

ACCESS AND UTILITY EASEMENT AGREEMENT

This **ACCESS AND UTILITY EASEMENT AGREEMENT** (the “Agreement”) is entered on September 26, 2024, by and between and **STORE GROWTH & DEVELOPMENT, LLC**, an Alabama limited liability company (“Grantor” or “SGD”) and **CHRISTIAN BROTHERS AUTOMOTIVE CORPORATION**, a Texas corporation (“Grantee” or “CBAC”). CBAC and SGD are sometimes referred to herein as “Owner” or “Owners”.

RECITALS

WHEREAS, SGD recorded that certain subdivision plat entitled, Store Growth Hwy 17 Subdivision in Map Book 59, Page 28 in the Probate Office of Shelby County, Alabama, (the “Plat”) and such plat created two lots and certain easements, including a 50 ft access, drainage and utility easement;

WHEREAS, SGD is the owner in fee simple of Lot 2, According to the Map of Store Growth Hwy 17 Subdivision as recorded in Map Book 59, Page 28 in the Probate Office of Shelby County, Alabama (the “SGD Property”);

WHEREAS, by purchase from SGD on even date herewith, CBAC is the owner in fee simple of Lot 1, According to the Map of Store Growth Hwy 17 Subdivision as recorded in Map Book 59, Page 28 in the Probate Office of Shelby County, Alabama (“CBAC Property”). The SGD Property and the CBAC Property may be collectively referred to herein as the “Property”;

WHEREAS, CBAC and SGD wish to supplement the easement created in the Plat and set out the terms and conditions for access across the access way to be constructed in such 50 ft access, drainage and utility easement (“Plat Easement Area”) as depicted on the attached Exhibit A; and

WHEREAS, CBAC desires to receive and SGD wish to grant an addition utility easement for water and sewer lines near Magnolia Parkway as further described herein.

NOW, THEREFORE, for and in consideration of the covenants herein contained herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the undersigned parties covenant and agree for themselves, their representatives, successors and assigns, as follows:

1. Easements to CBAC.

a. SGD hereby grants and conveys to CBAC (and to all successor owners in title of the CBAC Property and their tenants, subtenants, licensees, employees, contractors, invitees, customers, successors and assigns) a non-exclusive, perpetual easement over, upon and across the roadways, driveways and access ways now or hereafter located within the Plat Easement Area on the SGD Property, as the same may exist or be constructed for the purpose of vehicular and pedestrian access, ingress and egress to and from the CBAC Property.

b. SGD hereby grants and conveys to CBAC (and to all successor owners in title of the CBAC Property and their tenants, subtenants, licensees, employees, contractors, invitees, customers, successors and assigns) a non-exclusive, perpetual easement in, on and under the area described on the attached Exhibit "B" ("Utility Easement Area"), for the purpose of installing, maintaining, replacing water, sewer and other utility lines and equipment.

2. Prohibitions in Easement Areas. No Owner shall interfere with the free flow of pedestrian and vehicular traffic over the Plat Easement Area except to the extent reasonably necessary for repair and maintenance, traffic regulation and control and to prevent a dedication thereof or the accrual of any rights to any other person therein. The Plat Easement Area shall not be used for parking by any Owner. No parking rights are intended to be or are created by this Agreement. The Owners may enter cross parking agreements separately. The access way in the Plat Easement Area is the sole entrance for CBAC's facility on the CBAC Property. Keeping such access way open is essential to both Owners.

3. Reservation of Rights. Except as limited herein, SGD reserves the right to continue to use and enjoy the both the Plat Easement Area and Utility Easement Area for all purposes, including but not limited to ingress and egress, that do not interfere with or interrupt the use or enjoyment of such easements by CBAC; provided, SGD is prohibited from building any buildings or other above-ground structures on the such easement area.

4. Maintenance. After initial construction and completion of the improvements by CBAC, the driveway, drive aisles, and accessways in the Plat Easement Area shall be maintained in good condition and in conformity with any and all applicable laws, codes, rules, statutes and regulations of governmental authorities having jurisdiction thereof, by the Owner of the property on which that portion of the improvements is located. Notwithstanding anything to the contrary herein, if damage to the Plat Easement Area or improvements in the Plat Easement Area is caused by a particular Owner (or its employees, agents, invitees, contractors, tenants, subtenants, licensees), then the Owner causing such damage shall be solely responsible for the cost to repair the damage caused to the Plat Easement Area or improvements in the Plat Easement Area. Whenever an Owner performs any maintenance, repairs or replacements, as determined necessary by such Owner or as required or permitted by this Agreement, such work will be done expeditiously and in a good and workmanlike manner. Such maintenance, repair or construction activities, once commenced, will be prosecuted diligently until completion thereof so as to minimize any interference with the use or enjoyment of the easements created in this Agreement by the Owners and their respective employees, customers, agents, invitees, tenants and subtenants and in such manner so as to cause the least amount of disruption to any business operations being conducted on the other property as is reasonably practicable.

5. Reimbursement. After the completion of the improvements in the Plat Easement Area by CBAC, CBAC shall reimburse SGD for thirty-two percent (32%) of all reasonable expenses incurred to maintain the driveway and accessway on the Plat Easement Area upon written request from SGD, which shall be made on an annual basis and shall include paid invoices substantiating SGD's request for reimbursement. Failure of SGD to request reimbursement within one (1) year after the end of the calendar year the expenses are incurred shall constitute SGD's waiver of its right to be reimbursed for that calendar year. Repair, removal, upgrading or replacement of the driveway, accessway or portions thereof in connection with construction or installation of improvements, utilities or fixtures on the SGD Property or portion thereof shall not be considered reimbursable costs.

6. Indemnity. Each Owner shall indemnify, defend and hold each other Owner (and its tenant, subtenants, licensees, and affiliates) harmless from and against any and all damages, demands, claims, losses, liabilities, injuries to third parties and property, deaths, penalties, fines, liens, judgments, suits, actions, investigations, proceedings, costs and expenses whatsoever, which arise in connection with such indemnifying Owner and indemnifying Owner's respective agents, employees, tenants, subtenants, and contractors usage of the easement areas.

7. Remedies. In the event either Owner fails to perform its obligations under this Agreement or otherwise breaches the terms of this Agreement, the non-defaulting party may notify the defaulting party and shall specify the breach. If such failure or breach is not cured within thirty (30) days after receipt of such notice, then such non-defaulting party shall have the right to cure the failure or breach, and recover all actual and reasonable costs and expenses related thereto from the defaulting party. Notwithstanding the foregoing, in the event that the failure or breach creates an imminent danger or damage to persons or properties, or jeopardizes access to the Property, no notice shall be required prior to the non-defaulting party commencing such work or commencing a cure. Any monetary amounts due and payable to the non-defaulting party pursuant to this Agreement shall be paid within ten (10) days from the date the defaulting party is notified of the amounts due. It is expressly agreed that no breach of this Agreement shall entitle any party hereto to cancel, rescind or otherwise terminate this Agreement. Such limitation, however, shall not affect in any manner any other rights or remedies any party may have hereunder or under law or equity by reason of such breach.

8. Extent of Liability. Notwithstanding any other provision contained in this Agreement to the contrary, the Owners hereby expressly agree that the obligations and liability of each of them shall be limited solely to such party's interest in its respective property, as such interest is constituted from time to time. The Owners agree that any claim against a party hereto shall be confined to and satisfied only out of, and only to the extent of, such party's interest in its property, as such interest is constituted from time to time. Nothing contained in this Paragraph 8 shall limit or affect any right that any party might otherwise have to seek or to obtain injunctive relief or to specifically enforce the rights and agreements herein set forth, provided that such injunctive relief or specific performance does not involve the payment of money from a source other than such party's interest in its property, as such interest may be constituted from time to time.

9. Governing Law. This Agreement shall be governed in accordance with the laws of the State of Alabama.

10. No Partnership. This Agreement shall not create an association, partnership, joint venture or principal and agency relationship between the parties.

11. Covenants Running With Land. The easements, rights, obligations, provisions and restrictions contained within this Agreement shall be covenants and conditions running with the title to the properties and shall inure to the benefit of and be binding upon and enforceable against the parties hereto, their respective successors and assigns, including but without limitation, all subsequent owners, their heirs, successors and assigns, of the CBAC Property and the SGD Property and all persons claiming under them. Every person or legal entity who or which will hereafter own or acquire any right, title, interest or estate in or to any portion of the Property, whether or not such interest is reflected upon the public records of Shelby County, Alabama, will be conclusively deemed to have consented and agreed to each and every term and condition contained herein, whether or not any reference to this Agreement is contained in the document or instrument pursuant to which such person or legal entity will have acquired such right, title, interest or estate in the Property or any portions thereof. In the event any party shall now or hereafter own, acquire or otherwise take title to the Property, this Agreement shall survive and shall not be terminated or defeated by any doctrine of merger.

12. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

13. Not a Public Dedication. Nothing herein contained shall be deemed to be a dedication of any portion of the Plat Easement Area or Utility Easement Area to the general public or to any governmental body or agency, or for the general public or for any public use or purpose whatsoever.

14. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any party by judgment or court order shall in no way affect any other provisions hereof or the application thereof to any other party and the same shall remain in full force and effect.

15. Authority. CBAC and SGD each warrant and represent to the other that, as of the date of the execution of this Agreement, each has the authority to execute this Agreement, and this Agreement shall be binding on the parties in accordance with its terms.

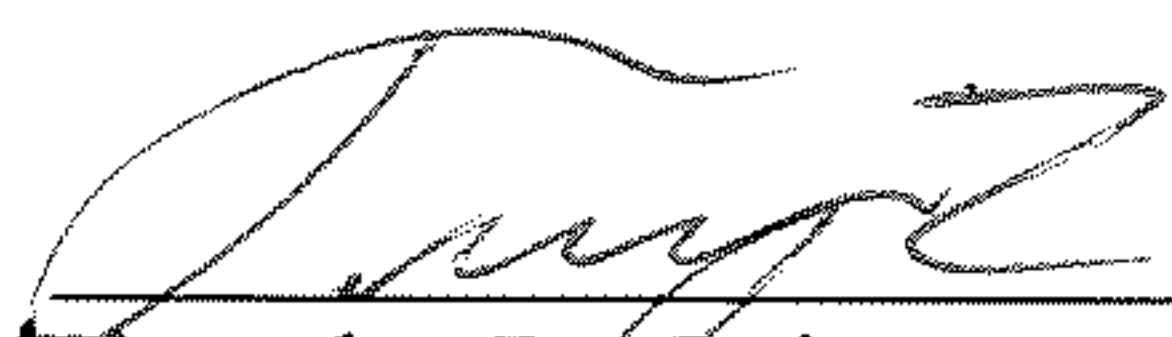
16. Amendment. This Agreement may only be modified or amended in writing by the Owners or successor owners of each portion of the property described herein.

(signatures on following pages)

EXECUTED to be effective as of the 26th day of September, 2024.


“CBAC”

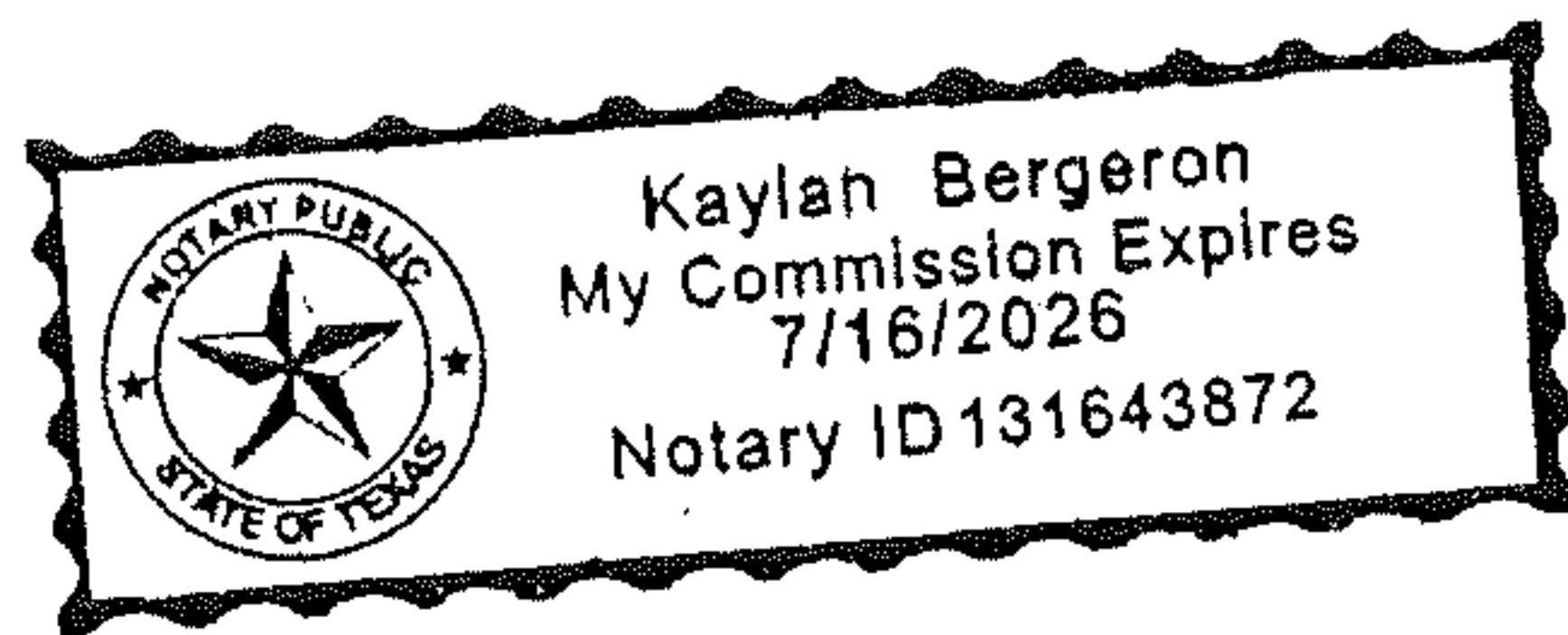
CHRISTIAN BROTHERS AUTOMOTIVE CORPORATION

By: 
Print Name: Timothy R. Geiger
Title: Vice President

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 25th day of September, 2024, by Timothy R. Geiger, Vice President of CHRISTIAN BROTHERS AUTOMOTIVE CORPORATION, a Texas corporation, for and on behalf of said corporation.


Notary Public, State of Texas



AFTER RECORDING, PLEASE RETURN TO:

Christian Brothers Automotive Corporation
Attn: Kaylan Bergeron
17725 Katy Fwy, Suite 200
Houston, TX 77094

UTILITY EASEMENT DESCRIPTION (AS-SURVEYED)

A portion of Lot 2 of the Store Growth Highway 17 Subdivision as recorded in Map Book 59, Page 28 in the Office of Probate for Shelby County Alabama, and being more particularly described as follows;

Commencing at a capped rebar (OPS CA1171) at the Northeast corner of Lot 2 of the Store Growth Highway 17 Subdivision as recorded in Map Book 59, Page 28 in the Office of Probate for Shelby County Alabama; thence S 03°34'20" W a distance of 314.43 feet to a capped rebar (GSA CA560) at the Southeast corner of said Lot 2; thence around a curve to the right having a radius of 1475.28 feet, a arc length of 50.03 feet, and subtended by a chord bearing and distance of S 84°25'45" W, 50.03 feet to the Point of Beginning; thence continue around a curve to the right having a radius of 1475.28 feet, a arc length of 38.36 feet, and subtended by a chord bearing and distance of S 82°42'46" W, 38.36 feet; thence N 07°54'39" E a distance of 9.17 feet; thence N 52°57'03" E a distance of 49.54 feet; thence S 03°35'41" W a distance of 43.88 feet to the Point of Beginning,

Said Easement having an area of 1003.67 square feet, 0.023 acres more or less.

Return To: First American Title Company
601 Travis, Suite 1875
Houston, TX 77002
Attn: Lisa Aguilar

NCS No. 1202043



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
09/30/2024 11:16:22 AM
\$46.00 JOANN
20240930000304280

Allie S. Bevil