazardous or toxic materials or substances; (i) for any liability of Maker pursuant to the Certificate and Indemnity Regarding Hazardous Substances executed by Maker and delivered to Noteholder in connection with the indebtedness evidenced by the Note; (j) for any delay after a default which is not cured, in deeding over the Mortgaged Property to the Noteholder or failure to cooperate in a consensual foreclosure, within 90 days of Noteholder's request; (k) for failure to maintain or alter the Mortgaged Property in compliance with the Americans with Disabilities Act of 1990, as it may be amended from time to time; and (l) for all court costs and reasonable attorneys' fees incurred in connection with the enforcement of one or more of the above subparagraphs (a) through (k), inclusive.

EXECUTED this 26th day of February, 2004.

"MAKER"

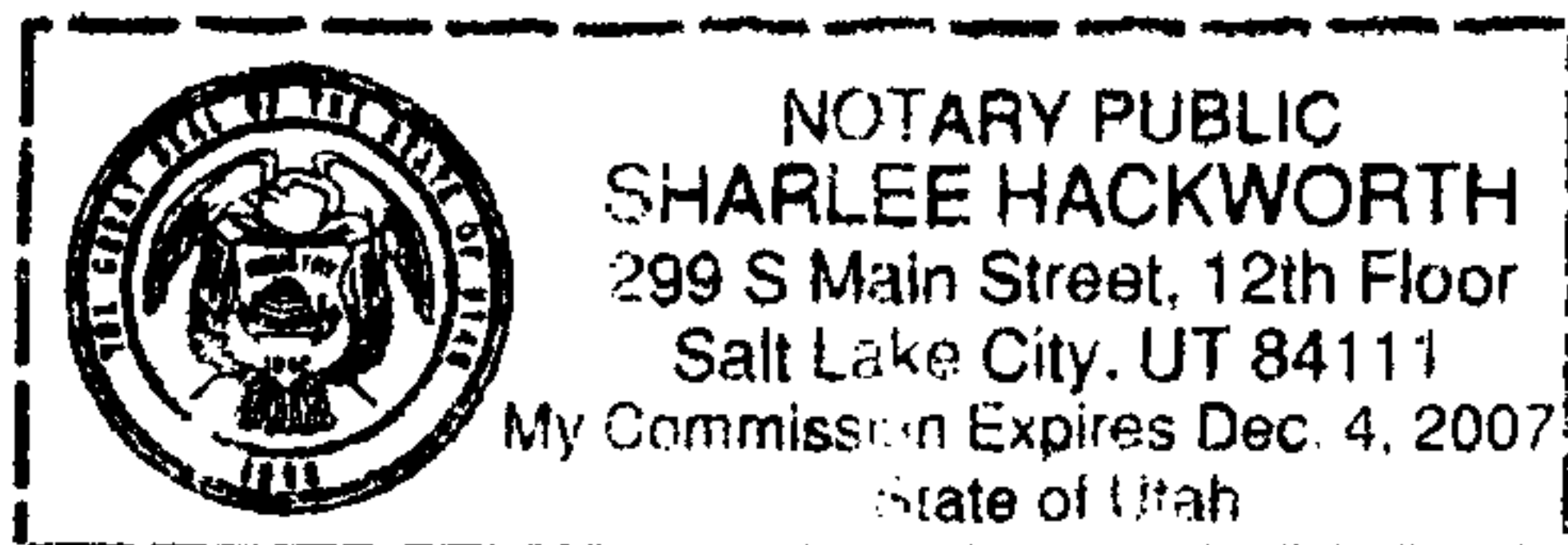
GECBAF Cascade Trust, a Utah trust and Val T. Orton, as Co-Trustee of said Trust

By: Val T. Orton
Val T. Orton, not in his individual capacity, but solely as Co-Trustee of the GECBAF Cascade Trust, a Utah trust

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

The undersigned Notary Public in and for said County in said State, hereby certify that Val T. Orton, whose name as Co-Trustee of the GECBAF Trust, a Utah trust, 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 said instrument, he, as such Co-Trustee and with full authority, executed the same voluntarily for and as the act of said trust.

Given under my hand and official seal, this the 26th day of February, 2004.



Sharlee Hackworth
NOTARY PUBLIC

AFFIX SEAL
My Commission Expires: _____

EXHIBIT "A"

Lots 1 and 2, according to the Survey of Carmax Auto Super Store, as recorded in Map Book 30, page 140, in the Office of the Judge of Probate Shelby County, Alabama and in Map Book 37, page 59, in the Office of the Judge of Probate Jefferson County, Alabama, and being more particularly described as follows:

Lot 1:

Commence at the Southwest corner of the Northwest Quarter of the Northwest Quarter of Section 26, Township 19 South, Range 3 West, Huntsville Meridian, Shelby County, Alabama, thence run North 06°42'09" East, along the west boundary line of said quarter-quarter, for a distance of 325.89 feet to the Point of Beginning; thence continue North 06°42'09" East, along the west boundary line of said quarter-quarter, for a distance of 937.25 feet to a capped iron found on the southerly right-of-way line of Highway 150 (right-of-way width varies); thence run North 84°28'56" East, along said right-of-way, for a distance of 26.40 feet to a capped iron set (CA-00279) on the southwesterly right-of-way line of Alabama Highway 150 (right-of-way width 50 feet); thence, leaving said southwesterly right-of-way, run North 59°15'25" East, along said southerly right-of-way of Highway 150, for a distance of 55.71 feet to the northeasterly right-of-way line of Alabama Highway 150 (right-of-way width 50 feet); thence leaving said northeasterly right-of-way, run North 09°38'28" East, along said southerly right-of-way of Highway 150, for a distance of 48.22 feet; thence run North 59°00'28" East, along said southerly right-of-way of Highway 150, for a distance of 358.11 feet; thence run South 84°53'00" East, along said southerly right-of-way of Highway 150, for a distance of 69.43 feet to the southwesterly right-of-way line of Cahaba River Estates Drive (right-of-way width varies); thence run South 30°33'27" East, along said right-of-way, for a distance of 369.70 feet; thence run South 38°47'31" East, along said right-of-way, for a distance of 111.69 feet; thence run South 35°21'49" East, along said right-of-way, for a distance of 53.86 feet; thence run South 34°25'06" East, along said right-of-way, for a distance of 116.33 feet; thence run South 24°16'33" East, along said right-of-way, for a distance of 21.15 feet to the Point of Curvature of a curve to the left, having a radius of 230.50 feet, a central angle of 19°14'18", a chord length of 77.03 feet and a chord bearing of South 33°53'20" East; thence continue along the arc of said curve, and said right-of-way, for a distance of 77.40 feet to the Point of Tangency of said curve; thence, leaving said right-of-way, run South 60°08'55" West for a distance of 1123.26 feet to the Point of Beginning.

Lot 2:

Begin at the Southwest corner of the Northwest Quarter of the Northwest Quarter of Section 26, Township 19 South, Range 3 West, Huntsville Meridian, Shelby County, Alabama, thence run North 06°42'09" East, along the west boundary line of said quarter-quarter, for a distance of 325.89 feet; thence run North 60°08'55" East for a distance of 1123.26 feet to the westerly right-of-way line of Cahaba River Estates Drive (right-of-way width 50 feet); said point also being the Point of Curvature of a curve to the left, having a radius of 230.50 feet, a central angle of 22°29'23", a chord length of 89.90 feet and a chord bearing of South 54°45'10" East; thence continue along the arc of said curve, and said right-of-way, for a distance of 90.48 feet to the Point of Tangency of said curve; thence run South 70°44'05" East for a distance of 100.25 feet; thence, leaving said right-of-way, run South 49°48'24" West for a distance of 1271.62 feet to the south boundary line of the Northwest Quarter of the Northwest Quarter of Section 26, Township 19 South, Range 3 West, Huntsville Meridian, Shelby County, Alabama; thence run North 83°45'28" West, along said south line, for a distance of 210.24 feet to the Point of Beginning.

EXHIBIT "B"

PERMITTED EXCEPTIONS

1. Restrictions appearing of recorded in Instrument 2001-42399, in the Probate Office of Shelby County, Alabama.
2. Restrictions or Covenants recorded in Instrument 20020917000446600 and Instrument 20020917000446610, in the Probate Office of Jefferson County, Alabama, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status, or national origin.
3. 50 foot building line on northwest, as shown by recorded map. (Lot 1)
4. 50 foot building line on east, as shown by recorded map. (Lots 1 & 2)
5. 15 foot building line on rear and sides, as shown by recorded map. (Lot 2)
6. 15 foot building line on north, as shown by recorded map. (Lot 1)
7. 20 foot easement on north and northwest, as shown by recorded map. (Lot 1)
8. Easement of undetermined width on east, as shown by recorded map. (Lot 1)
9. Joint access easement on northwest corner, as shown by recorded map. (Lot 1)
10. 20 foot Sanitary Sewer Easement recorded in Instrument 200161/6125, in the Probate Office of Jefferson County, Alabama, Bessemer Division.
11. The following matters of survey as delineated on the survey of Robert J. Black, Jr. with Sain Associates, Inc. dated October 20, 2003:
 - a) encroachment of concrete over westerly property line;
 - b) encroachment of 18" curb and gutter into 20' utility easement;
 - c) encroachment of curbing over property line.
12. Memorandum of Lease dated November 25, 2003 by and between Val T. Orton, solely in his capacity as Co-Trustees of the GECBAP Cascade Trust, a Utah trust established by Trust Agreement dated as of October 28, 2003, and not in its individual capacity and Carmax Auto Superstores, Inc., a Virginia Corporation, filed for record January 19, 2003, recorded in Instrument 20031219000815830, in the Probate Office of Shelby County, Alabama.

State of Alabama - Jefferson County

I certify this instrument filed on:

2004 MAR 02 A.M. 07:54

Recorded and \$ 15,645.00 Mtg. Tax

and \$ 67.00 Deed Tax and Fee Amt.
\$ Total \$ 15,712.00

MICHAEL F. BOLIN, Judge of Probate



200460/6821 BESS