



20060524000246090 1/25 \$1560.80
Shelby Cnty Judge of Probate, AL
05/24/2006 12:14:24PM FILED/CERT

**THIS INSTRUMENT PREPARED BY
AND, AFTER RECORDING, PLEASE
RETURN TO:**

~~Timothy Horan, Jr.
Franklin, Cardwell & Jones
1001 McKinney, 18th Floor
Houston, Texas 77002
Telephone: (713) 425-3246~~

STATE OF ALABAMA)
SHELBY COUNTY)

**MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS
AND FIXTURE FILING (PURCHASE MONEY MORTGAGE)**

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND
FIXTURE FILING (this "Mortgage"), made and entered into as of the 18th day of May, 2006, is
by CHRISTIAN BROTHERS AUTOMOTIVE CORPORATION, a Texas corporation
(hereinafter called "Borrower"), as mortgagor, whose mailing address is 15995 North Barkers
Landing, Suite 145, Houston, Texas 77079, to TEXAS STATE BANK, a Texas banking
association (hereinafter called "Lender"), as mortgagee, whose mailing address is Five Riverway,
Houston, Texas 77056.

WITNESSETH:

**THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING
STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-9A-502(c),
CODE OF ALABAMA 1975, AS AMENDED.**

THE STATED PRINCIPAL INDEBTEDNESS SECURED HEREBY IS \$985,162.00.

First in Time

WHEREAS, Borrower is indebted to Lender for a loan in the maximum principal amount of \$985,162 (the "Loan"), which Loan is being advanced pursuant to the terms and conditions of the Construction Loan Agreement dated of even date herewith executed between the Borrower and the Lender (the "Loan Agreement") and is evidenced by that certain Promissory Note dated of even date herewith executed by Borrower and payable to the order of the Lender (together with any extensions, modifications and/or renewals thereof and any notes given in payment of any such principal and/or interest, all of such being individually and collectively referred to as the "Note");

NOW, THEREFORE, in consideration of the sum of Ten Dollars to Borrower in hand paid by Lender, and other good and valuable considerations, the receipt and sufficiency of which are acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, Borrower has bargained, sold, given, granted, mortgaged, assigned, transferred, set over and conveyed, and by these presents does bargain, sell, give, grant mortgage, assign, transfer, set over and convey to the Lender and the Lender's successors and assigns, all of the Borrower's right, title and interest in and to the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which, together with any additional such property hereafter acquired by Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted, is hereinafter sometimes referred to as the "Premises"):

(a) All estate, right, title, and interest of Borrower in and to that certain tract(s) or parcel(s) of land located in Shelby County, Alabama, as more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Land"); and

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all furnishings, furniture, fixtures, machinery, equipment, appliances and personal property of every kind and nature whatsoever now or hereafter owned by Borrower and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of such buildings, structures and improvements upon the Land, including, without limitation, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, cleaning apparatus, and all other building materials and supplies of every kind now or hereafter placed or located on the Land, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing (collectively the "Improvements"), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Secured Indebtedness (as hereinafter defined) to be secured by this Mortgage; and

(c) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders

whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by them; and

(d) All rents, issues, profits and revenues of the Premises from time to time accruing, including, without limitation, all sums due under any leases or tenancies, together with all proceeds of insurance, condemnation payments, security deposits and escrow funds, and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, reserving only the right to Borrower to collect the same so long as an Event of Default has not occurred hereunder or such collection is not otherwise restricted by this Mortgage; and

(e) To the fullest extent assignable (if assignable by law), any and all goodwill, business or operating licenses, certificates, permits and contracts now held or hereafter acquired relating to the operation of any businesses conducted at the location of the Land from time to time (it being agreed that Borrower shall have no right to utilize any of them, whether or not transferable, at any location other than the Land); and

(f) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the Premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards; and

(g) All products and proceeds of the foregoing.

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use and benefit of Lender, its successors and assigns, in fee simple forever, subject, however to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the Secured Indebtedness, including future advances, at the times and in the manner stipulated herein and in the other Loan Documents (as hereinafter defined), all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall keep, perform, and observe all and singular the covenants and promises herein and in the other Loan Documents expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, then this Mortgage, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

PROVIDED, HOWEVER, that this conveyance is made as security for the following obligations of Borrower (collectively, the "Secured Indebtedness"):

(a) To secure unto Lender the payment of an indebtedness for borrowed money in the principal amount of **NINE HUNDRED EIGHTY-FIVE THOUSAND ONE HUNDRED SIXTY-TWO AND NO/100 DOLLARS**

(\$985,162.00), including future advances, together with interest thereon, due or to become due, which Lender has advanced or has agreed to advance pursuant to the Note;

(b) To secure all sums advanced by Lender to Borrower or expended by Lender for Borrower's account, including but not limited to advances for taxes and insurance, or for Borrower's benefit pursuant to the terms of this Mortgage;

(c) To secure any and all other obligations or sums due from Borrower pursuant to, and the faithful performance by Borrower of all terms and conditions contained in, this Mortgage, the Note, Loan Agreement dated of even date herewith executed between the Borrower and the Lender and the other "Loan Documents" (as defined in the Loan Agreement; capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement), together with any and all extensions, modifications and/or renewals of any of the foregoing; and

(d) To secure the payment of all court costs, expenses and costs of whatever kind incident to the collection of any indebtedness secured hereby and the enforcement or protection of the lien of this conveyance, including, but not limited to, reasonable attorney's fees, whether at trial, on appeal or in any bankruptcy proceedings.

AND BORROWER HEREBY FURTHER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

ARTICLE 1

1.1 **Performance of Note, Mortgage and Related Obligations.** This Mortgage shall secure payment of the Note and the payment and performance of all the Secured Indebtedness. Borrower will perform, observe and comply with all provisions hereof and of the Note secured hereby and duly and punctually will pay to Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by Borrower pursuant to the provisions of the Loan Documents, all without any deductions or credit for taxes or other similar charges paid by Borrower. Borrower specifically agrees that this Mortgage shall secure all indebtedness, liabilities or obligations of Borrower which may at any time become due under any swap agreement entered into between Borrower and Lender (or any affiliate of Lender) in connection with the Note.

1.2 **Warranty of Title.** The Borrower is lawfully seized of an indefeasible estate in fee simple in and to the Land, and has good and absolute title to all existing Improvements and personal property hereby mortgaged, and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth in Exhibit B hereto (the "Permitted Encumbrances"), the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title

thereto unto the Lender, and its successors and assigns, against the lawful claims of all persons whomsoever.

1.3 **Monthly Tax Deposits.** If required by the Lender after an Event of Default, the Borrower will pay to the Lender on the due date of and in addition to each scheduled monthly installment of principal and/or interest under the Note, until the Secured Indebtedness is fully paid, an amount equal to one-twelfth (1/12th) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Borrower to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Premises or any part thereof. Such added payments not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges when due. Upon the occurrence of an Event of Default, the Lender may apply to the reduction of the Secured Indebtedness, in such manner as the Lender shall determine, any amount under this Section remaining to the Borrower's credit.

1.4 **Other Taxes, Utilities and Liens.**

(a) The Borrower will pay, when and as due, prior to any delinquency, and, upon written request of Lender, will exhibit promptly to the Lender receipts for the payment of, all taxes, assessments, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Premises or any part thereof, or upon the interest of the Lender in the Premises, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower or in respect of the Premises or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Premises prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Premises or any part thereof.

(b) The Borrower will promptly pay or cause to be paid promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) The Borrower shall pay promptly all charges for labor and materials related to the Premises, and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Premises, unless such lien is promptly bonded and removed as a lien against the Premises. Borrower shall not consent to any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof. Unfiled, inchoate liens for labor and materials shall be permitted so long as such lien is subordinate hereto, and payment is not overdue or, if overdue, a bond or other security for payment satisfactory to Lender has been provided to Lender.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or security

agreements or debts secured thereby or the manner of collecting such taxes so as to adversely affect Lender, Borrower will pay any such tax on or before the due date thereof. If Borrower fails to make such prompt payment or if, in the opinion of Lender, any such state, federal, municipal, or other governmental law, order, rule or regulation prohibits Borrower from making such payment or would penalize Lender if Borrower makes such payment or if, in the opinion of Lender, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Secured Indebtedness shall, at the option of Lender, become immediately due and payable.

(e) The Borrower hereby indemnifies and holds Lender harmless from any sales or use tax that may be imposed on the Lender by virtue of the Secured Indebtedness.

1.5 **Insurance.** The Borrower will procure for, deliver to, and maintain for the benefit of the Lender during the life of this Mortgage insurance policies, in such amounts as the Lender shall reasonably require, with such insurers as Lender may approve, insuring the Premises against losses typically insured under policies of fire and extended coverage insurance, and against such other insurable hazards, casualties and contingencies as the Lender may reasonably require, including, if Lender shall require, insurance against flood, earthquake and subsidence. Without limiting the foregoing, the Borrower will maintain fire and extended coverage insurance in an amount not less than the full replacement cost of the Premises and will maintain rental continuation insurance in an amount not less than twelve (12) months' expected gross revenues from the operations of units which are owned by the Borrower and rented to third parties. The Borrower will also maintain Commercial General Liability insurance and all other insurance typically maintained by prudent companies operating similar businesses as those conducted at the Premises, all in such amounts and with such companies as shall be satisfactory to Lender. The form of such policies and the companies issuing them shall be reasonably acceptable to the Lender. All policies shall contain a standard non-contributory mortgagee endorsement and a loss payee endorsement making losses payable to the Lender. Lender shall be named as an additional insured on any liability policies. All policies must obligate the insurer to give Lender not less than thirty (30) days' prior written notice of cancellation. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Premises, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to the Lender, instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, the Lender may, without affecting this Mortgage, apply the net proceeds, at its option, either toward restoring the Premises, or as a credit on any portion of the Secured Indebtedness selected by it, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Borrower to be used to restore the Premises or for any other purpose or object satisfactory to the Lender. Lender

shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

If required by the Lender at any time after an Event of Default, the Borrower will pay to the Lender together with and in addition to the regular installment of principal and interest due under the Note, until the Secured Indebtedness is fully paid, an amount equal to one-twelfth (1/12th) of the yearly premiums for insurance. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums when due. Upon the occurrence of an Event of Default the Lender may apply to the reduction of the Secured Indebtedness, in such manner as the Lender shall determine, any amount paid in accordance herewith remaining to the Borrower's credit.

1.6 **Condemnation.** If all or any portion of the Premises shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, other than a taking of a part of the Premises which does not adversely affect access to and use of the Premises in the same manner and utility as required by Borrower's business, then the entire Secured Indebtedness shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, may, release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the Secured Indebtedness, whether then matured or to mature in the future, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.7 **Care of the Property.**

(a) The Borrower will preserve and maintain the Premises in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Premises shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Borrower may sell or otherwise dispose of, free from the lien and security interest of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien and security interest hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Premises, upon replacing the same by, or substituting for the same, other



furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to the Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien and security interest of this Mortgage.

(c) If the Premises or any part thereof is damaged by fire or any other cause, the Borrower will give immediate written notice of the same to the Lender.

(d) The Lender is hereby authorized to enter upon and inspect the Premises at all reasonable times during normal business hours.

(e) The Borrower will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority and covenants and restrictions affecting the Premises or any part thereof.

(f) If all or any part of the Premises shall be damaged by fire or other casualty, upon Lender making any insurance proceeds available to Borrower, the Borrower will restore promptly the Premises to the equivalent of its original condition, regardless of whether or not such insurance proceeds shall be sufficient for such purpose. If a part of the Premises shall be physically damaged through condemnation, upon Lender making any condemnation proceeds available to Borrower, the Borrower will restore promptly, repair or alter the remaining property in a manner satisfactory to the Lender, regardless of whether or not such condemnation proceeds shall be sufficient for such purpose.

1.8 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, deeds of trust, security agreements, instruments of further assurance, certificates and other documents as may, in the sole opinion of the Lender, be necessary or desirable in order to effectuate, complete, enlarge or perfect, or to continue and preserve the obligations of the Borrower under the Note and this Mortgage, and this Mortgage as a first and prior lien upon and security interest in all of the Premises, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, deeds of trust, security agreements, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used or useful in the operation of the Premises or any part thereof.

1.9 Expenses. The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs, and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Secured Indebtedness, this Mortgage, the Loan Documents, Borrower, or the Premises, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Premises, or

any action to protect the security hereof; and any such amounts paid by the Lender shall bear interest at the Default Rate set forth in the Note, shall be payable upon demand, and shall be secured by this Mortgage.

1.10 **Estoppel Affidavits.** The Borrower within ten (10) days after written request from the Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Secured Indebtedness and whether or not any offsets or defenses exist against such principal and interest.

1.11 **Use and Management of Premises.** Borrower shall cause the Premises to be operated for its intended use on a continuous basis and in a first-class manner, and in compliance with all applicable laws. Borrower shall not permit any unlawful use of the Property.

1.12 **Performance by Lender of Defaults by Borrower.** If the Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the Premises; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this Mortgage, then the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at the Default Rate set forth in the Note. Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

1.13 **Security Agreement.** With respect to the apparatus, fittings, fixtures, equipment, accounts, general intangibles and other personal property now or hereafter owned by Borrower or in which Borrower now or hereafter has an interest and to which a security interest may attach, and which is referred to or described in this Mortgage, this Mortgage is hereby made and declared to be a security agreement encumbering such property included herein as a part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the Land is situated, and Borrower hereby grants to Lender a security interest in such apparatus, fittings, fixtures, equipment, accounts, general intangibles and other personal property more particularly described in the definition of "Premises." A financing statement or statements reciting this Mortgage to be a security agreement affecting all of said personal property aforementioned shall be executed by Borrower and Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default hereunder, shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and

for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (aa) the proceeds of any fire and/or hazard insurance policy, or (bb) any award in eminent domain proceedings for taking or for loss of value, or (cc) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Lender as determined by this instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Lender in the event any court shall at any time hold, with respect to the foregoing items (aa), (bb), or (cc), that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

1.14 Limit of Validity. If from any circumstances whatsoever, fulfillment of any provision of this Mortgage or of the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section shall control every other provision of this Mortgage and of the Note.

1.15 Future Advances. Lender, at its option, may make future advances to Borrower; provided, that nothing contained herein shall constitute an obligation to do so except as may otherwise be required of Lender under the Loan Documents. Such future advances, together with interest thereon, shall be secured by this Mortgage when evidenced by the Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Lender may make such future advances (a) at the request of Borrower, whether or not there is any obligation to make future advances, or (b) to pay, with or without the consent or request of Borrower, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Premises.

1.16 Compliance with Applicable Environmental Law. Borrower represents and warrants to Lender that the Premises and Borrower are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law (as hereinafter defined), and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Borrower and the Premises. Borrower has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Premises by reason of any Applicable Environmental Law. Borrower has taken all reasonable and diligent steps necessary to determine and has determined that no petroleum products, oil, or hazardous substances have been disposed of or otherwise released on the Land and that the use which

Borrower has made, or intends to make of the Land will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid wastes on the Land. Borrower hereby agrees to pay any fines, charges, fees, expenses, damages, losses, liabilities, and response costs arising from or pertaining to the application of any such Applicable Environmental Law to the Premises. Borrower agrees to notify Lender in the event that any governmental agency or other entity notifies Borrower that it or the Premises may not be in compliance with any Applicable Environmental Law. Borrower agrees to permit Lender to have access to the Premises at all reasonable times in order to conduct, at Borrower's expense, any tests which Lender deems are necessary to ensure that Borrower and the Premises are in compliance with all Applicable Environmental Laws. Borrower and Guarantor have executed and delivered to Lender a separate Indemnity Agreement of even date herewith with respect to environmental matters, the terms of which are incorporated herein by reference.

As used herein, "Applicable Environmental Law" means any applicable laws, rules or regulations pertaining to health or the environment, or petroleum products, or radon radiation, or oil or hazardous substances, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), as codified at 42 U.S.C. § 9601 *et seq.*, as amended, the Resource Conservation and Recovery Act of 1976, as amended ("RCRA") and the Federal Emergency Planning and Community Right-To-Know Act of 1986, as amended. The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste," "disposal," "dispose," and "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein prospectively from and after the date of such amendments); notwithstanding the foregoing, to the extent that the laws of the State where the Premises is located establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, as CERCLA may be amended from time to time, or a meaning for "solid waste," "disposal," and "disposed" which is broader than specified in RCRA, as RCRA may be amended from time to time, such broader meanings under said state law shall apply in all matters relating to the laws of such State.

1.17 Leases and Management Agreements Affecting Premises. Borrower will comply with and observe its obligations as landlord under all leases affecting the Premises or any part thereof. Borrower will furnish Lender with executed copies of all leases now or hereafter created with respect to all or any part of the Premises. Borrower will not accept payment of rent more than thirty (30) days in advance without the prior written consent of Lender. Borrower shall not enter into any leasing agreement or management agreement relating to the Premises without the prior written consent of Lender. Any such consent, if given, will be conditioned upon Lender's receipt of a subordination agreement from such manager or leasing agent in form and content satisfactory to Lender. Upon Lender's request, Borrower shall promptly provide copies of any or all leases affecting the Premises or any part thereof. Borrower shall not enter into any leases for the Project without the prior consent of Lender. Borrower will provide such supplementary agreements from any lessees as Lender may require including estoppel letters and a subordination agreement in form and content acceptable to Lender.

1.18 Books, Records, and Financial Statements. Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Premises. Within forty-five (45) days of the end of each fiscal

quarter during the loan term, Borrower will provide to Lender (i) quarterly unaudited financial statements of Borrower prepared in a manner consistent with Borrower's annual statements, (ii) an operating statement for the Premises, and (iii) a rent roll, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent paid, and the amount of any security deposit held by Borrower with respect to such tenant, all of which must be certified by the chief financial officer of Borrower to be true and correct, and which must be in form and content acceptable to Lender. In addition, Borrower will furnish to Lender within ninety (90) days after the end of Borrower's fiscal year, (i) annual unaudited financial statements of Borrower prepared in accordance with generally accepted accounting principles consistently applied and certified by the Borrower as true and correct, and (ii) annual personal financial statements of the Guarantor certified by the Guarantor to be true and correct. Lender reserves the right to require such other financial information regarding Borrower, Guarantor, or Premises, and affiliates of any of the foregoing, at such other times, as Lender may reasonably request. The Lender further reserves the right to require that the annual financial statements of Borrower be audited if an Event of Default exists hereunder, if required by external regulatory authorities having jurisdiction over the Lender, or if the Lender has reasonable grounds to believe that the unaudited statements are incomplete or incorrect.

1.19 **Appraisals.** Lender may cause the Premises to be reappraised by an appraiser selected by Lender, and in accordance with Lender's appraisal guidelines and procedures then in effect, at any time during the Loan term. Borrower agrees to cooperate with Lender in obtaining any such reappraisals. Such reappraisals shall be at Borrower's expense if (i) an Event of Default exists, (ii) required by any external regulatory authority having jurisdiction over the Lender or (iii) required by internal bank policy as a result of diminution in the value of the Premises as reasonably determined by Lender.

1.20 **Financing Statements.** Borrower hereby authorizes Lender to file such financing statements as Lender deems necessary, in such jurisdictions as deemed necessary by Lender, without the signature or approval of Borrower.

ARTICLE 2

2.1 **Events of Default.** The term "Event of Default," wherever used in this Mortgage and in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

(a) If Borrower shall fail, refuse or neglect to pay, in full, any installment due under the Note as and when the same shall become due and payable, and such failure, refusal or neglect shall continue for a period of ten (10) days after notice to Borrower from Lender of such failure, refusal or neglect, provided Lender may exercise all its remedies hereunder without notice, if it has previously given Borrower two (2) notices under this Section 2.1 during any calendar year; or

(b) If Borrower shall fail, refuse or neglect to perform and discharge fully and timely any of the obligations contained herein or in any other of the Loan Documents, as and when called for, and such failure, refusal or neglect shall either be incurable or, if curable, shall

remain uncured for a period of twenty (20) days after the date Lender gives written notice thereof to Borrower; or

(c) If any representation, warranty or statement made by Borrower or Guarantor in, under or pursuant to any of the Loan Documents or any affidavit or other instrument executed in connection with the Loan Documents shall be false or misleading in any material respect as of the date hereof or shall become so at any time prior to the repayment in full of the Note; or

(d) The sale, transfer, lease, assignment, or other disposition, voluntarily or involuntarily, of the Premises, or any part thereof or any interest therein, including a sale or transfer in lieu of condemnation (excepting only transfers or other dispositions of the Premises permitted by the Loan Documents) or, except for Permitted Encumbrances or as otherwise expressly permitted by the Loan Documents, any further encumbrance of the Premises, unless the prior written consent of Lender is obtained (which consent may be withheld with or without cause in Lender's discretion).

2.2 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Secured Indebtedness shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence of this Mortgage, and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

2.3 Right to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Premises and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Premises without the appointment of a receiver or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Borrower;

(b) If Borrower shall for any reason fail to surrender or deliver the Premises or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Premises to Lender. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness and shall be secured by this Mortgage;

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Premises and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Premises insured; (iii) manage and operate the Premises and exercise all of the rights and powers of Borrower to the

same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Premises, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Premises (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Premises or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of deposits required in Section 1.5 and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 2.3 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender;

(d) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Premises to Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.4 Performance by Lender. Upon the occurrence of an Event of Default in the payment, performance or observance of any term, covenant or condition of this Mortgage, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the Default Rate provided in the Note or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

2.5 Receiver. If any Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Secured Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Land is situated. Borrower will pay unto Lender upon demand all expenses, including receiver's fees, reasonable attorney's fees, costs and agent's compensation,

incurred pursuant to the provisions of this Section 2.5, and upon any Borrower's failure to pay the same, any such amounts shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

2.6 Lender's Power of Sale. If an Event of Default shall have occurred and be continuing, the Lender may sell the Premises at public outcry to the highest bidder for cash in front of the main entrance of the county courthouse of the county where said Premises is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in a newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Premises so purchased. Lender may bid at said sale and purchase said Premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

2.7 Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term thereof or any other right, power or remedy hereunder, (ii) to foreclose this Mortgage and to sell the Premises, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine. Borrower will remain liable for any deficiency following foreclosure or exercise of other remedies to the full extent permitted by law.

2.8 Purchase by Lender. Upon any foreclosure sale or sale of all or any portion of the Premises under the power herein granted, Lender may bid for and purchase the Premises and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

2.9 Application of Proceeds of Sale. In the event of a foreclosure or other sale of all or any portion of the Premises, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' fees (attorneys fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Lender hereunder, and interest thereon; then to payment of the Secured Indebtedness and accrued interest thereon, in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto.

2.10 Borrower as Tenant Holding Over. In the event of any such foreclosure sale or sale under the powers herein granted, Borrower (if Borrower shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.



2.11 Waiver of Appraisal, Valuation, Etc. Borrower agrees, to the full extent permitted by law, that in case of a default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Premises, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

2.12 Waiver of Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Premises as against the collection of the Secured Indebtedness, or any part thereof.

2.13 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

2.14 Remedies Not Exclusive. Lender shall be entitled to enforce payment and performance of the Secured Indebtedness and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Secured Indebtedness may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as they or either of them may in their absolute discretion determine. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and either of them may pursue inconsistent remedies.

2.15 Waivers. After consulting with and considering the advice of independent legal counsel selected by Borrower, Borrower makes the following arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan.

(a) No delay or omission by Lender or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Borrower in the performance of the obligations of Borrower hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.

(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note or this Mortgage or any other obligation of Borrower or any subsequent purchaser of the Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for the payment of all or any portion of the Secured Indebtedness; (ii) take other or additional security for the payment of any of the Secured Indebtedness; (iii) waive or fail to exercise any right granted herein or in the Note; (iv) release any part of the Premises from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consent to the filing of any map, plat or replat affecting the Premises; (vi) consent to the granting of any easement or other right affecting the Premises; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the Premises or any document or instrument evidencing, securing or in any way related to the Secured Indebtedness, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Premises, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the Secured Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

(c) Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies they may have under the Loan Documents in any particular manner, in any particular order, or in any particular State or other jurisdiction. To the fullest extent that Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisal, stay of execution or extension, and Borrower, for Borrower, Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any

interest in the Premises, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, marshalling, stay of execution, and extension. Borrower further agrees that if any law referred to in this paragraph and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Borrower expressly waives and relinquishes any and all rights and remedies that Borrower may have or be able to assert by reason of the laws of the State of jurisdiction pertaining to the rights and remedies of sureties.

(d) It is mutually agreed by and between Borrower and Lender that the respective parties waive trial by jury in any action, claim, suit, proceeding, or counterclaim brought by either of the parties against the other on any matter whatsoever arising out of or in any way connected with this Mortgage and/or the conduct of the relationship between Borrower and Lender, all as more particularly set forth in the Note.

2.16 Suits to Protect the Premises. Lender shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Premises by any acts which may be unlawful or constitute a default under this Mortgage; (b) to preserve or protect its interest in the Premises and in the rents, issues, profits and revenues arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of Lender.

2.17 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

2.18 Lender's Option on Foreclosure. If this Mortgage is foreclosed, a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Premises.

2.19 Borrower to Pay the Note on Any Default in Payment; Application of Moneys by Lender. Upon the occurrence of an Event of Default, then, upon demand of Lender, Borrower will pay to Lender the whole amount due and payable under the Note; and in case Borrower shall fail to pay the same forthwith upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses, and disbursements of Lender's agents and attorneys.

ARTICLE 3

3.1 **Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Mortgage to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of Borrower or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.

3.2 **Terminology.** All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to Articles, Sections or subsections shall refer to the corresponding Articles, Sections or subsections of this Mortgage unless specific reference is made to Articles, Sections or subsections of another document or instrument.

3.3 **Severability; Complete Agreement.** If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Mortgage, the Note and the instruments executed in connection herewith constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof, and this Mortgage may not be amended except by a writing signed by the parties hereto.

3.4 **Applicable Law.** The agreements of Borrower and Lender herein shall be governed by and construed in accordance with the laws of the State of Alabama.

3.5 **Replacement of Note.** Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower at Lender's expense will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of the Note, and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement note.

3.6 **Assignment.** If the Note and the Secured Indebtedness shall be assigned by Lender, then this Mortgage shall likewise be deemed assigned by Lender and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

3.7 **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Mortgage, the Note and any and all

other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Indebtedness.

3.8 Waiver of Jury Trial. BORROWER, AND BY ACCEPTANCE HEREOF LENDER, HEREBY MUTUALLY WAIVE ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS MORTGAGE, THE NOTE, OR ANY OTHER LOAN DOCUMENT, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATING TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS MORTGAGE, THE NOTE, OR ANY OTHER LOAN DOCUMENT, OR IN CONNECTION WITH ANY TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AND LENDER AGREE THAT EITHER OR BOTH OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF LENDER, INCLUDING LENDER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF SUCH DISPUTE OR CONTROVERSY, SEEK TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH, AND BORROWER ACKNOWLEDGES THAT LENDER HAS, IN PART, BEEN INDUCED TO MAKE THE EXTENSION OF CREDIT EVIDENCED BY THE NOTE IN RELIANCE ON THE PROVISIONS OF THIS PARAGRAPH.

3.9 Notices. All notices, elections or demands permitted or required to be made herein or by applicable law, shall be given personally, by mail, by next-day courier service or by telecopy, addressed to the appropriate party at the following addresses:

If to Borrower:


Christian Brothers Automotive Corporation
15995 North Barkers Landing, Suite 145
Houston, Texas 77079

with a copy to:

_____.

If to Lender:

Texas State Bank
Five Riverway
Houston, Texas 77056


20060524000246090 21/25 \$1560.80
Shelby Cnty Judge of Probate, AL
05/24/2006 12:14:24PM FILED/CERT

With a Copy to:

Timothy Horan, Jr.
Franklin, Cardwell & Jones
1001 McKinney, 18th Floor
Houston, Texas 77002

or such other address as the party who is to receive such notice may designate in writing. Notice by mail shall be by registered or certified mail, addressed to the party with the proper amount of postage affixed thereto and shall be deemed received at the time delivery is accepted or refused. Notice by next-day courier shall be deemed received on the business day following delivery to the courier service, properly addressed and with all charges prepaid. Notice by telecopy shall be deemed received upon confirmation of transmission. Actual receipt of notice shall not be required to effect notice hereunder. Notices to the Lender must include the mail code, if provided.

3.10 Representations and Warranties. Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the Loan to Borrower that:

(a) Borrower is a corporation duly organized and validly existing under the laws of the State of Texas and is authorized to do business in and is in good standing in the State of Alabama. Borrower has full power and authority to consummate the transactions contemplated by this Mortgage and the other Loan Documents, all of which have been authorized by all requisite limited partnership.

(b) There are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened, which might adversely affect the financial condition of Borrower, any Guarantor, or General Partner or which might impair the value of any collateral taken or to be taken by Lender in connection with this loan transaction. None of the foregoing Persons are in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on such Person's business or assets, and none of such Persons are in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which such Person is subject. Neither the execution and performance of the Loan Documents, nor any other document executed in connection herewith by Borrower will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Borrower.

(c) All financial statements of Borrower, and other business enterprises in which Borrower has an interest heretofore given and hereafter to be given to Lender are and will be true and complete in all respects as of their respective dates and prepared in accordance with

generally accepted accounting principles consistently applied, and fairly represent the financial conditions of the business or Persons to which they pertain, and no materially adverse change has occurred in the financial conditions reflected therein since the respective date thereof.

(d) All utility and sanitary sewage services necessary for the use of the Premises and all roads necessary for the use of the Premises are available pursuant to permanent private or public easements which, to the best of Borrower's knowledge, are not subject to the exclusive rights of any other persons which could interfere with Borrower's use thereof.

(e) There are no proceedings pending, or, to the best of Borrower's knowledge, threatened, to acquire any power of condemnation or eminent domain with respect to the Premises, or any interest therein, or to enjoin or similarly prevent the use of any of the Premises as presently used.

(f) All documents furnished to Lender by or on behalf of Borrower as part of or in support of the loan application or pursuant to the commitment letter issued by Lender are true, correct, complete and accurately represent the matters to which they pertain.

(g) The Premises complies with all applicable laws, ordinances, rules and regulations, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters. Borrower agrees to indemnify and hold Lender harmless from any fines or penalties assessed or any corrective costs incurred by Lender if the Premises, or any part thereof, is hereafter determined to be in violation of any covenants or restrictions of record or any applicable laws, ordinances, rules or regulations, and such indemnity shall survive any foreclosure or deed in lieu of foreclosure.

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be properly executed and delivered as of the day and year first above written.

BORROWER:

**CHRISTIAN BROTHERS AUTOMOTIVE
CORPORATION,**
a Texas corporation

By: _____
Name: MARK O'ARR
Title: PRESIDENT

STATE OF Texas)
COUNTY OF Harris)

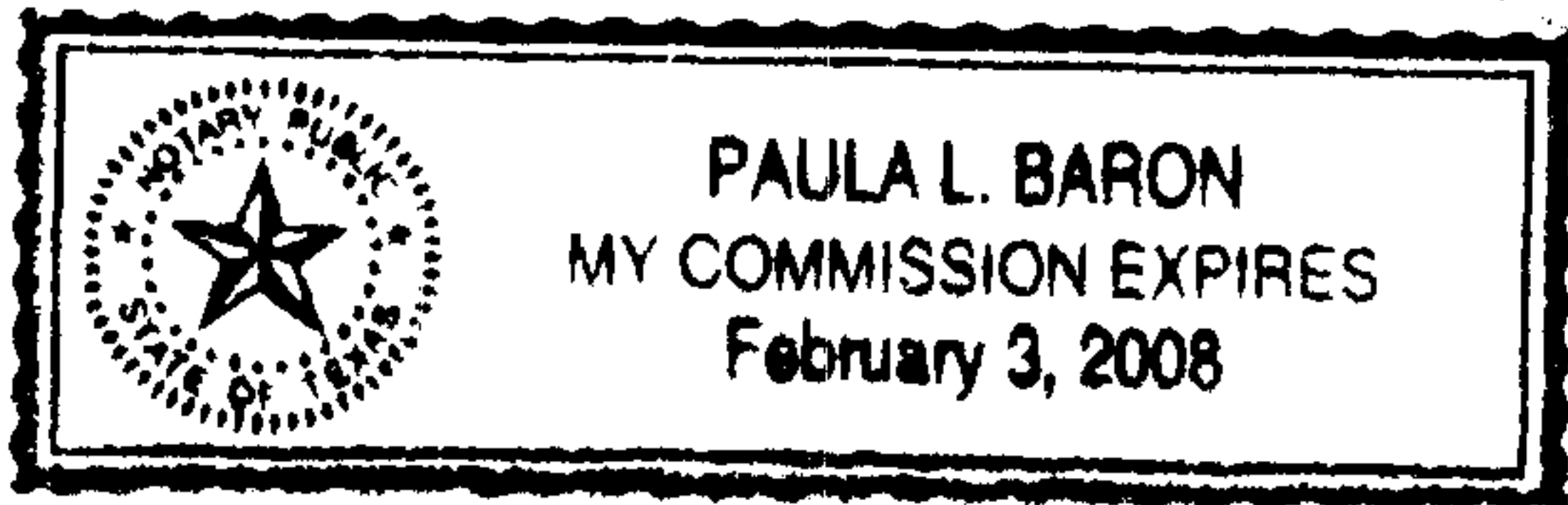
I, the undersigned Notary Public in and for said County, in said State, hereby certify that Mark A Carr, whose name as _____, as the President of Christian Brothers Automotive Corporation, a Texas corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 18th day of May, 2006.

Paula L. Baron

Notary Public

My Commission Expires: February 3, 2008



20060524000246090 23/25 \$1560.80
Shelby Cnty Judge of Probate, AL
05/24/2006 12:14:24PM FILED/CERT

EXHIBIT A

Legal Description

Lot Thirteen A (13A), according to the map or survey of Amended Resurvey of Lot – 13 Southpark, as recorded in Map Book 32, Page 59 in the Probate Office of Shelby County, Alabama.


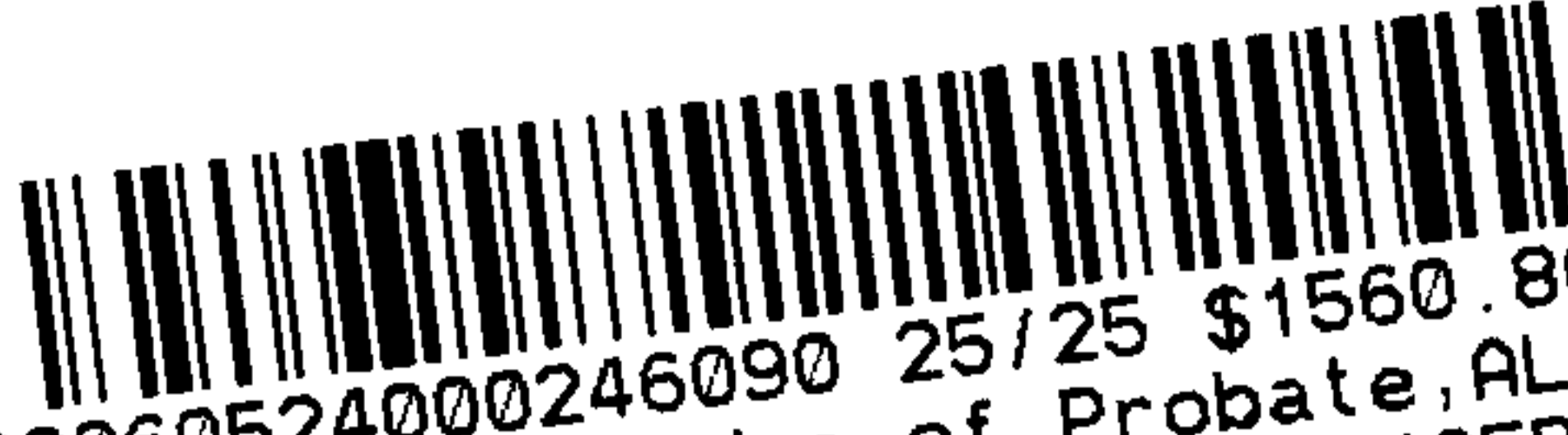

20060524000246090 24/25 \$1560.80
Shelby Cnty Judge of Probate, AL
05/24/2006 12:14:24PM FILED/CERT

EXHIBIT B

Permitted Encumbrances


20060524000246090 25/25 \$1560.80
Shelby Cnty Judge of Probate, AL
05/24/2006 12:14:24PM FILED/CERT

1. **Restrictions and Covenants as recorded in Book 1997, Page 22108 of the Official Records of Shelby County, Alabama.**
2. **Pole Line Permit to Alabama Power Company, recorded in Book 101, Page 523, Book 139, Page 157, Book 219, Page 586, Book 292, Page 356, Book 319, Page 40 and Book 251, Page 886, of the Official Records of Shelby County, Alabama.**
3. **Right of way to Alabama Power Company, recorded in Book 358, Page 836 of the Official Records of Shelby County, Alabama.**
4. **Easement to Harbert-Equitable Joint Venture, recorded in Book 267, Page 420 of the Official Records of Shelby County, Alabama.**
5. **Easement to Sunlink, recorded in Book 285, Page 207 of the Official Records of Shelby County, Alabama.**
6. **Mineral and mining rights as recorded in Book 127, Page 140 of the Official Records of Shelby County, Alabama.**
7. **Agreement between Harbert-Equitable Joint Venture and EES Joint Venture dated February 15, 1990, recorded in Book 1996, Page 744 of the Official Records of Shelby County, Alabama.**
8. **Reservations of easements and rights as recorded in Book 285, Page 203 of the Official Records of Shelby County, Alabama.**
9. **35-foot building set back line, as shown on the plat map recorded in Map Book 32, Page 59, in the Probate Office of Shelby County, Alabama.**
10. **20-foot sewer line, as shown on the plat map recorded in Map Book 32, Page 59, in the Probate Office of Shelby County, Alabama.**
11. **15-foot sewer line, as shown on the plat map recorded in Map Book 32, Page 59, in the Probate Office of Shelby County, Alabama.**
12. **Right-of-way to Shelby County, Alabama, recorded in Book 177, Page 46, Book 177, Page 25 and Book 153, Page 212, of the Official Records of Shelby County, Alabama.**