



20060524000246100 1/6 \$26.00  
Shelby Cnty Judge of Probate, AL  
05/24/2006 12:14:25PM FILED/CERT

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

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

**STATE OF ALABAMA     )  
SHELBY COUNTY        )**

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

**ASSIGNMENT OF LESSOR'S INTEREST IN LEASES**

THIS ASSIGNMENT OF LESSOR'S INTEREST IN LEASES ("Assignment"), made this the 18<sup>th</sup> day of May, 2006, by and between **CHRISTIAN BROTHERS AUTOMOTIVE CORPORATION**, a Texas corporation (herein called "Assignor"), whose mailing address is 15995 N. Barkers Landing, Suite 145, Houston, Texas 77079, and **TEXAS STATE BANK**, a Texas banking association (herein called "Assignee"), whose mailing address is Five Riverway Bank, Houston, Texas 77056.

**W I T N E S S E T H :**

FOR VALUE RECEIVED, and in consideration of the premises and the debt herein described, Assignor hereby grants, transfers, assigns and delivers to Assignee all of the right, title and interest of Assignor in and to any and all leases, subleases and other agreements (herein individually called a "Lease" and collectively called the "Leases"), written or oral, now or hereafter in effect, covering the use, occupation or possession of all or any portion of the property described as follows (the "Property"):

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,

together with (i) any and all modifications, amendments, extensions and renewals thereof and also any and all guarantees of lessees' obligations thereunder, together with extensions and renewals thereof, (ii) all the right, power and authority of Assignor to alter, modify or change the term of the Leases or to surrender, cancel or terminate the same, (iii) all rents, income and profits arising from the Leases and renewals thereof, if any, and (iv) all rents, income and profits due or to become due from the Property and all other leases for the use and occupation of the Property

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which are now in existence or which may be executed in the future during the term of this Assignment. The Property shall include the land described in Exhibit "A" together with all rights and appurtenances thereto and all improvements presently located or hereafter constructed thereon.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS:

I. The payment of all sums now or at any time hereafter owing to Assignee by Assignor, whether secured by an indenture or indentures of mortgage, including, without limitation, that certain Mortgage, Security Agreement, Assignment of Rents and Fixture Filing (the "Mortgage") of even date herewith, executed by Assignor in favor of Assignee, conveying the Property and recorded in the official records of the county and state where the Property is located prior to or on or about the date of execution of this Assignment.

II. The performance and discharge of each and every obligation, covenant and agreement contained in said Mortgage or any note, bond or evidence of debt secured thereby including, but not limited to, that certain Promissory Note (the "Note") dated of even date herewith in the original principal amount of **\$985,162**, executed by Assignor and payable to the order of Assignee (said Mortgage, Note and any and all other documents and instruments executed in connection with or otherwise relating to the Loan being collectively referred to herein as the "Loan Documents").

A. TO PROTECT THE SECURITY OF THIS ASSIGNMENT, ASSIGNOR AGREES WITH RESPECT TO EACH LEASE:

1. To faithfully abide by, perform and discharge each and every obligation, covenant and agreement of each of the Leases by lessor to be performed; to give prompt notice to the Assignee of any notice of default on the part of Assignor with respect to any of the Leases received from lessee or guarantor, together with an accurate and complete copy of any such notice; at the sole cost and expense of Assignor, to enforce or secure the performance of each and every obligation, covenant, condition and agreement of each of the Leases by lessee to be performed; not to modify or in any way alter the terms of any of the Leases; except in the ordinary, usual and prudent course of Assignor's business, not to terminate the terms of any of the Leases and not to accept a surrender thereof unless required or allowed to do so by the terms of any such Lease; not to anticipate the rents thereunder more than one (1) month in advance, or to waive, excuse, condone or in any manner release or discharge the lessee thereunder of or from the material obligations, covenants, conditions, and agreements by the lessee to be performed, including the obligation to pay the rental called for thereunder in the manner and at the place and time specified therein.

2. At Assignor's sole cost and expense, to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any of the Leases or the obligations, duties or liabilities of lessor, lessee or guarantor thereunder, and to pay all costs and expenses of the Assignee, including attorneys' fees in a reasonable sum, in any such action or proceeding in which the Assignee may appear.



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3. That should Assignor fail to make any payment or to do any act as herein provided then the Assignee, but without obligation to do so and without notice to or demand on Assignor, and without releasing Assignor from any obligation hereof, may make or do the same in such manner and to such extent as the Assignee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security or the rights or powers of the Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of lessor in the Leases contained; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

4. To pay immediately upon demand all sums expended by the Assignee under the authority hereof, together with interest thereon at the maximum rate of interest allowed by applicable law, and same shall be secured hereby and by the said Mortgage.

5. Assignor hereby covenants and warrants to the Assignee that (a) Assignor has not executed any prior assignment of the Leases or of its right, title and interest therein or the rentals to accrue thereunder; (b) Assignor has not performed any act or executed any instrument which might prevent the Assignee from operating under any of the terms and conditions hereof, or which would limit the Assignee in such operation; (c) Assignor has not accepted rent under any of the Leases for any period subsequent to the current period for which rent has already become due and payable; (d) there is no default now existing under any of the Leases; (e) Assignor has not executed or granted any modification or amendment whatsoever of any of the Leases either orally or in writing; and (f) each of the Leases is in full force and effect.

**B. IT IS MUTUALLY AGREED WITH RESPECT TO EACH LEASE THAT:**

1. So long as no event of default has occurred and is continuing in any of the obligations of Assignor herein or in any of the other Loan Documents or any of the Leases, Assignor shall have the limited license to demand, receive and collect all rents, issues and profits payable under each of the Leases. Assignor hereby agrees with Assignee that, upon notice from Assignee of an event of a default in any of the obligations of Assignor herein or in any of the other Loan Documents or any of the Leases (whether or not Assignee shall have exercised Assignee's option to declare the Note or evidence of debt due and payable), Assignee may, at Assignee's option, terminate the limited license and direct the lessees under the Leases to pay all rents, issues and profits payable under each of the Leases directly to Assignee and attorn in respect of all other obligations thereunder directly to Assignee without any obligation on their part to determine whether an event of default does in fact exist or has in fact occurred. Assignor hereby agrees that Assignee may notify the tenant under each of the Leases and any other parties in possession to make all payments thereof directly to Assignee. Assignor shall in every way facilitate the payment of said rents, issues and profits to Assignee. From the rents, profits and income received by the Assignee under this Assignment, Assignee may, in Assignee's sole discretion, pay the costs, if any, incurred in collection thereof or the



enforcement or performance hereof, including the fees and costs of agents and attorneys employed therefor by Assignee; pay accrued but unpaid interest on said obligations secured hereby; and pay principal on said obligations secured hereby whether due or not until said obligations are paid in full, in which event any remainder shall be paid to Assignor. Nothing contained herein, nor the exercise of any right, power or authority herein granted to Assignee shall be, or construed to be, an affirmation by Assignee of any tenancy, lease or option, nor an assumption of liability under, nor the subordination of, the lien or charge of the Mortgage, to any such tenancy, lease or option, nor an election of judicial relief, if any such relief is requested or obtained as to the Leases or the rents, profits and income payable thereunder, with respect to the Property or any other collateral given by Assignor to Assignee.

2. Upon or at any time after default in the payment of any obligation secured hereby or in the performance of any obligation, covenant or agreement herein or in any of the other Loan Documents or any of the Leases contained, which default remains uncured after notice, if any, and opportunity to cure, if any, provided for herein or in any of the other Loan Documents or any of the Leases contained, the Assignee may declare all sums secured hereby immediately due and payable, and may, at its option, without further notice, exercise all rights and remedies contained in the other Loan Documents and without regard for the adequacy of security for the indebtedness hereby secured, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, manage and operate the Property or any part thereof, make, enforce, modify and accept the surrender of the Leases, obtain and evict the tenants thereunder, fix or modify rents, and do any acts which the Assignee deems proper to protect the security hereof, and either with or without taking possession of the Property, in its own name, sue for or otherwise collect and receive all rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as the Assignee may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or waive, modify or affect notice of default under the Loan Documents or invalidate any act done pursuant to such notice.

3. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify the Assignee against and hold it harmless from any and all liability, loss or damage which it may or might incur under any of the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should the Assignee incur any such liability, loss or damage under any of the Leases or under or by reason of this Assignment or in the defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the maximum non-usurious rate permitted by applicable



law, shall be secured hereby and by the Mortgage, and Assignor shall reimburse the Assignee therefor immediately upon demand and upon the failure of Assignor so to do, the Assignee may declare all sums secured hereby immediately due and payable.

4. Assignee shall be accountable only for rents, issues and profits collected hereunder and not for the rental value of the Property.

C. IT IS FURTHER MUTUALLY AGREED THAT:

1. Until all obligations secured hereby shall have been paid in full, Assignor covenants and agrees to use its best efforts to keep leased at the current market rental all the Property and upon demand to transfer and assign to the Assignee any and all subsequent leases upon all or any part of the Property upon the same or substantially the same terms and conditions as are herein contained, and to make, execute and deliver to the Assignee, upon demand, any and all instruments that may be necessary or desirable therefor, but the terms and provisions of this Assignment shall apply to any such subsequent leases, whether or not so assigned and transferred.

2. Upon the payment in full of all obligations secured hereby, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Mortgage, this Assignment shall become and be void and of no effect.

3. This Assignment inures to the benefit of the named Assignee and its successors and assigns, and binds the Assignor and Assignor's heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Leases" as used herein means not only the Leases hereby assigned and any extension or renewal thereof, but also any Leases subsequently executed by Assignor covering the Property or any part thereof. In this Assignment, whenever the context so requires, the neuter gender includes the masculine or feminine, and the singular number includes the plural, and conversely. All obligations of each Assignor hereunder are joint and several.

4. All notices required or permitted to be given hereunder shall be deemed to have been duly given if deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, and addressed, if to Assignor, at the mailing address set forth above for Assignor and, if to Assignee, at the mailing address set forth above for Assignee, or to such other place or places as either party hereto may by thirty (30) days' prior written notice to the other party hereto from time to time designate for the purpose of receiving notices hereunder.

5. Assignee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by it to the satisfaction of such indebtedness, without prejudice to any of its rights hereunder.

6. Nothing herein contained and no act done or omitted by Assignee pursuant to the powers and rights granted it herein shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Documents, but this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Loan Documents. The right of Assignee to collect said indebtedness and to enforce any other security therefor owned by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

**ASSIGNOR:**

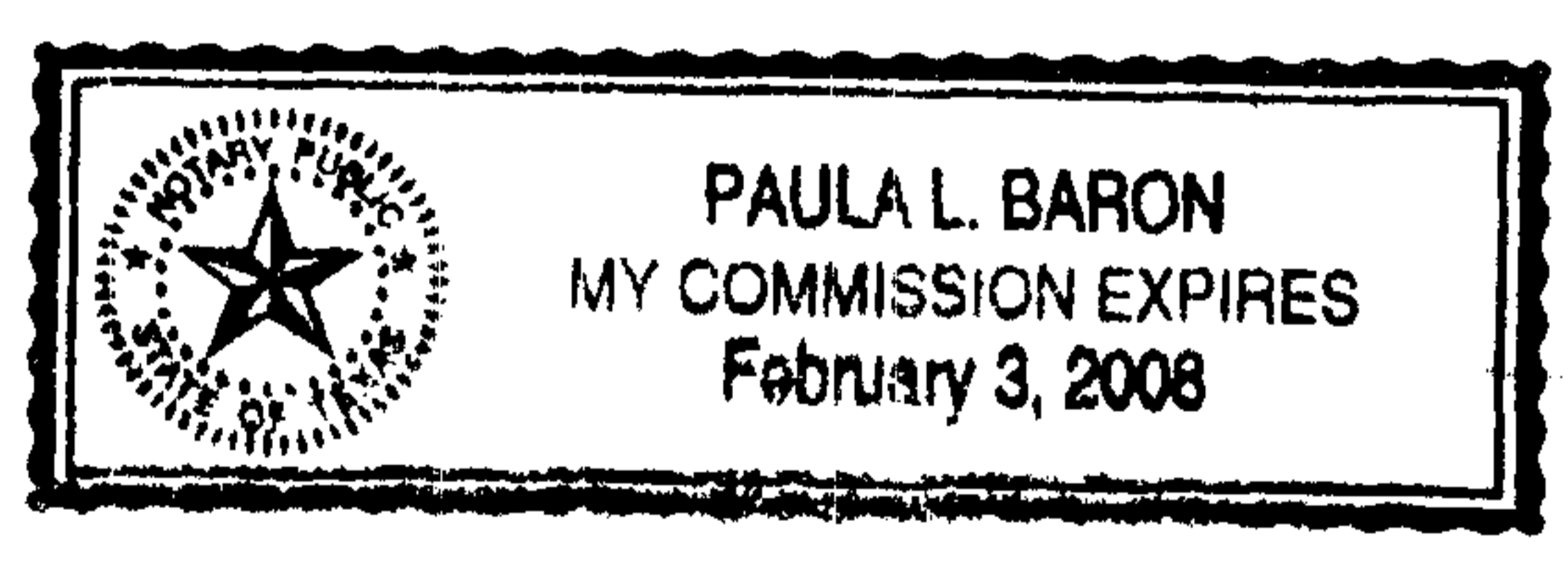
**CHRISTIAN BROTHERS AUTOMOTIVE CORPORATION, a Texas corporation**

By: Mark A. Carr, 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 Mark A Carr, 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 18<sup>th</sup> day of May, 2006.



Paula L. Baron  
Notary Public  
My Commission Expires: February 3, 2008