
20050907000461230 1/7 \$47.00
Shelby Cnty Judge of Probate, AL
09/07/2005 12:57:53PM FILED/CERT

SECOND MORTGAGE

THIS MORTGAGE is made on this 12 day of August, 2005, between JEREMY N. KRAUSS AND LESLIE J. KRAUSS, HUSBAND AND WIFE, as Mortgagor, whose address is 105 STONEHAVEN WAY, PELHAM, AL 35124, and Benteler Automotive Corporation, of 1780 Pond Run, Auburn Hills, Michigan 48326, as Mortgagee.

FOR VALUE RECEIVED, Mortgagor mortgages, grants, bargains, sells and conveys, and warrants to Mortgagee lands located in the Township/City of PELHAM, SHELBY County, State of AL, more particularly described as follows:

***Lot 238, according to the Survey of The Glen at Stonehaven, as recorded in Map Book 26, Page 91, in the Probate Office of Shelby County, Alabama.**

Together with the easements, improvements, hereditaments, and appurtenances now or hereafter belonging thereto and the rents, income, and profits therefrom and all fixtures now or hereafter attached to or used in connection therewith, collectively the "premises."

This Mortgage is made and given to secure payment of a certain Promissory Note of even date in the amount of Twelve Thousand Dollars (\$12,000.00), hereinafter called the "Indebtedness." It is understood that this Mortgage shall be subordinate to any and all other Mortgages given by the Mortgagor on the premises, without regard to the order of recordation.

Mortgagor further warrants, represents, and agrees as follows:

1. **Payment of Indebtedness.** Mortgagor agrees to pay or perform all of the Indebtedness, including all interest thereon, in accordance with the terms of the Promissory Note.

2. **Assignment of Leases.** Mortgagor, to the extent permitted by law, hereby assigns and mortgages to Mortgagee, and grants to Mortgagee a security interest in, as additional security for the Indebtedness, all of Mortgagor's right, title, and interest in and to all existing and future oral or written leases of the premises by Mortgagor as Lessor, together with all rents and profits arising from, and all other proceeds of, any such leases. Mortgagor will pay and perform all obligations and covenants required of it by the terms of any such lease. If Mortgagor shall default in the payment or performance of any such obligation or covenant, then Mortgagee shall



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have the right, but shall have no obligation, to pay or perform the same on behalf of Mortgagor, and all sums expended by Mortgagee in connection therewith shall become part of the Indebtedness, payable by Mortgagor to Mortgagee upon demand, together with interest at the highest rate allowed by law.

3. **Taxes.** Mortgagor will pay, or cause to be paid, when due, all taxes, assessments, and other similar charges levied upon or with respect to, the premises before the same become delinquent and will deliver to Mortgagee satisfactory evidence of the payment thereof.

4. **Insurance.** Mortgagor will cause all buildings, improvements, and other insurable parts of the premises to be insured against loss or damage by fire, windstorm and such other hazards as Mortgagee from time to time may require, in such amounts and with such insurers as shall be acceptable to Mortgagee, and Mortgagor will cause all premiums on such insurance to be paid when due. Each policy evidencing such insurance shall include Mortgagee as an additional insured. Each such policy shall provide that at least ten days' prior written notice of any cancellation thereof shall be given to Mortgagee by the insurer. Each renewal of each such policy shall be delivered to Mortgagee at least ten days prior to the expiration date of such policy. Upon foreclosure of this Mortgage, or other transfer of the premises in satisfaction of the Indebtedness, all right, title and interest of Mortgagor in and to any insurance policies then in force, including the right to any premium refund thereon, shall vest in the purchaser or grantee.

In the event of any loss of or damage to the premises, Mortgagor will give immediate notice thereof to Mortgagee, and Mortgagee shall have the right to make proof of such loss or damage, if Mortgagor does not promptly do so. All proceeds payable under any such insurance policy shall be payable directly to Mortgagor to be used to rebuild or repair the premises.

5. **Maintenance and Repair.** Mortgagor will maintain the premises in good condition and repair; will not commit or suffer any waste thereof; will not remove, demolish, or substantially alter any building or fixture on the premises without the prior written consent of Mortgagee; will comply, or cause compliance, with all laws, ordinances, regulations, or requirements of any governmental authority applicable to the premises; will promptly repair, restore, replace, or rebuild any part of the premises which is damaged or destroyed by any casualty; and will promptly pay when due all charges for utilities and other services to the premises.

6. **Mortgagee's Right to Perform; Receiver.** If Mortgagor shall default in the payment of the aforesaid taxes, assessments, or other similar charges or in procuring and maintaining the aforesaid insurance or in the performance of any other obligation of Mortgagor hereunder, including its obligation to keep the premises in good condition and repair, then Mortgagee shall have the right, but shall have no obligation, to pay such taxes, assessments, or other similar charges, or procure and maintain such insurance, or cause such other obligation to be performed, and all sums expended by Mortgagee in connection therewith shall become part of the Indebtedness, payable by Mortgagor to Mortgagee upon demand. Mortgagee, and any persons authorized by Mortgagee, shall have the right to enter upon the premises at all reasonable times for the purpose of inspecting the premises or taking any other action pursuant to the preceding sentence.

7. **Events of Default.** Upon the occurrence of any of the following events of default, all or any part of the Indebtedness shall, at the option of Mortgagee, become immediately due and payable without notice or demand:

(a) If Mortgagor's employment with Mortgagee shall be terminated, for any reason whatsoever.

(b) If Mortgagor shall default in the payment when due (whether by acceleration or otherwise) of the principal of, or any penalty or late charge with respect to the Indebtedness.

(c) If Mortgagor shall become insolvent, or if a voluntary or involuntary proceedings in bankruptcy shall be commenced by or against Mortgagor.

(d) If Mortgagor, without the written consent of Mortgagee, shall sell, convey, or transfer the premises, or any interest therein, or shall cause or suffer any writ of attachment, garnishment, execution, or other legal process to be placed upon the premises, or any interest therein.

8. **Remedies.** Mortgagee shall have all rights and remedies provided for in this Mortgage or otherwise permitted by law. In addition, upon the occurrence of an event of default defined in paragraph 7 above, Mortgagee shall have the right, and is hereby authorized:

(a) To cause the abstract of title, tax histories, and federal tax lien searches with respect to the premises to be certified to current date, or to procure a new abstract of title, tax histories and federal tax lien searches in case none was furnished to Mortgagee, or to procure title insurance renewals in the event that title insurance was furnished to Mortgagee, and all sums expended therefore shall be part of the Indebtedness.

(b) To foreclose this Mortgage by action pursuant to applicable law.

(c) To sell, release, and convey the premises at public sale, and to execute and deliver to the purchasers at such sale good and sufficient deeds of conveyance, rendering any surplus funds, after payment of the Indebtedness in full and the expenses of such sale, including attorney fees as provided by law, to Mortgagor, all in accordance with the applicable statutes of the state wherein the premises are located, as the same may be enacted and amended from time to time. In the event of public sale, the premises, at the option of Mortgagee, may be sold in one parcel.

(d) Should default be made on the payment of any sum expended by the said Mortgagee or assigns, or should said indebtedness hereby secure, or any part thereof, or the interest thereon, remain unpaid at maturity, or should the interest of said Mortgagee or assigns in said property become endangered by reason of the enforcement of any prior lien or incumbrance thereon, so as to endanger the debt hereby secured, then in any one of said events, the whole of said indebtedness hereby secured shall at once become due and payable, and this mortgage be subject to foreclosure as now provided by law in case of past due mortgages, and the said Mortgagee, agents, or assigns, shall be authorized to take possession of the premises hereby conveyed, and with or without first taking possession, after giving twenty-one days notice, by publishing once a week for three consecutive weeks, the time, place, and terms of sale, by publication in some newspaper published in said County and State, sell the same in lots or parcels or en masse as Mortgagee, agents or assigns deem best, in front of the Court House door of said County, (or the division thereof) where said property is located, at public outcry, to the highest bidder for cash, and apply the proceeds of the sale: First, to the expense of advertising, selling, and conveying, including a reasonable attorney's fee, Second, to the payment of any amounts that may have been expended, or that it may then be necessary to expend, in paying insurance, taxes, or other incumbrances, with interest thereon; Third, to the payment of said indebtedness, in full, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; and Fourth, the balance, if any, to be turned over to the said Mortgagor and undersigned further agree that said Mortgagee, agents or assigns may bid at said sale and purchase said property, if the highest bidder therefore and undersigned further agree to pay a reasonable attorney's fee to said Mortgagee or assigns, for the foreclosure of this mortgage in Chancery, should the same be so foreclosed, said fee to be a part of the debt hereby secured.

All rights and remedies of Mortgagee under this Mortgage, whether or not exercisable only on default, shall be cumulative and may be exercised from time to time, and no delay by Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy, except to the extent otherwise provided by law.

9. **Expenses.** In the event of a default, in addition to any rights or remedies of Mortgagee, if Mortgagee institutes a lawsuit to enforce its rights herein, and Mortgagee prevails, Mortgagor shall pay Mortgagee's reasonable expenses incurred enforcing its rights hereunder and all such expenses shall be part of the Indebtedness.

10. **Notices.** All notices of Mortgagor and to Mortgagee shall be deemed to be duly given when mailed, with postage prepaid, to the respective addresses of Mortgagor and Mortgagee appearing on the first page hereof, or if and when delivered personally.

11. **Miscellaneous.** The covenants contained herein shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors, assigns, heirs, executors, administrators and personal representatives. Whenever used herein, unless the context otherwise requires, the singular number shall include the plural, and the use of any gender shall be applicable to all genders. The headings to the various paragraphs hereof have been inserted for convenient reference only and shall to no extent have the effect of amending or changing the expressed provisions of this Mortgage.

12. **Severability.** Any provisions of this Mortgage prohibited or unenforceable by any applicable law shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

13. **Drafting.** This Mortgage has been executed after negotiation and the opportunity by both parties to have this Mortgage reviewed and revised by legal counsel of their choice. None of the provisions of this Mortgage shall be interpreted or construed against any party hereto solely by virtue of the fact that any such provision shall have been drafted by legal counsel representing such party.

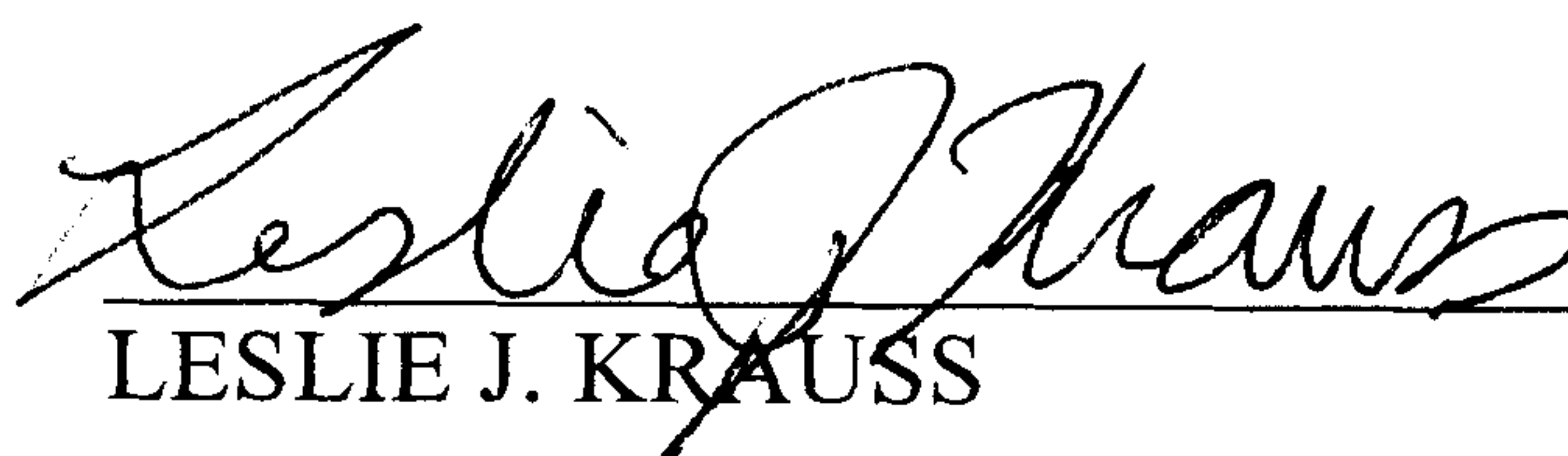
14. **Captions.** The captions appearing in this Mortgage are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of any provision of this Mortgage nor in any way affect this Mortgage.

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15. **Interpretation and Construction.** This Mortgage and the rights and indebtedness secured hereby without regard to the place of contract or payment shall be construed and enforced according to the laws of the State of Michigan.

Mortgagor has executed this Mortgage as of the day and year first above written.

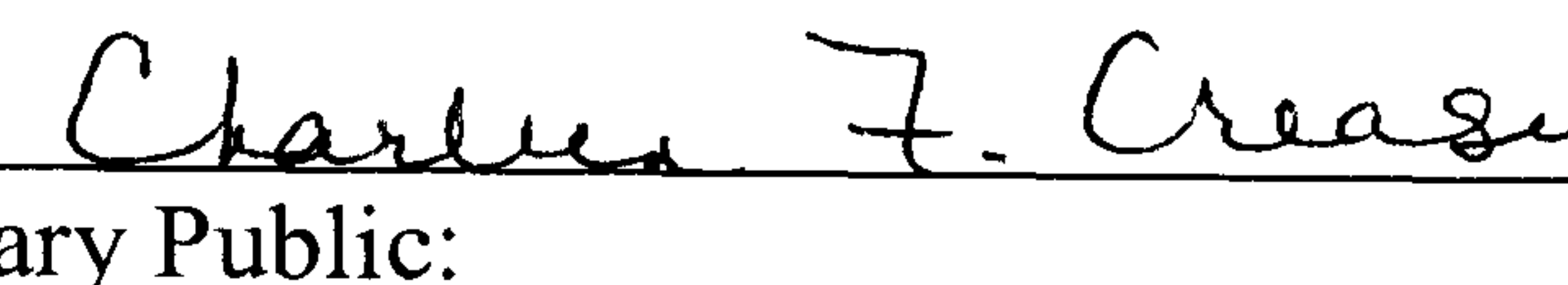

JEREMY N. KRAUSS


LESLIE J. KRAUSS

STATE OF AL)
) ss.
COUNTY OF Lee)

I, Charleen F. Creasy, a Notary Public in and for said County, in said State, hereby certify that JEREMY N. KRAUSS, whose name is signed to the foregoing conveyance, and who is known to me acknowledged before me on this day, that being informed of the contents of the conveyance he/she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 22 day of August, 2005.


Notary Public: _____

My commission expires: _____
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 22, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

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STATE OF AL)
) ss.
COUNTY OF Lee)

I, Charleen F. Creasy, a Notary Public in and for said County, in said State, hereby certify that LESLIE J. KRAUSS, whose name is signed to the foregoing conveyance, and who is known to me acknowledged before me on this day, that being informed of the contents of the conveyance he/she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 22 day of August, 2005.

Charleen F. Creasy
Notary Public: _____

My commission expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE**
MY COMMISSION EXPIRES: July 22, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

This instrument prepared by
and when recorded return to:
Kathleen Katz
Stewart Title Guaranty Company (NTS)
1980 Post Oak Blvd.; Suite 610
Houston, TX 77056
(713) 232-4341