

CITY OF BELLAIRE TEXAS

PLANNING AND ZONING COMMISSION

MAY 16, 2017

Council Chamber

Regular Session

6:00 PM

7008 S. RICE AVENUE
BELLAIRE, TX 77401



Chairman

Mr. Winfred Frazier

Commissioner

Jonathan Saikin

Commissioner

Bill Thorogood

Vice Chairman

Dirk Stiggins

Commissioner

Mike Axelrad

Commissioner

Marc Steinberg

Commissioner

S. Lynne Skinner

Mission Statement:

The City of Bellaire is dedicated to outstanding quality service and facilities to ensure an open, progressive, and secure community.

I. CALL TO ORDER AND ANNOUNCEMENT OF QUORUM**II. APPROVAL OF MINUTES FROM PAST MEETINGS**

1. Planning and Zoning Commission - Workshop & Regular Session - Apr 11, 2017 6:00 PM

III. REMINDER TO CITIZENS DESIRING TO ADDRESS THE COMMISSION**IV. GENERAL PUBLIC COMMENTS**

Persons at the meeting who have indicated their desire to be heard on matters of general interest to the Commission by submitting the form provided shall have three minutes to present their comments. The Commission is not permitted to fully discuss, debate, or consider items that are not on the agenda. Questions presented to the Commission may be referred to staff.

V. CURRENT BUSINESS (ITEMS FOR DISCUSSION, CONSIDERATION, AND/OR POSSIBLE ACTION)

1. Docket # SUP-2017-01-Consideration of an application filed by Moody Soliman, on behalf of Prestige Automotive, for a Specific Use Permit as required by Chapter 24, Planning & Zoning, Section 24-536 Corridor Mixed-Use District, B. (2) d), to allow for the operation of an automobile service station at 5012 Bissonnet St, located in the CMU Zoning District.
2. Approval of the Commission's Report & Recommendation to City Council regarding the request for a Specific Use Permit at 5012 Bissonnet Street.
3. Application filed by James Lassiter, for a total plat vacation of "Amending Plat of Lot 3 and 4, Block 3 of Post Oak Plaza." The property is addressed as 4707 Braeburn Drive.

VI. COMMITTEE REPORTS**VII. CORRESPONDENCE****VIII. REQUESTS FOR NEW BUSINESS, ANNOUNCEMENTS AND COMMENTS**

1. **Staff liaison report on the status of projects previously addressed by the Commission, as well as projects for future meetings.**
 - a. **Properties at Newcastle and Bissonnet, and Newcastle and Howard**
 - b. **Bellaire Town Center**
 - c. **Bellaire High School**

- 2. The Chairman shall recognize any Commissioner who wishes to bring New Business to the attention of the Commission. Consideration of New Business shall be for the limited purpose of determining whether the matter is appropriate for inclusion of a future Agenda of the Commission or for the referral to staff for investigation.**

IX. ADJOURNMENT



CITY OF BELLAIRE TEXAS

PLANNING AND ZONING COMMISSION

APRIL 11, 2017

Council Conference Room and Council Chamber
6:00 PM

Workshop & Regular Session

7008 S. RICE AVENUE
BELLAIRE, TX 77401

A. WORKSHOP SESSION

I. Call to Order & Announcement of Quorum

Chairman Frazier called the Workshop Session to order at 5:57 PM, and announced that a quorum was present, consisting of the following members:

II. Review and discussion of the City Manager's proposed draft of the 2018-2022 Capital Improvement Plan, under the authority given to the Commission by City Ordinance Chapter 24-402.

Mr. McDonald explained that this was the Commission's last opportunity to ask questions of Project Manager Michelle Jordan prior to voting on a recommendation in the Regular Session.

Vice Chairman Stiggins mentioned that at the last meeting the Commission talked about the unfunded projects and how an estimated amount should be added to the funding for water and wastewater lines, streets, drainage, and pavement management projects beyond 2022. He stated that he didn't see that added to the CIP.

Mr. McDonald explained that if desired, it will be included as part of the Commission's Report and Recommendation.

Vice Chairman Stiggins felt that it should be included as a suggestion.

The rest of the Commission agreed.

Commissioner Skinner asked Mr. McDonald if staff has gone through the CIP and compared the projects listed with the ones in the Comprehensive Plan.

Mr. McDonald stated that staff has done this.

Vice Chairman Stiggins also mentioned that he would be interested in including steps 1,3, and 4 from the Beautification Master Plan, which deal with perimeter and West Loop Gateways, as well as lighting.

Ms. Jordan explained that the City is currently looking into rebranding, and that two items will be on City Council's agenda on Monday April 17th regarding this effort. She stated that one will be a presentation from Design by Principle describing what the phases and efforts would include, and a proposed timeline for accomplishing these tasks, and the second would be an item for consideration to authorize the use of beautification funds to develop the brand identity. She added that the results of this study could impact what the gateways and other beautification projects grow up to be.

Minutes Acceptance: Minutes of Apr 11, 2017 6:00 PM (Approval of Minutes from Past Meetings)

Mr. McDonald stated that the Commission could definitely add in the report to Council that it supports the addition of gateways at each of the main entrances to the City, similar to what is mentioned in the Beautification Master Plan.

The Commission agreed that the addition of gateways should be added as a suggestion within the report and recommendation to Council.

Commissioner Skinner asked if improvement made in the rights-of-way would need to be approved by TxDOT.

Mr. McDonald confirmed this and stated that as far as he knows, the City has not yet approached TxDOT about any plans.

Commissioner Saikin felt that the 610 underpasses need to be addressed in order to create a more walkable City.

Mr. McDonald agreed, and added that the underpasses are referenced in the Terrain Studios study within the community pathways project.

Commissioner Saikin and the rest of the Commission agreed that a line item should be added in year 2020 for community pathways implementation to include safe crossings at the 610 underpasses, with additional lighting for improved visibility.

City Manager, Paul Hofmann mentioned that there will also be an opportunity for the City of Bellaire to work with the City of Houston and other bike groups and enthusiasts to create connections throughout the City.

Chairman Frazier mentioned Zindler Park and asked why the projects were split up into five different line items.

Ms. Jordan explained that this would not be an improvement to the entire park, like some of the other ones listed, just certain aspects of the park.

Commissioner Axelrad asked what the reasoning was behind investing money into a new library, when the City's infrastructure is in such bad shape. He questioned whether in this day and age people actually still utilize the library's resources.

Mr. Hofmann and Mr. McDonald explained that a lot of people still prefer an actual book to an electronic device, and that many families take advantage of the library's reading programs and activities. They also mentioned that the library is used on a regular basis as a meeting space for groups within the community.

III. Adjournment

Chairman Frazier adjourned the Workshop Session at 6:49 PM.

B. REGULAR SESSION

I. Call to Order & Announcement of Quorum

Chairman Frazier called the Regular Session to order at 6:59 PM, and announced that a quorum was present, consisting of the following members:

Attendee Name	Title	Status	Arrived
Jonathan Saikin	Commissioner	Present	

Mike Axelrad	Commissioner	Present	
Winfred Frazier	Chairman	Present	
Bill Thorogood	Commissioner	Absent	
Marc Steinberg	Commissioner	Absent	
Dirk Stiggins	Vice Chairman	Present	
S. Lynne Skinner	Commissioner	Present	

II. Approval of Minutes from Past Meetings

2. Planning and Zoning Commission - Regular Session - Mar 14, 2017 6:00 PM

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Mike Axelrad, Commissioner
SECONDER: S. Lynne Skinner, Commissioner
AYES: Saikin, Axelrad, Frazier, Stiggins, Skinner
ABSENT: Thorogood, Steinberg

III. Reminder to citizens desiring to address the Commission

Chairman Frazier reminded any citizens that wished to address the Commission to fill out a speaker form.

IV. Public Hearings

Docket # SUP-2017-01-Public Hearing on an application filed by Moody Soliman, on behalf of Prestige Automotive for a Specific Use Permit, as required by Chapter 24, Planning & Zoning, Section 24-536 Corridor Mixed-Use District, B. (2) d), to allow for the operation of an automobile service station at 5012 Bissonnet St, located in the CMU Zoning District.

1. Presentation of the Public Hearing Process

Mr. McDonald explained the public hearing process.

2. Presentation by the Applicant

Moody Soliman-Mr. Soliman thanked City staff for their help throughout the process and informed the Commission that he is requesting a specific use permit in order to continue the same use for the property at 5012 Bissonnet as what is currently there, an automobile service station. He added that no modifications will be made to the site, and that the only differences will be the change in management and the types of cars that will be serviced. Mr. Soliman mentioned that he is aware of the conditions that were placed on the SUP previously and that he plans to continue abiding by all of those requests. He added that he also plans to go above and beyond with regard to the landscaping of the property.

3. Staff Findings

Mr. McDonald stated that the request is for a specific use permit at 5012 Bissonnet to allow for the operation of an automobile service station, which is the same use that currently exists on the property. He informed the Commission that the property is surrounded on three sides by the Corridor Mixed-Use Zoning District and to the west by Urban Village Downtown. Mr. McDonald added that a specific use is a permitted use, but the Commission can place conditions on that use in an effort to better regulate it. He reiterated that the applicant is aware of the previous conditions and that no changes are being made to the site plan.

4. Public Comments

- a. Persons at the meeting who have indicated their desire to address the Commission by submitting the form provided shall have three (3) minutes each to present comments concerning the Application. If a speaker wishes to yield their time to another speaker, a total of six (6) minutes will be allotted. If additional time is not yielded, the time limit may be extended to five (5) minutes at the discretion of the Chair, with the consent of the Commission.**

There was no public comment.

5. Rebuttal by the Applicant

There was no rebuttal by the applicant.

6. Questions from the Commission

Commissioner Skinner asked if any signage would be put on the property prior to the Commission voting on the request.

Mr. McDonald explained that the only signage that would be installed is what is there now, which gives information on the public hearing.

Commissioner Axelrad asked for clarification that the Commission could put various conditions on the application, not limited to the ones that were put on the previous SUP. He mentioned that the site is somewhat outdated and that he would like to see more improvements made to the property.

Mr. McDonald confirmed that the Commission can put any conditions on the SUP that it deems necessary. He also mentioned that he could look through the design standards that are now in place for the CMU and determine if any of them could be applied to this property as a condition.

Chairman Frazier asked Mr. Soliman for confirmation that he was aware of all of the conditions and that he plans to continue following of all them.

Mr. Soliman confirmed that he was made aware of the conditions and that he does plan to continue following all of them. He reiterated that he would most likely even go above and beyond with some of the requirements, specifically with landscaping on the site.

7. Invitation for Written Comment, if applicable

Mr. McDonald informed the Commission and the public that written comments would be accepted until 5:00 PM on Wednesday, May 3rd.

8. Closure of the Public Hearing

Motion: A motion was made by Commissioner Axelrad and seconded by Vice Chairman Stiggins to close the public hearing.

Vote: the motion carried on a vote of 5-0.

The public hearing was closed at 7:12 PM.

V. General Public Comments

1. **Persons at the meeting who have indicated their desire to be heard on matters of general interest to the Commission by submitting the form provided shall have three minutes to present their comments. The Commission is not permitted to fully discuss, debate, or consider subjects for which public notice has not been given on the agenda. Issues that cannot be referred to staff for action, may be placed on the agenda of a future meeting.**

There were no general public comments.

VI. Current Business (Items for discussion, consideration, and/or possible action)

1. Docket # Z-2017-01, 02-Consideration of an application filed by Todd Blitzer of Mirador group, to amend the City of Bellaire Code of Ordinances, Chapter 24, Planning and Zoning, Section 24-534 D., to include a reduction in the minimum site area for a planned development requirement within the R-5 Residential District to one (1) acre, and to amend the Official Zoning Map to remove 4301 Bellaire Boulevard from the Bellaire Boulevard Estate Overlay District (BBEOD). This property is currently located within both the R-5 Residential District and the BBEOD.

Mr. McDonald explained that this is for the consideration of two requests, filed by Todd Blitzer of Mirador Group, on behalf of Dallas Christian College, for the removal of 4301 Bellaire Boulevard from the Bellaire Boulevard Estate Overlay District and the reduction of the minimum site area for a planned development within the R-5 Zoning District to one acre. He added that there were 5 members of the public who spoke against the application during the public hearing, citing concerns such as, traffic, flooding, improper marketing, and the fear that the granting of this request would set a precedent for other properties in the area. Mr. McDonald added that one member of the public spoke in favor of the application, and one written comment, also in favor of the request, was read into the record. He stated that thirteen written comments were submitted after closure of the public hearing, and they were included in the packet. Mr. McDonald then reviewed the role of staff, stating that staff's job is to process and review applications for developments, zoning, and code amendments, and ultimately to make a recommendation to the Planning and Zoning Commission. He added that at that point, the Commission has the right to accept, modify, or deny that recommendation. Mr. McDonald stated that there have been some disconcerting questions to his integrity over the last few weeks, and mentioned that as his role as Director of Development Services he tries to stay impartial and give honest and open information to the Commission. He stated that he hoped as though the Commissioners have seen that from him the past, and that he knows they will continue to see it from him in the future.

Mr. McDonald mentioned that what first needs to be understood about the application is that there is currently no project under consideration. The request, if approved, merely provides an opportunity for the Commission and the City Council to consider a broader allowance for the property located at 4301 Bellaire Boulevard. He added that the adoption of this proposed amendment would only make three by-right zoning changes that would impact this property:

1. A reduction in the front building line from 50 feet to 30 feet
2. The allowance of 2 single-family residences instead of 1

3. The ability for a planned development application to be filed for this property

He mentioned that there had been concerns about whether or not the property has been properly marketed, or priced, but stated that ultimately these are not land use questions necessary for staff's review. Nowhere in the zoning ordinance does it state how, for how long, or at what price a property must be listed for sale. Mr. McDonald pointed out that with regard to whether a future project would or would not negatively impact the existing residential development to the west of the property is a question to be addressed at such future date when a specific project has been submitted for review and consideration. He stated that items such as traffic and drainage are always purposefully considered and reviewed with help from the Public Works Department and the City Engineer when a specific project is on the table. Mr. McDonald mentioned that it is also important to realize that this is the only property within the Bellaire Boulevard Estate Overlay District that is sandwiched between an existing planned development and a utility easement. He added that a speaker at the public hearing brought up the fact that the property directly across the street from 4301 Bellaire Boulevard is currently developed as a single-family lot. He explained that while this is the case, the house is adjacent to a single-family lot directly to its west, in fact that entire section of the block is single-family homes. This lends a uniqueness to the property at 4301 Bellaire that no other property in the BBEOD faces, therefore, the approval of this request would not set any sort of precedent to support any other property in the BBEOD if such were to seek a similar request. Mr. McDonald also pointed out that the property is called out as small lot residential on the Future Land Use Map, which is consistent with the request. He stated that based on staff's findings, he recommends approval of the request to remove the property from the BBEOD and to amend the code of ordinances, as requested.

Vice Chairman Stiggins asked what the current allowable uses are.

Mr. McDonald stated that the only thing allowed there currently, by-right, is one single family home, a church, or a school. He added that the church and school would still have to come before the Commission for a specific use permit to operate within a residential zone.

Commissioner Stiggins mentioned that approval of the request would allow for two homes to be built on the property and asked if a replat would need to be done.

Mr. McDonald confirmed that a replat would have to be done, and that it would come before the Commission for approval.

Commissioner Skinner asked what the history is of the Bellaire Boulevard Estate Overlay District (BBEOD).

Mr. McDonald informed the Commission that it was created in 2001, when the owner of the Teas Property was trying to subdivide their lot. He added that it was created in an effort to encourage large lot residential development resulting in a "grand boulevard of homes, schools, churches, and houses of worship" with homes facing Bellaire Boulevard.

Commissioner Axelrad mentioned that some of the written comments referenced "spot zoning." He asked Mr. McDonald and Attorney Petrov to explain why this would not be considered spot zoning.

Mr. McDonald explained that the property is not being re-zoned. He added that the request is to take it out of the overlay district, but not to rezone it from R-5.

Attorney Petrov agreed and added that spot zoning occurs when a property is rezoned to something completely different than what the surrounding properties are zoned as.

Commissioner Saikin mentioned the insufficient drainage for the property and asked why the owners were not required to mitigate for that.

Mr. McDonald explained that the church has been in existence longer than the City's current drainage requirements have been in effect.

Commissioner Saikin added that, in his opinion, Dallas Christian College should have done what they could to help alleviate the issue of flooding on the property. He stated that he felt as though the granting of this request would be, in an essence, rewarding them for being bad neighbors. Commissioner Saikin also reiterated that he is concerned about whether there will be any demand for residential homes on this site, and if the location of the property will result in a lesser product than what is consistent with the rest of Bellaire.

Chairman Frazier mentioned that the zoning for this area is already inconsistent, and that he is concerned that the granting of this request will negatively impact the purpose for which the BBOD was created. He added that he will be voting against the application for that reason.

RESULT:	FAILED [0 TO 5]
MOVER:	Dirk Stiggins, Vice Chairman
SECONDER:	Mike Axelrad, Commissioner
NAYS:	Saikin, Axelrad, Frazier, Stiggins, Skinner
ABSENT:	Thorogood, Steinberg

2. Approval of the Planning and Zoning Commission's Report and Recommendation to City Council regarding the proposed zoning amendments at 4301 Bellaire Boulevard.

The Commission asked that a bullet point be added to the report regarding the fact that the Commission feels as though the base zoning for the entire BBOD is inconsistent and should be addressed in its entirety so as not to negatively impact the overlay district and the purpose for its creation.

RESULT:	ADOPTED AS AMENDED [UNANIMOUS]
MOVER:	Jonathan Saikin, Commissioner
SECONDER:	Mike Axelrad, Commissioner
AYES:	Saikin, Axelrad, Frazier, Stiggins, Skinner
ABSENT:	Thorogood, Steinberg

3. Approval of the Planning and Zoning Commission's Report and Recommendation to City Council regarding the Draft 2018-2022 Capital Improvement Plan.

The Commission voted to approve the Report and Recommendation to City Council with the following suggestions for inclusion:

- The addition of gateways at each of the main entrances to the City, similar to what is mentioned within the Beautification Master Plan.
- Estimated funding for water and wastewater lines, streets, drainage, and pavement management programs beyond the year 2022.
- A line item in the year 2020 for community pathways implementation to include safe crossings at 610 underpasses, with additional lighting for improved visibility.

RESULT:	ADOPTED AS AMENDED [UNANIMOUS]
MOVER:	Dirk Stiggins, Vice Chairman
SECONDER:	S. Lynne Skinner, Commissioner
AYES:	Saikin, Axelrad, Frazier, Stiggins, Skinner
ABSENT:	Thorogood, Steinberg

VII. Committee Reports

There were no committee reports.

VIII. Correspondence

There was no correspondence.

IX. Requests for New Business, Announcements, or Comments

1. Staff liaison report on the status of projects previously addressed by the commission as well as projects for future meetings.

Mr. McDonald informed the Commission that HEB has been demolished and that they should begin construction soon. He also mentioned that City Council heavily amended the proposed changes to the Comprehensive Plan, and suggested that the Commission take a look at what changes were made. He added that he has almost completed the site plan review for the Bellaire Town Center, and that there are still no updates on Bellaire High School.

Chairman Frazier mentioned that the parking lot for the Bellaire Town Center has a tendency to flood, and asked if that was being taken into consideration with the redevelopment of the site.

Mr. McDonald explained that the retention of water in a parking lot is not always a bad thing, as it could have been designed to hold water. He added that the building is going to be shifted and they are actually reducing the amount of impervious coverage on the site, which should help. Mr. McDonald mentioned that once the building plans have actually been submitted the drainage will be reviewed.

Chairman Frazier asked if there were any updates on the Chevron and Shell properties.

Mr. McDonald stated that he feels as though the property owners are still trying to understand what exactly is allowed, based on what City Council voted on. He added that the Commission could possibly see a request for a specific use permit or a planned development for the Shell property to allow for some sort of commercial or retail office project.

Commissioner Skinner mentioned Mr. McDonald's previous comment regarding staff's role in planning and zoning. She stated that she supports Mr. McDonald and has never felt that he has overstepped his boundaries.

Commissioner Saikin agreed with Commissioner Skinner.

2. The Chairman shall recognize any Commissioner who wishes to bring New Business to the attention of the Commission. Consideration of New Business shall be for the limited purpose of determining whether the matter is appropriate for inclusion of a future Agenda of the Commission or for the referral to staff for investigation

No New Business was brought forward.

X. Adjournment

Motion: a motion was made by Commissioner Skinner and seconded by Commissioner Axelrad to adjourn the Regular Meeting.

Vote: the motion carried on a vote of 5-0.

The meeting was adjourned at 8:13 PM.

Planning and Zoning Commission

City Council Chambers, First Floor of
City Hall
Bellaire, TX 77401



Meeting: 05/16/17 06:00 PM
Department: Development Services
Category: Specific Use Permit
Department Head: John McDonald
DOC ID: 2280

SCHEDULED ACTION ITEM (ID # 2280)

Item Title:

Docket # SUP-2017-01-Consideration of an application filed by Moody Soliman, on behalf of Prestige Automotive, for a Specific Use Permit as required by Chapter 24, Planning & Zoning, Section 24-536 Corridor Mixed-Use District, B. (2) d), to allow for the operation of an automobile service station at 5012 Bissonnet St, located in the CMU Zoning District.

Background/Summary:

This item is for the consideration of an application for a Special Use Permit to operate an automotive service station on the site of the old Volvos Only location, at the corner of Bissonnet and South Rice Ave. "Automotive service station" is permitted as a specific use under Sec. 24.536, B.(2),d). The applicant does not propose any changes to the current site plan. Volvos Only has operated under a specific use permit (S-31), which was granted by Ordinance No. 92-012, and approved by City Council on March 2, 1992.

A public hearing on this application was held on April 11. No comments were submitted prior to or during the public hearing. No additional written comments have been received.

Staff has reviewed the design criteria applicable to the CMU district. Most requirements would be burdensome to apply to a preexisting structure. Improved maintenance of the structure and the required landscaping would generally benefit the site.

Recommendation:

The Director of Development Services recommends approval of the Specific Use Permit with the following conditions:

1. That all vehicles remaining overnight shall be parked within an enclosed service bay or within a fenced area.
 - a. Any automobiles dropped off by customers dropped off by customers for repairs at any time outside normal business hours (8:00 A.M. to 5:00 P.M., Monday through Friday) are excepted from this provision. However, the permit holder shall, as soon as practicable, take all steps necessary to cause such vehicles to be properly secured and screened.
2. The eight (8) foot screening fence currently in place on the property shall be maintained in such a manner as to provide for a one hundred (100) percent visual barrier, and if at any time the fence shall fail to provide the total visual barrier as herein required, the permit holder shall immediately cause the same to be replaced or repaired.
 - a. That the warped fence boards on the west side of the property be replaced.
3. The exterior of the structure shall be maintained in good repair, structurally sound, and sanitary so as not to pose a threat to the public health, safety or welfare; and all damages to the stucco on the building be replaced and painted to match the building; that all parking lot striping be repainted and maintained; and that all

parking lot signage be replaced.

4. No storage and/or display of merchandise or other property shall be permitted except within the existing structure.
5. The permit holder shall file with the Department of Development Services a landscaping plan which shall detail the type of landscaping materials and plants to be planted with the permeable areas within the property. The materials and plants detailed within this landscape plan shall be maintained in a healthy, growing state, and if for any reason the condition of the landscaping and planting materials should deteriorate, the permit holder shall immediately replace the same to maintain full compliance with this requirement.
6. All mechanical repairs to vehicles serviced on this site requiring more than thirty (30 minutes) from beginning to conclusion shall be performed inside the building located upon the permitted property.
7. The permit holder shall at all times comply with the terms and provisions of the Code of Ordinances of the City of Bellaire, including, without limitations, requirements relating to signs, exterior storage of cars, part, or accessories, and requirement prohibiting sales of cars, boats, or any other vehicles. Failure to comply with these regulations or any condition placed upon this permit shall constitute grounds for termination of the permit issued hereunder.

ATTACHMENTS:

- 5012 SUP Application (PDF)
- Letter of Affidavit-5012 Bissonnet Street (PDF)
- City Planning Letter-5012 Bissonnet (PDF)
- Ord. 92-012 (PDF)

CITY OF BELLAIRE
RECEIVED

MAR 10 2017

DEVELOPMENT SERVICES

**Application for Special Use Permit For Prestige Automotive
With No Change to Existing Facilities
3/07/2017**

Following is the relevant section of the City Ordinance dealing with Special Use Permit.
Following each section is our application response.

Sec. 24-605. - Application for Specific Use Permit.

Any person desiring to petition for a specific use permit to this chapter shall be required to file an application in writing with the Planning and Zoning Official, accompanied by a nonrefundable application fee, in an amount established by the City Council of the City Manager, to defray the actual cost of processing the application. The application shall include the following information:

Attached is a check in the amount of \$1,055.00 for this application.

- (1) *The name and address of the applicatn; and in the event that the applicant is a partnership, the full name and address of the general partner, and in the event that the applicatn is a corporation, the full names and addresses of all officers, a statement as the state of incorporation, the name and address of the registered agent and the address of the registered office of the corporation;*

Name: Moody Soliman

Address: 4303 Village Forest Dr. Sugar Land TX, 77479

- (2) *The Section or Sections of this chapter authorizing a specific use permit:*
Since the zoning of this parcel is CMU, the relevant section ordinance dealing with specific use permits is, Sec. 24-536. CMU. Corridor mixed use district (CMU): Specific uses include "Transportation, automobile and related uses" in Sec. 24-536 (2-D)
Ordinance 14-013

- (3) *A legal description and street address of the property, which is the subject of the application;*

Street Address: 5012 Bissonnet Street, Bellaire, TX 77401

Legal Description: LTS 10 & 11 & TR 9 BLK 24 BELLAIRE

- (4) *A statement of ownership accompanied by a certificate from a title insurance company certifying ownership;*
Prestige Automotive is in the process of securing "an SUP contingent long-term lease" for the use of the property owned by Purcell Partnership
- (5) *A written description of the propsed specific use as provided for in this Code:*
No changes to the site improvements are being requested as a part of this application.

Attachment: 5012 SUP Application (2280 : Consideration-5012 Bissonnet)

The proposed specific use is a continuation of previous use under "Volvos Only", and as neighboring garages operating under the same Code. No auto body repairs nor auto paint.

- (6) *A written environmental assessment statement describing in general terms the impact of the development for which approval is sought and providing any specific information that the Planning and Zoning Official shall deem necessary:*

Since no changes are being made to the site, there should not be any adverse environmental impact to the site.

- (7) *Such other information or documentation as the Planning and Zoning Official, the Planning and Zoning Commission of the City Council may from time to time designate or which may be deemed necessary and appropriate to a full and proper consideration and disposition of the particular application:*

Thank you in advance for your assistance with this application. Please let me know if you need any additional information.

Best regards,



Moody Soliman

832-428-9998

moody@moodysoliman.com

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SPECIAL USE PERMIT OF CITY OF BELLAIRE

State of Texas

County of ~~Harris~~ **TRAVIS**

Before me, the undersigned authority, on this day personally appeared (owner) John Purcell, known to me to be the person whose name is subscribed to the foregoing instrument, who being duly sworn, did depose and state:

John Purcell
I, John Purcell of 715 Sunfish St. Lakeway Tx 78734 appoint Moody Solomon of 4303 Village Forest Dr. Sugar Land TX 77479, to operate the property located at 5012 Bissonnet St as an "Automobile Service Station" as I have operated in the past (Volvo's Only), and be my representative in applying for the City of Bellaire Special Use Permit.

Sworn before me, the undersigned authority on this the 7th day of April, 2017 to certify with my hand and seal of office.

Caitlin Kornblum



Attachment: Letter of Affidavit-5012 Bissonnet Street (2280 : Consideration-5012 Bissonnet)



Chicago Title of Texas, LLC
1225 North Loop West, Suite 420
Houston, TX 77008

CITY PLANNING LETTER

GF#: CTTCS17002179

Time frame covered by this report:
to April 25, 2017

Property

Address: 5012 Bissonnet

City/State/Zip Code: ,

Legal Description:

A tract of land containing 0.2337 acre located in the James Blessing Survey, Abstract 162, Harris County, Texas, being Lots 9, 10, and 11 of Block 24 of the original subdivision of the Town of Bellaire, as recorded in Volume 3, Page 59 of the Harris County Map Records and being more particularly described by metes and bounds attached hereto:

Metes and Bounds:

Based on a search of the Public Records of the County of Harris County, Texas the last instrument purporting to convey title to the land described above was:

PURCELL FAMILY PARTNERSHIP, LTD., a Texas limited partnership, by virtue of Deed recorded Y887210.

This report hereby reports that the instruments listed below have been filed of record in the office of the County Clerk of Harris County, Texas, and are affecting title to the property above described during the time frame as set out above:

RESTRICTIONS:

Those recorded in Volume 696, Page 3 and Volume 759, Page 595 both of the Deed Records of Harris County, Texas, and under Harris County Clerk's File No. J116008.

EASEMENTS:

None of Record

LIENS:

Deed of Trust executed by John W. Purcell to Mike Roy, Trustee, dated April 14, 2000, recorded in/under Clerk's File No. U373249 of the Real Property Records of Harris County, Texas, securing Sterling Bank in the payment of one note in the principal sum of \$250,000.00, due and payable and bearing interest as



CITY PLANNING LETTER
(Continued)

therein provided; and all the terms, conditions and stipulations contained therein, including, but not limited to, any additional indebtedness, if any, secured by said instrument.

Assignment of Lease and Rents recorded under Harris County Clerk's File No. U373250.

Subordination Agreement recorded under Harris County Clerk's File No. U396560.

Contractor Subordination Agreement recorded under Harris County Clerk's File No. U448587.

This report is issued for the use of and shall inure to the benefit of **Moody Soliman** and is issued in consideration of **\$324.75** paid by the benefited party named above, and no others, and to whom said sum shall be returned as agreed liquidated damages in the event of any mistakes herein. By accepting this search, the benefited party agrees that the said sum and no more shall constitute the full measure for damages against the issuing company.

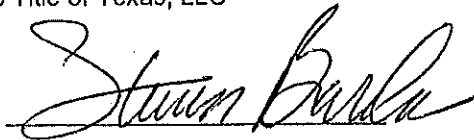
SPECIAL NOTE AND LIMITATION OF LIABILITY: This report is issued with the express understanding, evidenced by the acceptance of same, that this report does not undertake to give or express any opinion as to the validity of the title hereinabove described or the authority of those executing the above listed instruments, but is simply reporting herein and hereby as to the recitals of instruments listed. The Company assumes no liability greater than the consideration paid for this certificate by reason of issuance, delivery and/or use of same, nor for any error or omissions herein.

This report does NOT reflect title to any of the oil, gas and other mineral interests affecting subject property, nor any documents creating and/or affecting said estates, nor the validity of any rights, privileges and immunities relating thereto.

Further, this report does not address and no search has been performed regarding the following: claims and rights of parties in possession; discrepancies in area and boundaries; unpaid bills for labor or material in connection with repairs or new improvements; unpaid taxes; change in marital or corporate status of owner(s) since date of purchase; homestead rights or claims; easements and restrictions.

Chicago Title of Texas, LLC

By:



522-07-2435

EXHIBIT "A"

A tract of land containing 0.2337 acres located in the James Blessing Survey, Abstract 162, Harris County, Texas, being Lots 9, 10, and 11 of Block 24 of the original subdivision of the Town of Bellaire, as recorded in Volume 3, Page 59 of the Harris County Map Records, and being more particularly described as follows:

COMMENCING at a 3/4 inch pipe found for the Northwest corner of Block 24 same being the Southeast intersection corner of Rice Avenue and Locust Street;

THENCE South, along the East line of Rice Avenue, 90 feet wide, a distance of 186.23 feet to a 5/8 inch iron rod set in concrete for the Northwest corner of Lot 11 and the POINT OF BEGINNING;

THENCE East, along the common line between Lots 11 and 12, a distance of 120.00 feet to a 5/8 inch iron rod set for the Northeast corner of Lot 11;

THENCE South, along the East line of Lots 9, 10, and 11, a distance of 81.90 feet to a "+" cut in concrete in the Northwest line of Bissonnet Street (formerly Richmond Avenue);

THENCE South, 61 deg. 27 min. 27 sec. West, along the Northwest line of Bissonnet Street, a distance of 6.15 feet to a "+" cut in concrete at the intersection with Spruce Street, 60 feet wide;

THENCE South, 89 deg. 55 min. 07 sec. West, along the North line of Spruce Street and the South line of Lot 9, a distance of 114.60 feet to a "+" cut in concrete for the Southwest corner of Lot 9 and the intersection with Rice Avenue;

THENCE North, along the East line of Rice Avenue and the West line of Lots 9, 10, and 11, a distance of 85.00 feet to the POINT OF BEGINNING, and containing 10,182 square feet of land.

This description is based on the Land Title Survey and plat made by E.L. Luper, Registered Public Surveyor on August 10, 1983.

RECORDER'S MEMORANDUM
AT THE TIME OF RECORPTION, THIS INSTRUMENT WAS FOUND TO BE UNRECORDED FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

ANY INSTRUMENT WHICH REFLECTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF CLERICAL OR MISC. ERROR IS UNRECORDED UNDER ITSELF AND THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was filed in the Harris County Clerk's Office on the 4th day of November, 1998, and was duly recorded in the Official Public Records of Real Property of Harris County, Texas.

NOV 4 1998



Beverly R. Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS

Beverly R. Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS

98 NOV -4 PM 3:11

FILED

Exhibit C – LIMITATION LANGUAGE FOR LIMITATION TO AMOUNT OF FEE PAID FOR SEARCH

YOU EXPRESSLY AGREE AND ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE THE EXTENT OF LOSS WHICH COULD ARISE FROM ERRORS OR OMISSIONS IN, OR THE COMPANY'S NEGLIGENCE IN PRODUCING, THE REPORT. YOU RECOGNIZE THAT THE FEE CHARGED IS NOMINAL IN RELATION TO THE POTENTIAL LIABILITY WHICH COULD ARISE FROM SUCH ERRORS OR OMISSIONS OR NEGLIGENCE. THEREFORE, YOU UNDERSTAND THAT THE COMPANY WAS NOT WILLING TO PROCEED IN THE PREPARATION AND ISSUANCE OF THE REQUESTED REPORT BUT FOR YOUR AGREEMENT THAT THE COMPANY'S LIABILITY IS STRICTLY LIMITED.

YOU AGREE THAT MATTERS AFFECTING TITLE BUT WHICH DO NOT APPEAR AS A LIEN OR ENCUMBRANCE AS DEFINED IN THE CUSTOMER AGREEMENT OR APPLICATION ARE OUTSIDE THE SCOPE OF THE REPORT.

YOU AGREE, AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THIS REPORT AND TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF THE COMPANY, ITS LICENSORS, AGENTS, SUPPLIERS, RESELLERS, SERVICE PROVIDERS, CONTENT PROVIDERS, OR ANY OTHER SUBSCRIBERS OR SUPPLIERS, SUBSIDIARIES, AFFILIATES, EMPLOYEES, AND SUBCONTRACTORS FOR ANY AND ALL CLAIMS, LIABILITIES, CAUSES OF ACTION, LOSSES, COSTS, DAMAGES AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEY'S FEES, HOWEVER ALLEGED OR ARISING INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM BREACH OF CONTRACT, NEGLIGENCE, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF WARRANTY, EQUITY, THE COMMON LAW, STATUTE, OR ANY OTHER THEORY OF RECOVERY OR FROM ANY PERSON'S USE, MISUSE, OR INABILITY TO USE THE REPORT, SO THAT THE TOTAL AGGREGATE LIABILITY OF THE COMPANY, ITS EMPLOYEES, AGENTS AND SUBCONTRACTORS SHALL NOT EXCEED THE COMPANY'S TOTAL FEE FOR THIS REPORT.

YOU AGREE THAT THE FOREGOING LIMITATION ON LIABILITY IS A TERM MATERIAL TO THE PRICE YOU ARE PAYING WHICH PRICE IS LOWER THAN WOULD OTHERWISE BE OFFERED TO YOU WITHOUT SAID TERM. YOU RECOGNIZE THAT THE COMPANY WOULD NOT ISSUE THIS REPORT, BUT FOR YOUR AGREEMENT, AS PART OF THE CONSIDERATION GIVEN FOR THIS REPORT, TO THE FOREGOING LIMITATION OF LIABILITY AND THAT ANY SUCH LIABILITY IS CONDITIONED AND PREDICATED UPON THE FULL AND TIMELY PAYMENT OF THE COMPANY'S INVOICE FOR THIS REPORT.

THIS REPORT IS LIMITED IN SCOPE AND IS NOT AN ABSTRACT OF TITLE, TITLE OPINION, PRELIMINARY TITLE REPORT, TITLE REPORT, COMMITMENT TO ISSUE TITLE INSURANCE, OR A TITLE POLICY, AND SHOULD NOT BE RELIED UPON AS SUCH. IN PROVIDING THIS REPORT, THE COMPANY IS NOT ACTING AS AN ABTRACTOR OF TITLE. THIS REPORT DOES NOT PROVIDE OR OFFER ANY TITLE INSURANCE, LIABILITY COVERAGE OR ERRORS AND OMISSIONS COVERAGE. THIS REPORT IS NOT TO BE RELIED UPON AS A REPRESENTATION OF THE STATUS OF TITLE TO THE PROPERTY. THE COMPANY MAKES NO REPRESENTATIONS AS TO THE REPORT'S ACCURACY, DISCLAIMS ANY WARRANTIES AS TO THE REPORT, ASSUMES NO DUTIES TO YOU, DOES NOT INTEND FOR YOU TO RELY ON THE REPORT, AND ASSUMES NO LIABILITY FOR ANY LOSS OCCURRING BY REASON OF RELIANCE ON THIS REPORT OR OTHERWISE.

IF YOU DO NOT WISH TO LIMIT LIABILITY AS STATED HEREIN AND YOU DESIRE THAT ADDITIONAL LIABILITY BE ASSUMED BY THE COMPANY, YOU MAY REQUEST AND PURCHASE A POLICY OF TITLE INSURANCE, A BINDER, OR A COMMITMENT TO ISSUE A POLICY OF TITLE INSURANCE. NO ASSURANCE IS GIVEN AS TO THE INSURABILITY OF THE TITLE OR STATUS OF TITLE. YOU EXPRESSLY AGREE AND ACKNOWLEDGE THAT YOU HAVE AN INDEPENDENT DUTY TO ENSURE AND/OR RESEARCH THE ACCURACY OF ANY INFORMATION OBTAINED FROM THE COMPANY OR ANY PRODUCTS OR SERVICES PURCHASED.

NO THIRD PARTY IS PERMITTED TO USE OR RELY UPON THE INFORMATION SET FORTH IN THIS REPORT, AND NO LIABILITY TO ANY THIRD PARTY IS UNDERTAKEN BY THE COMPANY.

YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COMPANY, ITS LICENSORS, AGENTS, SUPPLIERS, RESELLERS, SERVICE PROVIDERS, CONTENT PROVIDERS, OR ANY OTHER SUBSCRIBERS OR SUPPLIERS, SUBSIDIARIES, AFFILIATES, EMPLOYEES, AND SUBCONTRACTORS BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, INCOME, SAVINGS, DATA, BUSINESS, OPPORTUNITY, OR GOODWILL, PAIN AND SUFFERING, EMOTIONAL DISTRESS, NON-OPERATION OR INCREASED EXPENSE OF OPERATION, BUSINESS INTERRUPTION OR DELAY, COST OF CAPITAL, OR COST OF REPLACEMENT PRODUCTS OR SERVICES, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, NEGLIGENCE, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE, OR OTHERWISE AND WHETHER CAUSED BY NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE OR ANY OTHER CAUSES WHATSOEVER, AND EVEN IF THE COMPANY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY FOR SUCH DAMAGES.

THESE LIMITATIONS WILL SURVIVE THE CONTRACT.

[Limitation Language for limitation to amount of fee paid for products]

WARRANTY DEED

Y887210
11/09/05 300728018

\$24.00

THE STATE OF TEXAS §
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS THAT:

JOHN W. PURCELL and PATTI L. PURCELL ("*Grantors*"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantors, have GRANTED, BARGAINED, SOLD and CONVEYED and by these presents do GRANT, BARGAIN, SELL and CONVEY unto PURCELL FAMILY PARTNERSHIP, LTD., a Texas limited partnership ("*Grantee*") and Grantee's heirs, successors and assigns, the following described real property (the "*Subject Property*"):

BEING all of Grantors' interest in that certain tract of land containing 0.2337 acre lot located in the James Blessing Survey, Abstract 162, in Harris County, Texas, being Lots 9, 10 and 11 of Block 24 of the original subdivision of the Town of Bellaire, as recorded in Volume 3, Page 59 of the Harris County Map Records, and being more particularly described by metes and bounds as shown on Exhibit "A" which is attached hereto and made a part hereof for all purposes.

This conveyance is made and accepted expressly subject to (i) liens securing payment of ad valorem taxes for the year 2005 and subsequent years, and subsequent assessments for prior years due to change in land usage or ownership, and (ii) all restrictions, easements, rights-of-way, all prior conveyances and reservations of oil, gas and other mineral interests and royalty interests, all oil, gas and other mineral leases, maintenance and assessment charges and liens securing same, building set back lines, zoning laws and ordinances of governmental authorities and all covenants and agreements, if any, of record in the Real Property Records of Harris County, Texas, to the extent that such matters are presently valid, subsisting and affect the Subject Property.

TO HAVE AND TO HOLD the Subject Property, together with all and singular the rights and appurtenances thereto and anywise belonging unto the said Grantee, and Grantee's heirs, successors and assigns forever; and Grantors do by these presents bind themselves, their heirs, successors and assigns to warrant and forever defend all and singular the Subject Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

EXECUTED this 02 day of November, 2005.

GRANTORS:

John W. Purcell

JOHN W. PURCELL

Patti L. Purcell

PATTI L. PURCELL

Grantee's Address:

5222 Holly Street
Bellaire, Texas 77401

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me on this the 02 day of November, 2005, by John W. Purcell.



Sarah Liscum
Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me on this the 02 day of November, 2005, by Patti L. Purcell.



Sarah Liscum
Notary Public in and for the State of Texas

AFTER RECORDING, RETURN TO:

The Shanks Law Firm
5900 Memorial Drive, Suite 210
Houston, Texas 77007-8008

PurcellJohnDeed5012BisssonnettoPS.vpd

Attachment: City Planning Letter-5012 Bissonnet (2280 : Consideration-5012 Bissonnet)

EXHIBIT "A"

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW
 THE STATE OF TEXAS
 COUNTY OF HARRIS
 I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED. In the Official Public Records of Real Property of Harris County, Texas on

NOV - 9 2005



Shirley L. Kuyman
 COUNTY CLERK
 HARRIS COUNTY, TEXAS

A tract of land containing 0.2337 acre located in the James Blessing Survey, Abstract 162, Harris County, Texas, being Lots 9, 10, and 11 of Block 24 of the original subdivision of the Town of Bellaire, as recorded in Volume 3, Page 59 of the Harris County Map Records, and being more particularly described as follows:

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This description is based on the Land Title Survey and plat made by B.L. Luper, Registered Public Surveyor on August 10, 1983.

FILED FOR RECORD
 8:00 AM

NOV - 9 2005

Shirley L. Kuyman
 County Clerk, Harris County, Texas

Attachment: City Planning Letter-5012 Bissonnet (2280 : Consideration-5012 Bissonnet)

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
 THE STATE OF TEXAS
 COUNTY OF HARRIS
 This document was FILED in File Number Sequence on the date and at the time
 shown herein. It is hereby RECORDED in the Official Public Records of Harris
 County, Texas on

EXHIBIT "A"

MAY - 1 2003



Brenda S. Heyman
 COUNTY CLERK
 HARRIS COUNTY, TEXAS

A tract of land containing 0.2337 acre located in the James Blessing Survey, Abstract 162, Harris County, Texas, being Lots 9, 10, and 11 of Block 24 of the original subdivision of the Town of Bellaire, as recorded in Volume 3, Page 59 of the Harris County Map Records, and being more particularly described as follows:

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FILE FOR RECORD
 8:00 AM

MAY - 1 2003

Brenda S. Heyman
 County Clerk, Harris County, Texas

U373249

Hb 10
CHICAGO TITLE
GF 255156 NW

532-15-0946

ATTENTION COUNTY CLERK--THIS INSTRUMENT COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A MORTGAGE, BUT ALSO AS A FINANCING STATEMENT COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE GRANTOR (DEBTOR) AND BENEFICIARY (SECURED PARTY) ARE SET FORTH IN THIS INSTRUMENT.

05/05/00 101312586 U373249

\$59.00

DEED OF TRUST, SECURITY AGREEMENT, AND FINANCING STATEMENT

This Deed of Trust, Security Agreement, and Financing Statement (the "Deed of Trust") is made and entered into as of April 14, 2000 (the "Effective Date"), by and among JOHN W. PURCELL, also known as JOHN PURCELL (the "Grantor"), whose address is 5222 Holly Street, Bellaire, Texas 77401, MIKE ROY, as Trustee (the "Trustee"), for the benefit of STERLING BANK (the "Beneficiary"), a national banking association, whose address for notice hereunder is 15000 Northwest Freeway, P.O. Box 40333, Houston, Texas 77240-0333. This Deed of Trust is executed pursuant to the terms of the Credit Agreement, defined below, and in consideration of the Loans made pursuant to the terms thereof.

ARTICLE I
DEFINITIONS

1.1 Defined Terms. For the purposes of this Deed of Trust, unless the context otherwise requires, the following terms shall have the respective meanings assigned to them in this Article or in the sections referred to below:

"Beneficiary" means the above named Person, and any and all subsequent holder or holders, from time to time, of the Note.

"Borrowers" mean the Grantor and Volvos Only, Inc.

"Buildings" mean any and all buildings, covered garages, utility sheds, workrooms, air conditioning towers, open parking areas and other improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land, or any part thereof.

"Credit Agreement" means the Construction Loan Agreement of even date herewith by and among the Grantor and Volvos Only, Inc. (the "Borrowers") and Beneficiary, under and pursuant to the terms of which the Beneficiary will make the Loans to the Borrowers.

"Event of Default" and "Default" shall have the meanings ascribed to them in the Credit Agreement, and "Default" shall also mean the happening or occurrence of any of the events described in Article V.

"Fixtures" mean all materials, supplies, equipment, apparatus and other items now or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with, temporarily or permanently, any of the Buildings or the Land, including, but not limited to, any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning apparatus, sprinkler systems, fire extinguishing apparatus and

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532-15-0947

equipment, water tanks, light standards and poles, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, counter-top units, appliances, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements, together with all accessions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof.

"Grantor" means the above named Person, and any and all subsequent owners of the Mortgaged Property, or any part thereof.

"Impositions" mean all, (i) real estate and personal property taxes, (ii) charges for any easement, license or agreement maintained for the benefit of the Mortgaged Property, and (iii) other taxes, charges and assessments and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which, at any time prior to or after the Effective Date, may be assessed, levied or imposed upon the Mortgaged Property or the Rents, or the ownership, use, occupancy or enjoyment thereof.

"Land" means the real estate described below and all rights, titles and interests appurtenant thereto:

A tract of land containing 0.2337 acre located in the James Blessing Survey, Abstract 162, Harris County, Texas, being Lots 9, 10, and 11 of Block 24 of the original subdivision of the Town of Bellaire, as recorded in Volume 3, Page 59 of the Harris County Map Records, and being more particularly described as follows:

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THENCE South, 61 deg. 27 min. 27 sec. West, along the Northwest line of Bissonnet Street, a distance of 6.15 feet to a "+" cut in concrete at the intersection with Spruce Street, 60 feet wide;

THENCE South, 89 deg. 55 min. 07 sec. West, along the North line of Spruce Street and the South line of Lot 9, a distance of 114.60 feet to a "+" cut in concrete for the Southwest corner of Lot 9 and the intersection with Rice Avenue;

THENCE North, along the East line of Rice Avenue and the West line of Lots 9, 10, and 11, a distance of 85.00 feet to the POINT OF BEGINNING, and containing 10,182 square feet of land.

"Mortgaged Property" means all or, where the context permits or requires, any portion of, any interest in the Land, Buildings, Fixtures, Personalty, Leases, Rents, and Utility Rights, together with:

532-15-0948

- A. All rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances in anywise appertaining thereto, and all right, title and interest of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof providing access to or benefitting the Land; and,
- B. All betterments, additions, alterations, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein; and,
- C. All right, title and interest of Grantor in and to any awards, remuneration, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Buildings, Fixtures, Personalty, or Utility Rights, including, but not limited to, those for any vacation of, or change of grade in, any streets affecting the Land or the Buildings; and,
- D. All permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the Land, Buildings or Fixtures; and,
- E. The Plans, all contracts and subcontracts relating to the construction of the Buildings and Fixtures; and,
- F. All deposits, funds, accounts, contract rights, instruments, documents, notes and/or chattel paper arising from or by virtue of any transaction relating to the Land, Buildings, Fixtures, Personalty, Rents, and Utility Rights; and,
- G. All proceeds arising from or by virtue of the sale, lease or other disposition of any of the Mortgaged Property; and,
- H. All right, title and interest of Grantor in and to any awards, remuneration, settlements or compensation heretofore made or hereafter to be made under any policy of insurance relating to the Mortgaged Property; and,
- I. Any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment, or the performance and discharge of the Obligations.

"Note" means the promissory note of even date herewith, executed by Borrower payable to the order of Beneficiary in the amount of \$250,000.00, payable as therein set out, with the final payment due on October 14, 2005, and secured, in part, by this Deed of Trust, and any and all renewals, rearrangements, enlargements or extensions thereof and of any note or notes given therefor.

"Obligations" means, in addition to the Obligations defined in the Credit Agreement:

- A. All funds hereafter advanced by Beneficiary to or for the benefit of Grantor as contemplated by any covenant or provision contained in this Deed of Trust, regardless of whether such indebtedness, obligations and liabilities are direct, indirect, fixed, contingent, joint, several, or joint and several; and,
- B. All costs incurred by Beneficiary, including, but expressly not limited to, reasonable attorneys' fees, court costs and other similar costs, to obtain, preserve, perfect and enforce the liens and security interests securing the payment of the Obligations, and costs incurred to maintain, preserve, collect and sell the Mortgaged Property, or any part thereof, including but not limited

532-15-0949

to, taxes, assessments, insurance premiums, repairs, rent, storage charges, advertising costs, brokerage fees and expenses of sale; and,

- C. All other indebtedness of whatever kind or character owing, or which may hereafter become owing, by Grantor to Beneficiary, whether the indebtedness is direct or indirect, primary or secondary, fixed or contingent, or arises out of or is evidenced by note, deed of trust, open account, overdraft, endorsement, surety agreement, guaranty, or otherwise; and, it is specifically contemplated that Grantor may hereafter become indebted to Beneficiary in further sum or sums; and,
- D. All renewals, extensions and modifications of the Obligations, or any part thereof; and,
- B. Any judgment entered by a court of competent jurisdiction enforcing or requiring payment any of the items described above.

"Personalty" means all right, title and interest of Grantor in and to all furniture, furnishings, equipment, machinery, goods, insurance proceeds, contract rights, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Grantor with any governmental agencies, boards, corporations, providers of utility services, public or private, and all other personal property, other than the Fixtures, of any kind or character as defined in and subject to the provisions of the UCC, which are now or hereafter located or to be located upon, within or about the Land and the Buildings, or which are or may be used in or related to the planning, development, financing or operation of the Mortgaged Property, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof.

"Plans" mean any and all plans, specifications and other technical descriptions prepared for construction of any improvements on the Land, including any Building.

"Rents" mean all of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Grantor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property.

"Requirements" mean (i) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any manner applicable to Grantor or the Mortgaged Property, including, but specifically not limited to, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, and including, but expressly not limited to, all Environmental Laws, the Americans with Disabilities Act of 1990, and the Fair Housing Amendments Act of 1988, as same may, from time to time, be amended and all regulations issued pursuant thereto; (ii) any and all Leases; (iii) any and all other contracts, written or oral, of any nature to which Grantor may be bound, including, without limitation, any other contract pursuant to which Grantor is granted a possessory interest in the Land; and, (iv) any and all restrictions or restrictive covenants, present and future as the same may apply to the Mortgaged Property.

"Utility Rights" mean all public and private utility connections, all rights relating to sewage treatment capacity, water capacity and utilities serving the Land and Buildings, such as utility contracts, and all rights to refunds, reimbursement and/or payment of any type from any utility company or Governmental Authority, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs.

532-15-0950

1.2 Other Definition Provisions.

- A. Capitalized terms used herein and not otherwise defined in this Deed of Trust shall have the meanings ascribed to them in the Credit Agreement or the other Loan Documents.
- B. Defined terms used herein in the singular shall import the plural and vice versa.
- C. The words "hereof," "herein," "hereunder" and similar terms when used in this Deed of Trust shall refer to this Deed of Trust as a whole and not to any particular provision of this Deed of Trust.

ARTICLE II GRANT

2.1 Grant. To secure the full and timely payment, and the full and timely performance and discharge of the Obligations, Grantor has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey the Mortgaged Property unto the Trustee, the Trustee's successors and assigns, forever, to have and to hold the Mortgaged Property unto the Trustee, the Trustee's successors and assigns, forever, and Grantor binds Grantor, Grantor's heirs, successors and assigns, to warrant and forever defend title to the Mortgaged Property unto Trustee against every Person whomsoever lawfully claiming or to claim the same or any part thereof.

2.2 Trust. If, however, Borrowers shall pay, or cause to be paid, as and when the same shall become due and payable and shall perform and discharge, or cause to be performed and discharged, the Obligations on or before the date same are to be performed and discharged, then, in that case only, the liens, security interests, estates and rights granted by the Loan Documents, including this Deed of Trust, shall terminate and be released by Beneficiary at Grantor's expense, otherwise same shall remain in full force and effect. A certificate or statement from Beneficiary stating that the Obligations have not been paid in full, or that the Obligations have not been fully performed and discharged, shall be sufficient evidence thereof for the purposes of reliance by third parties on that fact.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Grantor unconditionally represents and warrants to Beneficiary as follows:

3.1 Title to Mortgaged Property. Grantor has good and indefeasible title to the Land, Buildings and Fixtures in fee simple, and good and marketable title to the Rents, Utility Rights, Plans and Personalty, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever. This Deed of Trust constitutes a valid and subsisting first priority deed of trust lien on the Land, Buildings and Fixtures and a valid and subsisting first priority security interest in and to, and a valid first assignment of, the Utility Rights, Plans and Personalty, all in accordance with the terms hereof. The Land and Buildings are not Grantor's homestead or residence, and are not and will not be claimed, used or occupied by Grantor, as such.

3.2 Litigation. Except as has been disclosed in writing by Grantor to Beneficiary, there are no actions, suits or proceedings pending, or to the knowledge of Grantor threatened, against or affecting the Mortgaged Property, or involving the validity or enforceability of this Deed of Trust or the priority of the liens and security interests created by the Loan Documents. No event has occurred, including specifically, but not limited to, Grantor's execution of the Loan Documents and Borrowers' consummation of the Loans,

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which will violate, be in conflict with, result in the breach of, or constitute, with due notice or lapse of time, or both, a default under any Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon Grantor's property other than the liens and security interests created by the Loan Documents.

3.3 Hazardous Materials. No prior or current owner of the Mortgaged Property or any part thereof or any tenant, subtenant, prior tenant or prior subtenant has used any Hazardous Materials on, from or affecting the Mortgaged Property or any part thereof in any manner which violates any of the Environmental Laws.

ARTICLE IV COVENANTS

4.1 Affirmative Covenants. Grantor unconditionally covenants and agrees with Beneficiary as follows:

- A. Grantor will pay and perform all of the Obligations, as and when called for in the Loan Documents and on or before the due dates thereof.
- B. Grantor will promptly comply with, conform to and observe all present and future Requirements whether or not same shall necessitate structural changes in the Buildings and/or Fixtures or interfere with the use of the Mortgaged Property.
- C. Grantor will protect the first priority lien and security interest status of this Deed of Trust and will not, without the prior written consent of Beneficiary, create, place, or permit to be created or placed, or otherwise mortgage, hypothecate or encumber the Mortgaged Property with, any other lien or security interest of any nature whatsoever, statutory, constitutional or contractual, regardless of whether same is allegedly or expressly inferior to the lien and security interest created by this Deed of Trust. If any such lien or security interest is asserted against the Mortgaged Property, Grantor will promptly, at Grantor's sole cost and expense, pay the underlying claim in full or take such other action to cause same to be released. If any lien or security interest is asserted against the Mortgaged Property, but such lien or security interest does not arise by virtue of the voluntary action of Grantor, Grantor shall have the right to dispute any such asserted lien or security interest subject to a requirement by Beneficiary that Grantor post a bond or other type of security reasonably satisfactory to Beneficiary as collateral for such involuntary lien. Within five (5) days from the date any lien or security interest is asserted, Grantor shall give Beneficiary notice of the lien or security interest claimed. The notice shall specify who is asserting the lien or security interest and shall detail the origin and nature of the underlying claim giving rise to such asserted lien or security interest.
- D. Grantor will duly pay and discharge the Impositions not later than the due dates thereof, or the day any fine, penalty, interest or cost may be added thereto or imposed, or the day any lien may be filed for the nonpayment thereof, if such day is used to determine the due date of the respective item. Grantor may however, if permitted by law and if installment payments will not create or permit the filing of a lien against the Mortgaged Property, pay the Impositions in installments, whether or not interest shall accrue on the unpaid balance of the Impositions. Grantor will duly pay and discharge not later than the due dates thereof, or the date any fine, penalty, interest or cost may be added thereto or imposed, or the day any lien may be filed for the non-payment thereof, if such day is used to determine the due date of the respective item, all taxes, assessments and charges of every nature and to whomever assessed that may now or

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hereafter be levied or assessed upon this Deed of Trust, upon the lien or estate hereby created, or upon the Obligations, subject, however, to the provisions of Section 10.10.

- E. Upon demand of Beneficiary and in order to implement the provisions of Section 4.1.D and Section 4.1.I, Grantor shall monthly pay to Beneficiary an amount (the "Escrow Sum") equal to one twelfth of the sum of (i) the annual Impositions, estimated, wherever necessary, to become due for the tax year during which such payment is due, and (ii) the insurance premiums for the same year for the insurance policies required hereunder. If Beneficiary determines that any amounts theretofore paid by Grantor are insufficient for the payment in full of the Impositions and insurance premiums, Beneficiary shall notify Grantor of the increased amounts required to provide a sufficient amount necessary to pay the Impositions and insurance premiums. Grantor shall then pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. The Escrow Sum may be held by Beneficiary in non-interest bearing accounts and may be commingled with Beneficiary's other funds. Upon assignment of this Deed of Trust, Beneficiary shall have the right to pay over the balance of the Escrow Sum then in Beneficiary's possession to Beneficiary's assignee whereupon Beneficiary and the Trustee shall then become completely released from all liability with respect thereto. Upon full payment of the Obligations or at such earlier time as Beneficiary may elect, the balance of the Escrow Sum in Beneficiary's possession shall be paid over to Grantor, whether the Person identified in defined terms of this Deed of Trust or the then owner of the Mortgaged Property, and no other party, including prior owners of the Mortgaged Property, shall have any right or claim thereto. If no Event of Default shall have occurred and be continuing, the Escrow Sum shall, at the option of Beneficiary, be paid to Grantor in sufficient time to allow Grantor to pay the Impositions and the required insurance premiums or may be paid directly to the Governmental Authority and the insurance company entitled thereto. If, however, an Event of Default shall have occurred and be continuing, Beneficiary shall have the additional option of crediting the full amount of the Escrow Sum against the Obligations. Beneficiary is not obligated to render the Mortgaged Property to taxing authorities or to attempt to obtain any adjustments to the assessed valuation or the amount of taxes, insurance premiums or Impositions with respect to the Mortgaged Property. Notwithstanding anything to the contrary contained in this Deed of Trust, Beneficiary reserves the right to waive the payment by Grantor to Beneficiary of the Escrow Sum, and, in the event Beneficiary does so waive such payment, it shall be without prejudice to Beneficiary's rights to insist, at any subsequent time or times, that such payments be made in accordance herewith.
- F. In the event of the passage, after the date of this Deed of Trust, of any law of the State of Texas changing in any manner the laws for the taxation of deeds of trust or debts and the interest thereon secured by deeds of trust for state or local purposes, or the manner of the collection of any such taxation so as to adversely affect this Deed of Trust or Beneficiary's rights hereunder, the Beneficiary shall have the right to give thirty (30) days written notice to Grantor requiring the payment of the Obligations, and if such notice is given, the Obligations shall become due, payable and collectible at the expiration of the thirty (30) day period.
- G. Grantor will keep the Mortgaged Property in good order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements and alterations thereof and thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, which are necessary to keep same in such order and condition. Grantor will also use Grantor's best efforts to prevent any act or occurrence which might impair the value or usefulness of the Mortgaged Property for the intended use as set forth in the Plans or elsewhere in the Loan Documents. In instances where repairs, replacements, renewals, additions, betterments, improvements or alterations are required to the Mortgaged Property on an emer-

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gency basis to prevent loss, damage, waste or destruction thereof, Grantor shall proceed to construct same, or cause same to be constructed, notwithstanding anything to the contrary contained in Section 4.2.B. In instances where emergency measures are to be taken, Grantor will notify Beneficiary in writing of the commencement of same and the measures to be taken and, when same are completed, the completion date and the measures actually taken.

- H. In the event the ownership of the Mortgaged Property or any part thereof becomes vested in a Person other than Grantor, Beneficiary may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and the Obligations in the same manner as with Grantor without in any manner vitiating or discharging Grantor's liability hereunder or on the Obligations. No sale of the Mortgaged Property, forbearance on the part of Beneficiary, or extension of the time for the payment of the Obligations given by Beneficiary shall operate to release, discharge, modify, change or affect, either in whole or in part, any original liability of Grantor.
- I. Grantor will obtain and maintain insurance, on a non-reporting basis, upon and relating to the Mortgaged Property in such amounts and with such insurers of recognized responsibility as are acceptable to Beneficiary, in Beneficiary's sole judgment, insuring (i) against personal injury and death, loss by fire and such other hazards, casualties and contingencies, (ii) builder's all risk coverage, as are normally and usually covered by extended coverage policies in effect where the Land is located, (iii) business interruption or rent loss insurance in an amount at least equal to 100% of the sum of annual debt service on the Note and operating expenses, including, without limitation, real estate taxes and assessments and casualty insurance, (iv) flood insurance, and (v) such other risks as may be specified by Beneficiary. Each insurance policy issued in connection therewith shall provide by way of endorsements, riders or otherwise that (i) proceeds will be payable to Beneficiary as Beneficiary's interest may appear; (ii) the coverage of Beneficiary shall not be terminated, reduced or affected in any manner regardless of any breach or violation by Grantor of any warranties, declarations or conditions in the policy; (iii) no insurance policy shall be canceled, endorsed, altered or reissued to effect a change in coverage for any reason and to any extent whatsoever unless such insurer shall have first given Beneficiary ten (10) days prior written notice thereof; and, (iv) Beneficiary may, but shall not be obliged to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance and such payments shall be accepted by the insurer to prevent same. Beneficiary shall be furnished with a certificate of insurance, together with the original of each such initial policy coincident with the execution of this Deed of Trust and a certificate of insurance, together with the original of each renewal policy not less than fifteen (15) days prior to the expiration of the initial or each succeeding renewal policy, together with receipts or other evidence that the premiums thereon have been paid. Grantor assigns all rights to the insurance policies, including, but not limited to the proceeds thereof, to Beneficiary as collateral for the Obligations. Beneficiary is irrevocably appointed by Grantor as attorney-in-fact, coupled with an interest, of Grantor to (i) assign any insurance policy in the event of the foreclosure of this Deed of Trust or other extinguishment of the Obligations, and (ii) endorse any check made payable to Grantor, or to Grantor and any other Person, including without limitation, Beneficiary, representing amounts payable under or other proceeds from any insurance policy maintained with respect to the Mortgaged Property. Beneficiary shall not, however, be obligated to collect, and shall not be liable for failure to collect, any amounts or proceeds under any insurance policy.
- J. If any act or occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, including any casualty for which insurance was not obtained or obtainable, shall result in damage to or loss or destruction of the Mortgaged Property, Grantor will immediately give notice thereof

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to Beneficiary. Unless the provisions of Section 4.1.M apply, Grantor will, at Grantor's sole cost and expense and regardless of whether the insurance proceeds, if any, shall be sufficient or available for the purpose, promptly commence and continue diligently to completion the restoration, repair, replacement and rebuilding of the Mortgaged Property as nearly as possible to the value, condition and character immediately prior to such damage, loss or destruction.

- K. If (i) an Event of Default exists at the time that the Mortgaged Property is damaged by fire or other casualty, (ii) the damage from the casualty loss exceeds the amount of \$50,000.00, or (iii) an Event of Default shall occur at any time during the period of restoration of the Mortgaged Property, the amount collected under each insurance policy shall, at the sole option of Beneficiary, be used in any one or more of the following manners: (a) Applied on the Obligations, whether the Obligations are then matured or unmatured; (b) used to perform or discharge any of the Obligations; (c) used for the restoration, repair or replacement of the Mortgaged Property; or, (d) released to Grantor.
- L. If a casualty loss shall occur and if the proceeds of the insurance are made available to Grantor for restoration of the Mortgaged Property, the proceeds will be made available on the following terms and conditions:

(1) If the estimated cost of restoration of the Mortgaged Property is equal to or less than \$10,000.00, Grantor shall promptly settle and adjust any claims under the insurance policies which insure against such risks, receive and hold any insurance proceeds and apply the same to the restoration of the Mortgaged Property, in which case Grantor shall not be obligated to establish an escrow fund. Beneficiary shall have the right to obtain an opinion of an independent contractor or engineer satisfactory to Beneficiary, but at Grantor's expense, to estimate the cost to restore the Mortgaged Property to its original condition. The opinion may be revised, at Grantor's expense, as restorations are made. If ever during the restoration of the Mortgaged Property, the amount of the insurance proceeds is not sufficient to restore the Mortgaged Property based on the independent contractor's or engineer's opinion, subject to revision as restorations are made, Grantor shall be obligated to pay the difference toward the restoration of the Mortgaged Property.

(2) If the estimated cost of restoration is greater than \$10,000.00, Grantor shall promptly settle and adjust any claims under the insurance policies and Beneficiary shall have the right, but not the obligation, to participate in the settlement of the insurance claims and may, in Beneficiary's sole discretion, consent or withhold Beneficiary's consent to any settlement, adjustment, or compromise of such insurance claims and no such settlement, adjustment, or compromise shall be final or binding upon Beneficiary without Beneficiary's prior consent.

(3) Upon settlement of the insurance claims, the insurance proceeds shall be deposited into an interest bearing escrow fund (the "Fund") with Beneficiary. If the amount of the insurance proceeds is not sufficient to restore the Mortgaged Property based on the independent contractor's or engineer's estimate as set out in Section 4.1.L.(4), subject to revision as restorations are made, Grantor shall be obligated to deposit in the Fund the difference between the contractor's or engineer's estimate and the amount of the insurance proceeds or deliver to Beneficiary an irrevocable, unconditional letter of credit issued in a form and by a financial institution acceptable to Beneficiary or other cash equivalent acceptable to Beneficiary.

(4) The Fund shall not be released by Beneficiary unless used to restore the Mortgaged Property to its original condition and only when a construction inspector satisfactory to Bene-

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fiary approves such disbursements from time to time. The Fund shall not be disbursed to Grantor unless and until (i) Beneficiary has approved plans and specifications for the restoration (and once approved by Beneficiary being herein called the "Work") of the Mortgaged Property; (ii) Grantor has executed a contract acceptable to Beneficiary with a general contractor acceptable to Beneficiary for the Work; (iii) the general contractor has submitted lien waivers and/or releases, executed by the general contractor and all subcontractors, which may be partial releases to the extent of partial payments and which, in the case of final releases, may be contingent upon payment if Beneficiary makes payment directly to such contractor or subcontractor; (iv) Grantor has furnished Beneficiary with an abstractor's certificate from the date of the issuance of the Title Policy, reflecting that no liens have been filed; (v) Grantor has, at Beneficiary's sole option, either (a) secured a payment bond in the amount of the contract for the Work, naming Beneficiary as an additional indemnitee, and Grantor has recorded such bond and the contract in the real property records of all counties in which the Mortgaged Property is located, or (b) provided for the retainage of funds for the benefit of potential lien claimants in accordance with Texas law; and, (vi) Grantor has submitted such other documents and information as may be required by Beneficiary to determine that the Work has been satisfactorily performed in accordance with the plans and specifications approved by Beneficiary. If any request for payment for the Work is for an amount in excess of the sum then remaining in the Fund, Grantor shall advance the required amount in cash immediately upon demand by Beneficiary.

(5) Any sums remaining in the Fund after payment of the costs to complete the Work shall be retained by Beneficiary and applied to the payment or prepayment of all or any principal and interest due under the Obligations.

(6) If Grantor (i) abandons the Mortgaged Property, (ii) fails to respond within thirty (30) days to a settlement offer by the insurer, (iii) fails to fulfill any of Grantor's obligations under this Section, including, but not limited to, the obligations to promptly settle and adjust any insurance claims, to apply all insurance proceeds to the restoration of the Mortgaged Property, to fund any difference between the contractor's or engineer's estimate and the amount of insurance proceeds, and to fund in cash any differences between the cost of restoration and the amount in the Fund, or (iv) fails to satisfy any condition to a disbursement of insurance proceeds set forth in Section 4.1.L.(4), within ten (10) days after written notice from Beneficiary to Grantor demanding such satisfaction, then Beneficiary may at Beneficiary's sole and absolute discretion collect and apply the insurance proceeds as set out Section 4.1.K.

- M. If (i) the cost of the restoration, repair or replacement work exceeds \$50,000.00, (ii) no Event of Default then exists and remains uncured, and (iii) Beneficiary elects not to apply the insurance proceeds, if any are available, to the restoration, repair or replacement of the Mortgaged Property, then Grantor shall not be obligated to restore, repair or replace the Mortgaged Property in accordance with the foregoing provisions of this Section.
- N. Grantor covenants: (i) To duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding on Grantor under each of the Leases; (ii) not to do or permit to be done anything to impair the security of any of the Leases; (iii) except for tenant deposits, not to collect any of the Rents more than thirty (30) days in advance of the time when the same become due under the terms of such Leases; (iv) not to discount any future accruing Rents; (v) to maintain each of the Leases in full force and effect during the full term thereof, except as otherwise provided in (vii) below; (vi) to appear in and defend any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants and agreements of Grantor or the other party or

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parties thereto; (vii) not to amend, modify, or terminate any of the Leases or accept a surrender of the premises leased thereunder in any respect or enter into any new Leases without the prior written consent of Beneficiary; (viii) not to assign or grant a security interest in and to any of the Leases to any party other than Beneficiary without the prior written consent of Beneficiary; (ix) at the request of Beneficiary, to assign and transfer to Beneficiary any specific Leases, the assignment to be in form and substance satisfactory to Beneficiary; (x) at the request of Beneficiary, to execute and deliver all such further assurances and assignments in and to the Mortgaged Property as Beneficiary shall from time to time reasonably require; and, (xi) to deliver to Beneficiary executed counterparts of all Leases regardless of whether such Leases were or are executed before or after the Effective Date.

- O. Grantor will, upon the request of Beneficiary, cause the Appraisal to be updated.
- P. Grantor will permit Beneficiary, and Beneficiary's agents, representatives and employees, to inspect the Mortgaged Property at all reasonable times.
- Q. Grantor will defend, at Grantor's sole cost and expense, and hold Beneficiary harmless from, any action, proceeding or claim affecting the Mortgaged Property or the Loan Documents, or resulting from or arising out of the failure of Grantor to perform or discharge the Obligations or otherwise to comply with the provisions of the Loan Documents, and all costs and expenses incurred by Beneficiary in protecting Beneficiary's interests hereunder in such an event, including all court costs and reasonable attorneys' fees, shall be borne by Grantor.
- R. Grantor will maintain full and accurate books of account and other records reflecting the results of the operations of the Mortgaged Property. Grantor will furnish, or cause to be furnished, to Beneficiary on or before ninety (90) days after the end of Grantor's fiscal year, a certificate by Grantor certifying that, as of the date thereof, there does or does not, as the case may be, exist an event which constitutes, or which upon due notice or lapse of time or both would constitute, an Event of Default or, if an Event of Default exists, specifying the nature thereof. At any time and from time to time Grantor shall deliver to Beneficiary such financial data as Beneficiary shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property, and Beneficiary shall have the right, at reasonable times and upon reasonable notice, to audit, examine and make copies or extracts of Grantor's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Beneficiary and Beneficiary's representatives for such purpose on the Mortgaged Property or at such other location as Beneficiary may approve.
- S. At any time during the term in which (i) the liens created hereby are in existence, or (ii) Beneficiary holds any interest in the Mortgaged Property, Beneficiary may require Grantor to provide Beneficiary, at the expense of Grantor, an environmental inspection, assessment or audit, prepared by a qualified consultant approved by Beneficiary, certifying as to the presence or absence of Hazardous Materials. If Grantor shall fail to provide the environmental survey, assessment or audit, Beneficiary may, but shall not be obligated to do so, conduct such survey, assessment or audit, all of the costs of which shall be added to the Obligations, shall be secured hereby and shall be due and payable on demand. Grantor grants Beneficiary, Beneficiary's employees, agents and independent contractors, the right to enter on the Mortgaged Property for the purposes of conducting surveys, audits, tests and examinations and the installation of such monitoring and testing devices, as Beneficiary deems necessary.

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- T. Grantor will maintain, preserve and renew all rights of way, easements, grants, privileges, licenses and franchises reasonably necessary for the intended use of the Mortgaged Property. Grantor will not, without the prior consent of Beneficiary, initiate, join in or consent to any private restrictive covenant or other public or private restriction as to the use of the Mortgaged Property. Grantor shall, however, comply with all Requirements which may at any time affect the use of the Mortgaged Property.
- U. Within three (3) Business Days after receipt from Beneficiary of a request therefor, Grantor shall execute and deliver to Beneficiary, and/or to such other party Beneficiary may designate, a certificate stating: (i) The amount of the unpaid principal balance and accrued interest due and owing on the Note; (ii) the date on which the last payment on the Note was made and the date the next payment on the Note is due; (iii) that the Loan Documents described in the certificate have or have not been amended or changed in any manner, and if changed or amended, how amended; (iv) that, if true, there are no Events of Default then existing; and, (v) that, if true, Grantor has no defenses, claims or rights of set off against the full enforcement of the Loan Documents according to their terms.

4.2 Other Covenants. Grantor covenants and agrees with Beneficiary that, until the Obligations shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

- A. Grantor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which: (i) Violates any Requirement; (ii) may be dangerous unless safeguarded as required by law; (iii) constitutes a public or private nuisance; or, (iv) makes void, voidable or cancelable, or increases the premium of, any insurance policy then in force.
- B. Grantor will not commit or permit any waste of the Mortgaged Property and will not, subject to the provisions of Section 4.1.G and Section 4.1.M, without the prior written consent of Beneficiary, make or permit to be made any alterations or additions to the Mortgaged Property of a material nature.
- C. Grantor will not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Land or Buildings unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Grantor, free and clear of any lien or security interest, other than the liens created hereunder.
- D. Grantor shall not use or cause, as a result of any intentional or unintentional act or omission on the part of Grantor, the Mortgaged Property or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Materials except in strict compliance with all laws, ordinances, codes, rules, orders, regulations or policies of Governmental Authority governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials (collectively, the "Environmental Laws"). Neither shall Grantor cause as a result of any intentional or unintentional act or omission on the part of Grantor, a release of any Hazardous Materials onto the Mortgaged Property or onto any other property. Grantor shall comply with all applicable Environmental Laws and shall obtain and comply with any and all approvals, registrations or permits required thereunder. Grantor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Mortgaged

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Property or any part thereof (i) in accordance with all applicable Environmental Laws, (ii) to the satisfaction of the Beneficiary, and (iii) in accordance with the orders and directives of all Governmental Authority. Grantor shall promptly notify Beneficiary of Grantor's receipt of any notice of a violation of any Environmental Laws. GRANTOR SHALL DEFEND, INDEMNIFY, AND HOLD BENEFICIARY, BENEFICIARY'S EMPLOYEES, AGENTS, OFFICERS, AND DIRECTORS, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SETTLEMENTS, DAMAGES, COSTS OR EXPENSES OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, ARISING OUT OF, OR IN ANY WAY RELATED TO: (i) The presence, disposal, release or threatened release of any Hazardous Materials which are on, from, or affect the soil, water, vegetation, buildings, personal property, Persons, animals or other wise at the Mortgaged Property or any part thereof; (ii) any personal injury, including wrongful death, or property damage, real or personal, arising out of or related to such Hazardous Materials; (iii) any lawsuit brought or threatened, settlement reached, or governmental order relating to such Hazardous Materials; and/or, (iv) any violation of laws, orders, regulations, codes, or requirements or demands of Governmental Authority, or any policies or requirements of Beneficiary, which are based upon or in any way related to such Hazardous Materials, including, without limitation, attorneys' and consultant fees, investigation and laboratory fees, court costs and litigation expenses. In the event Beneficiary forecloses under this Deed of Trust, or Grantor tenders a deed in lieu of foreclosure, Grantor shall assure Beneficiary that the Mortgaged Property is conveyed free of any and all Hazardous Materials so that the condition of the Mortgaged Property shall conform with all applicable Environmental Laws. For purposes of this Deed of Trust, "Hazardous Materials" shall be deemed to include, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. §§9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§6901, et seq.), the Texas Solid Waste Disposal Act, as amended, and the regulations adopted and publications promulgated pursuant thereto, or as defined in any other Environmental Laws and any friable asbestos or other materials, which may, if released into the ambient air, constitute a health hazard for individuals. The provisions of this subsection shall be in addition to any and all other obligations and liabilities Grantor may have to the Beneficiary under this Deed of Trust or at common law, and shall survive the transactions contemplated herein. Beneficiary shall have the right, but shall not be obligated, to notify any Governmental Authority of information that may come to Beneficiary's attention with respect to Hazardous Materials on or emanating from the Mortgaged Property. Grantor irrevocably releases Beneficiary from any claims of loss, damage, liability, expense or injury relating to or arising from, directly or indirectly, any such disclosure.

- B. Grantor shall not initiate, join in, or consent to any change in any private restrictive covenants, zoning ordinances or other public restrictions limiting or defining the uses that may be made of the Mortgaged Property or any part thereof without the prior written consent of Beneficiary.

ARTICLE V DEFAULT

5.1 Default. The term "Default", as used 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. The occurrence or happening of a Default under the Credit Agreement; and/or,

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- B. If the Mortgaged Property is demolished, destroyed or substantially damaged so that, in Beneficiary's business judgment, the Mortgaged Property cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time; and/or,
- C. If the holder of any lien or security interest on the Mortgaged Property, without hereby implying Beneficiary's consent to the existence, placing, creating or permitting of any such lien or security interest, institutes foreclosure or other proceedings for the enforcement of the holder's remedies thereunder; and/or,
- D. If, without the prior written consent of the Beneficiary, which consent may be given or withheld by the Beneficiary in the exercise of the Beneficiary's sole and absolute discretion, (i) all or any part of the Mortgaged Property, or any interest therein is sold, transferred or otherwise conveyed, or (ii) the Grantor enters into any contract agreeing to sell, transfer or otherwise convey the Mortgaged Property, or any interest therein, or (iii) the Grantor creates any lien or encumbrance subordinate to this Deed of Trust, or (iv) the Grantor creates any leasehold interest for any purpose whatsoever covering all or any portion of the Mortgaged Property, including without limitation, one or more oil, gas or other mineral leases covering the Mortgaged Property or any portion thereof, for a period longer than one (1) year (all and any of the above being hereinafter collectively called "Transfers"), and irrespective of whether any such Transfers are evidenced by written instruments, or if such written instrument is filed for record; and/or,
- E. If Grantor, without the prior written consent of Beneficiary, creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any easement, restrictive covenant, mortgage, pledge, lien, statutory, constitutional or contractual, security interest, encumbrance or charge on, or conditional sale or other title retention agreement, regardless of whether same is expressly subordinate to the liens of the Loan Documents, with respect to, the Mortgaged Property, the Leases, the Plans or the Rents.

5.2 Notice of Default. Upon becoming aware of the existence of any condition or event which constitutes a Default, Grantor shall immediately furnish to Beneficiary written notice specifying the nature and period of existence thereof and the action taken or proposed to be taken with respect thereto.

ARTICLE VI REMEDIES

6.1 Remedies. If a Default shall occur, Beneficiary may, at Beneficiary's election and by or through the Trustee or otherwise, exercise any or all of the following rights and remedies.

- A. Beneficiary may declare the unpaid principal balance (the "Principal Balance") of the Note as of the date of a Default, the accrued interest and any other unpaid portion of the Obligations to be immediately due and payable, without notice, presentment, protest, demand, notice of intent to accelerate, notice of acceleration, or action of any nature whatsoever, each of which hereby is expressly waived by Grantor, whereupon the same shall become immediately due and payable.
- B. Beneficiary may enter upon the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto, whether Grantor remains in possession of all or any part of the Mortgaged Property after a Default and without Beneficiary's prior written consent. Beneficiary may invoke any and all legal remedies to dispossess Grantor, including, but specifically not limited to, one or more actions for forcible entry and detainer, trespass to try title and writ of restitution. Nothing contained in the foregoing sentence shall, however, be construed

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to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default than would have existed in the absence of this provision.

- C. Beneficiary may hold, lease, manage, operate or otherwise use or permit the use of the Mortgaged Property, either individually or by other Persons, firms or entities, in such manner, for such time and upon such other terms as Beneficiary deems to be prudent and reasonable under the circumstances, making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Beneficiary shall deem necessary or desirable.
- D. Beneficiary may sell or offer for sale the Mortgaged Property in such portions, order and parcels as Beneficiary may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction at the county courthouse of any county in which any of the Land to be sold is situated, in the area in such courthouse designated for real property foreclosure sales in accordance with applicable law, or in the absence of any such designation, in the area set forth in the written notice of sale (the "notice of sale") herein described. Any sale or offer for sale shall be on the first Tuesday of any month between the hours of 10:00 am and 4:00 pm, commencing no earlier than such time as may be designated in the notice of sale, after giving legally adequate notice of the time, place and terms of sale and that portion of the Mortgaged Property to be sold. Notice of the sale shall be given by (i) posting or causing to be posted the notice of sale for at least twenty-one (21) consecutive days prior to the date of the sale at the county courthouse door of each county in which the Land is situated, (ii) filing or causing to be filed a copy of the notice of sale in the office of the county clerk of each county in which the Land is situated at least twenty-one (21) days preceding the date of the sale, and (iii) at least twenty-one (21) days preceding the date of the sale, serving the notice of sale, by the Beneficiary or any Person chosen by the Beneficiary, of the proposed sale by certified mail on each debtor obligated to pay the indebtedness evidenced by the Note according to the records of Beneficiary.. Service of notice to each debtor shall be completed upon deposit of the notice of sale, enclosed in a postpaid wrapper, properly addressed to each debtor at the most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the U.S. Postal Service. It is expressly understood that the affidavit of any Person having knowledge of the facts to the effect that the service was completed shall be prima facie evidence of the fact of the service. All or any of the aforesaid shall be accomplished in such manner as permitted or required by §51.002 of the Texas Property Code relating to the sale of real estate or by Chapter 9 of the UCC relating to the sale of collateral after default by a debtor, as the section and the chapter now exist or may be hereafter amended, or by any other present or subsequent articles or enactments relating to same. Nothing contained in this Section shall, however, be construed so as to limit in any manner the Trustee's rights to sell the Mortgaged Property, or any portion thereof, by private sale if, and to the extent that, a private sale is permitted under the laws of the State of Texas or by public or private sale after entry of a judgment by any court of competent jurisdiction ordering same. At any such sale, whether made under the powers herein contained, §51.002 of the Texas Property Code, the UCC or any other legal enactment, or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for the Trustee to have physical possession, or to have constructive possession of, the Mortgaged Property. Grantor covenants and agrees to deliver to the Trustee any portion of the Mortgaged Property not actually or constructively possessed by Trustee immediately upon demand by Trustee, and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to the purchaser at the sale. At any sale, (i) each instrument of conveyance executed by Trustee shall contain a general warranty of title, binding upon Grantor and Grantor's heirs, successors and assigns, (ii)

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each and every recital contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Obligations, advertisement and conduct of the sale in the manner provided herein and otherwise by law, (iii) the appointment of any successor Trustee hereunder, and any and all prerequisites to the validity thereof shall be conclusively presumed to have been performed, (iv) the receipt of Trustee or of such other party or officer making the sale shall be a sufficient discharge to the purchaser or purchasers for the purchaser's purchase money and no such purchaser or purchasers, or purchaser's assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money, or be in any manner answerable for any loss, misapplication or non-application thereof, (v) to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of Grantor's right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and the sale shall be a perpetual bar both at law and in equity against Grantor, and against any and all other Persons claiming or to claim the property sold or any part thereof, by, through or under Grantor, and (vi) to the extent and under such circumstances as are permitted by law, Beneficiary may be a purchaser at any such sale, and shall have the right, after paying or accounting for all costs of the sale or sales, to credit the amount of the bid upon the amount of the Obligations, in the order of priority set forth in this Deed of Trust, in lieu of cash payment.

- E. Beneficiary may make application to a court of competent jurisdiction as a matter of strict right and without notice to Grantor for the appointment of a receiver of the Mortgaged Property, without regard to the adequacy of the Mortgaged Property for the repayment of the Obligations or the solvency of any Person liable for the repayment of the Obligations. Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 6.9. The right to the appointment of a receiver shall apply regardless of whether Beneficiary has commenced procedures for the foreclosure of the liens and security interests created herein, or has commenced any other legal proceedings to enforce payment of the Obligations, or performance or discharge of the Obligations, and shall also apply upon the actual or threatened waste to any part of the Mortgaged Property.
- F. Beneficiary shall have the option to proceed with foreclosure in satisfaction of any installments of the Obligations which have not been paid when due either through the courts or by directing the Trustee or the Trustee's successors in trust to proceed with foreclosure in satisfaction of the matured, but unpaid portion, of the Obligations as if under a full foreclosure, conducting the sale as herein provided and without declaring the entire Principal Balance and accrued interest due. A sale may be made subject to the unmatured portion of the Obligations, and any such sale shall not, in any manner, affect the unmatured portion of the Obligations. As to such unmatured portion of the Obligations, however, this Deed of Trust shall remain in full force and effect just as though no sale had been made hereunder. It is further agreed that several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Obligations, it being the purpose hereof to provide for a foreclosure and sale of the security for any matured portion of the Obligations without exhausting the power to foreclose and sell the Mortgaged Property for any subsequently maturing portion of the Obligations.

6.2 Remedies Cumulative, Concurrent and Nonexclusive. Beneficiary shall have all rights, remedies and recourse granted in the Loan Documents and available at law or in equity, including, specifically, those granted by the UCC in effect and applicable to the Mortgaged Property and the Leases, or any portion

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thereof, and same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively or concurrently against Grantor, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary, and (iii) may be exercised as often as the occasion therefor shall arise. It is agreed by Grantor that the exercise or failure to exercise any of the remedies shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, all of which are intended to be, and shall be, nonexclusive.

6.3 No Conditions Precedent to Exercise of Remedies. Grantor shall not be relieved of any of the Obligations by reason of:

- A. The failure of the Trustee to comply with any request of Grantor to foreclose the lien of this Deed of Trust or to enforce any provisions of the other Loan Documents;
- B. The release, regardless of consideration, of the Mortgaged Property or any portion thereof or the addition of any other property to the Mortgaged Property;
- C. The entering into of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Beneficiary which extends, renews, rearranges or in any other manner modifies the terms of the Loan Documents regardless of whether or not (i) the Grantor shall have first given consent to or have been given notice of any such agreement, or (ii) any consideration shall have been paid to Grantor; or,
- D. By any other act or occurrence save and except the complete payment and fulfillment of all Obligations.

6.4 Release of and Resort to Collateral. Beneficiary may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any manner impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their stature as first and prior liens and security interests in and to the Mortgaged Property, and without in any manner releasing or diminishing the liability of Grantor for the repayment, or the performance, of the Obligations. Beneficiary may resort to any other security held by Beneficiary in such order and manner as Beneficiary may elect for payment of the Obligations.

6.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Grantor irrevocably and unconditionally waives and releases (i) all benefits which may accrue to Grantor by virtue of any present or future moratorium law or other law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (ii) all notices of any Event of Default, except as may be expressly provided for in the Credit Agreement, or of Beneficiary's intention to accelerate maturity of the Obligations or of the Trustee's election to exercise or Trustee's actual exercise of any right, remedy or recourse provided for under the Loan Documents; and, (iii) any right to a marshalling of assets or a sale in inverse order of alienation.

6.6 Waiver of Foreclosure Deficiency Statutes. To the maximum extent permitted by applicable law, Grantor expressly waives all rights to any determination of fair market value of the Mortgaged Property and all rights to a set off of any deficiency remaining after foreclosure pursuant to Texas law, including, without limitation, any such rights arising pursuant to §§51.003, 51.004, and 51.005 of the Texas Property Code (the "Foreclosure Deficiency Statutes"). Grantor has knowledge and experience in loan transactions and Grantor is not in a disparate bargaining position with Beneficiary.

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6.7 Alternative Appraisal Process. In the event that the waiver set forth in Section 6.6 is held invalid, illegal or unenforceable in any respect for any reason, Grantor and Beneficiary agree (i) to submit the Appraisal Value, as such term is defined below, as the only competent evidence for purposes of the fair market value determination under the relevant Foreclosure Deficiency Statutes, and (ii) to submit such competent evidence to the judge, instead of a jury, as the finder of fact under the relevant Foreclosure Deficiency Statutes. For the purposes of this Section, "Appraised Value" shall mean the fair market value of the Mortgaged Property as appraised for the highest and best use of the Mortgaged Property in accordance with the following provisions:

- A. Upon the request of either Grantor or Beneficiary, Grantor and Beneficiary shall each appoint an independent appraiser who is a designated member in good standing with the Appraisal Institute or another recognized national organization of appraisers if the former organization is no longer in existence, having at least ten (10) years experience, of which the last five (5) years shall have been in the greater Houston, Texas area, in appraising properties similar to the Mortgaged Property for institutional lenders and others, each of whom shall prepare and submit a written appraisal of the Mortgaged Property within forty-five (45) days of such appraiser's appointment. If Grantor shall fail to appoint the Grantor's appraiser and designate same to the Beneficiary within the time specified, the Beneficiary shall appoint both appraisers. If the difference, if any, between the two (2) appraisals submitted is an amount less than or equal to five (5) per cent of the amount of the lesser appraisal, the Appraised Value of the Mortgaged Property shall be deemed to be equal to the numerical average of the amounts of the two (2) appraisals submitted.
- B. If the difference between the two (2) appraisals submitted is an amount greater than five (5) percent of the amount of the lesser appraisal, the initial appraisers shall meet within seven (7) days after the submission of the initial appraisals to appoint a mutually acceptable third appraiser with the same minimum qualifications specified herein for the initial appraisers. In the event that the initial appraisers are unable to agree upon the appointment of a third appraiser with the same minimum qualifications specified herein for the initial appraisers within seven (7) days after the submission of the initial appraisals, then either Grantor or Beneficiary, on behalf of both, may request the appointment of a third appraiser with the same minimum qualifications specified herein for the initial appraisers by any U.S. District Judge for the Southern District of Texas, Houston Division. The third appraiser shall prepare and submit a written appraisal of the Mortgaged Property within forty-five (45) days of such appraiser's appointment. If a third appraisal is required to be submitted, the Appraised Value of the Mortgaged Property shall be deemed to be equal to the numerical average of the amounts of the three (3) appraisals submitted.
- C. In the event of the failure, refusal or inability of any appraiser selected pursuant to this Agreement to act in accordance with the provisions of this Agreement, a new appraiser shall be appointed instead, which appointment shall be made in the same manner as herein provided for the appointment of such appraiser so failing, refusing or unable to act.
- D. Fees and expenses of the appraisers shall be borne by Grantor, and to the extent paid by Beneficiary, shall be reimbursed to Beneficiary by Grantor on demand.
- E. It is expressly agreed by Grantor that to the extent of §51.003 of the Texas Property Code, or any amendment thereto, requires that the "fair market value" of the Mortgaged Property shall be determined as of the foreclosure date in order to enforce a deficiency against Grantor, the Appraisers shall limit their determination, and the term "fair market value", shall include only the factors set forth below:

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(1) The Mortgaged Property is to be valued "AS IS" and "WITH ALL FAULTS" and there shall be no assumption of restoration of or refurbishment of improvements, if any, after the date of the foreclosure;

(2) There shall be an assumption of a prompt resale of the Mortgaged Property for an all cash sales price by the purchaser at the foreclosure sale so that no extensive holding period should be factored into the determination of "fair market value" of the Mortgaged Property;

(3) A set off to the fair market value of the Mortgaged Property as determined hereunder shall be made by deducting from such value the reasonable estimated closing costs relating to the sale of the Mortgaged Property, including, but not limited to, brokerage commissions, title policy premiums, tax prorations, escrow fees, and other common charges which are incurred by a seller of property; and,

(4) After consideration of the factors required by law and those required above, an additional discount factor shall be calculated based upon the estimated time it would reasonably take to effectuate a sale of the Mortgaged Property so that the "fair market value", as so determined is discounted to be as of the date of the foreclosure sale of the Mortgaged Property.

6.8 Discontinuance of Proceedings. In case Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Beneficiary shall have the unqualified right so to do and, in such event, Grantor and Beneficiary shall be restored to their former positions with respect to the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourse and powers of Beneficiary shall continue as if same had never been invoked.

6.9 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operating or other use of, the Mortgaged Property, the Leases or the Plans shall be applied by Trustee or Beneficiary, or the receiver, if one is appointed, to the extent that funds are so available therefrom in the following orders of priority:

- A. First, to that portion of the Obligations then remaining unpaid, including, without limitation, principal and interest and the costs and expenses of taking possession of the Mortgaged Property and of holding, managing, operating, using, leasing, repairing, improving and selling the same, including, by way of illustration, but not by way of limitation, any one or more of the following to the extent Beneficiary deems appropriate: (i) prepayment penalties or charges, (ii) 'Trustees' and receivers' fees, (iii) court costs, (iv) attorneys', brokers', managers', accountants' and appraisers' fees and expenses, (v) costs of advertisement, and (vi) the payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Deed of Trust, except those to which the Mortgaged Property has been or will be sold subject to and without in any manner implying Beneficiary's prior consent to the creation thereof, as to which Grantor is not fully personally liable, it being agreed that the application of such proceeds shall be in such a manner as not to extinguish or reduce Grantor's liability until all the Obligations as to which Grantor is not personally liable has been paid in full;
- B. Next, to the payment of that portion of the Obligations as to which Grantor is fully liable;
- C. Next, to the payment of any indebtedness or obligation secured by a subordinate deed of trust on or security interest in the Mortgaged Property, to the extent known by Beneficiary; and,

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D. Lastly, to Grantor.

6.10 Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to the terms hereof shall become the legal owner of the portion of the Mortgaged Property sold. All occupants of the sold Mortgaged Property or any part thereof shall become tenants at sufferance of the purchaser at the foreclosure sale. The tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the Mortgaged Property, and the rental shall be due daily to the purchaser. All occupants shall deliver possession to the Mortgaged Property immediately to the purchaser upon demand. It shall not be necessary for the purchaser at a foreclosure sale to bring any action for possession of the Mortgaged Property other than a statutory action of forcible detainer in any Justice of the Peace Court having jurisdiction over the Mortgaged Property.

ARTICLE VII CONDEMNATION

7.1 General. Immediately upon Grantor's obtaining knowledge of the institution of any proceeding for the condemnation of the Mortgaged Property, or any part thereof, Grantor shall notify Beneficiary of such fact. Grantor shall then, if requested by Beneficiary, file or defend Grantor's claims thereunder and prosecute same with due diligence to final disposition and shall cause any awards or settlements to be paid over to Beneficiary for disposition pursuant to the terms of this Deed of Trust. Grantor may be the nominal party in such proceeding, but Beneficiary shall be entitled to participate in and to control same and to be represented therein by counsel of Beneficiary's own choice. Grantor will deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by Beneficiary from time to time to permit Beneficiary's participation. If the Mortgaged Property is taken or diminished in value, including, without limitation, by any change or changes of grade of any streets affecting the Land and Buildings, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Grantor by virtue of Grantor's interest in the Mortgaged Property shall be, and by these presents is, assigned, transferred and set over unto Beneficiary to be held by Beneficiary, in trust, subject to the lien and security interest of this Deed of Trust.

7.2 Application of Award. Beneficiary may, at the Beneficiary's election, use the award or settlement in any one or more of the following manners: (i) Apply the same or any part thereof on the Obligations, whether the Obligations are then matured or unmatured; (ii) use the same or any part thereof to perform or discharge the Obligations; (iii) use the same or any part thereof to restore, repair or replace the Mortgaged Property to a condition satisfactory to Beneficiary, with the disbursement of such funds to be made in accordance with the provisions of Section 4.1.L; or, (iv) release the same to Grantor.

7.3 Collection. Beneficiary is empowered to collect and receive the proceeds of any condemnation award or settlement. Grantor irrevocably appoints Beneficiary as Grantor's attorney-in-fact, coupled with an interest, to collect and receive the award and settlement proceeds. Beneficiary shall not be obligated to collect, and shall not be liable for failure to collect, any such proceeds.

ARTICLE VIII SECURITY AGREEMENT

8.1 Security Interest. This Deed of Trust shall be construed as a deed of trust on real property and it shall also constitute and serve (i) as a "Security Agreement" on personal property within the meaning of, and shall constitute a first and prior security interest under the UCC, as to property within the scope thereof and situated in the State of Texas with respect to the Personalty, Fixtures, Plans, Leases and Rents, and (ii) as an "Assignment of Rents and Leases" of the Rents and Leases. To this end, Grantor has granted,

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bargained, conveyed, assigned, transferred, and set over, and by these presents does grant, bargain, convey, assign, transfer and set over, unto Beneficiary, as secured party, a first and prior security interest and all of Grantor's right, title and interest in, to and under the Personalty, Fixtures, Plans, Leases and Rents to secure the full and timely payment of the Obligations and the full and timely performance and discharge of the Obligations. Notwithstanding anything to the contrary contained in this Deed of Trust, the security interest created by this Deed of Trust, shall not cover the accounts receivable (except to the extent same are proceeds of a sale of any the Personalty, Fixtures, Plans, Leases or Rents) or inventory of Grantor.

8.2 Financing Statements. Grantor agrees to execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, all Financing Statements and such further assurances as Beneficiary may, from time to time, consider necessary to create, perfect and preserve Beneficiary's security interest herein granted and Beneficiary may cause the Financing Statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

8.3 UCC Remedies. Beneficiary shall have all the rights and remedies with respect to the Personalty, Fixtures, Plans, Leases and Rents afforded to the Beneficiary as a secured party by the UCC, as to property within the scope thereof, in addition to, and not in limitation of, the other rights and remedies afforded by the Loan Documents.

8.4 No Obligation of Trustee or Beneficiary. The assignment and security interest herein granted shall not be deemed or construed to constitute the Trustee or Beneficiary as a trustee in possession of the Mortgaged Property, to obligate the Trustee or Beneficiary to lease the Mortgaged Property or attempt to do same, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

8.5 Fixture Filing. This Deed of Trust and Security Agreement shall constitute a fixture filing for all purposes under the UCC and shall be so indexed in the offices of the county clerks wherein any portion of the Land is situated. All or part of the Mortgaged Property are or are to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses set forth in the recitals to this Deed of Trust, and the address of the Beneficiary, as secured party, and the address of the Grantor, as debtor, are as set forth in therein.

8.6 Remedies. If an Event of Default shall occur, Beneficiary may elect, in addition to exercising any and all other rights and remedies set forth in Article VI or referred to in Section 8.3, to collect and receive all of the Rents and to proceed in the manner set forth in §9.501(d) of Chapter 9 of the UCC relating to the procedure to be followed when a Security Agreement covers both real and personal property. Except as otherwise set forth in this Section, at any foreclosure and sale as described in Section 6.1.D, it shall be deemed that the Trustee proceeded under such Section and that such sale passed title to all of the Mortgaged Property and other property described herein to the purchaser at the foreclosure sale, including, without limitation, the Personalty, Plans, Leases and Rents. Beneficiary, acting by and through the Trustee or any other representative, may elect either prior to or at such sale not to proceed under §9.501(d) of the UCC by notifying Grantor of the manner in which Beneficiary intends to proceed with regard to the Personalty, Plans, Leases and Rents.

8.7 Hold Harmless. Beneficiary shall not be obligated to perform or discharge, or does Beneficiary undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this Deed of Trust. GRANTOR INDEMNIFIES AND SHALL AND DOES AGREE TO HOLD BENEFICIARY HARMLESS FROM ANY AND ALL LIABILITY, LOSS, OR DAMAGE WHICH BENEFICIARY MAY OR MIGHT INCUR UNDER ANY OF THE LEASES OR UNDER OR BY REASON OF THIS DEED OF TRUST AND FROM ANY AND ALL

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CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST BENEFICIARY BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON BENEFICIARY'S PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY OF THE LEASES. Should Beneficiary incur any such liability, loss or damage under any of the Leases, under or by reason of this Deed of Trust or in the defense of any such claims or demands, the amount thereof, including all costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Grantor shall reimburse Beneficiary therefor immediately upon demand.

ARTICLE IX TRUSTEE

9.1 No Liability. The Trustee shall not be liable for any error of judgment or act done by the Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or wilful misconduct. The Trustee shall not be personally liable in case of entry by the Trustee, or anyone entering by virtue of the powers herein granted the Trustee, upon the Mortgaged Property for debts contracted or liability or damages incurred in the management or operation of the Mortgaged Property. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by the Trustee hereunder, believed by the Trustee in good faith to be genuine. The Trustee shall be entitled to reimbursement for expenses incurred by the Trustee in the performance of the Trustee's duties hereunder, including, without limitation, any amounts payable to attorneys, accountants, engineers or others selected by Trustee to aid the Trustee in the performance of the Trustee's duties hereunder, and to reasonable compensation for such of the Trustee's services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to the Trustee hereunder. GRANTOR WILL, FROM TIME TO TIME, REIMBURSE THE TRUSTEE FOR, AND HOLD THE TRUSTEE HARMLESS AGAINST ANY AND ALL LIABILITY AND EXPENSES WHICH MAY BE INCURRED BY THE TRUSTEE IN THE PERFORMANCE OF THE TRUSTEE'S DUTIES. Grantor absolutely ratifies and confirms any and all acts that the Trustee or any successor or substitute Trustee may lawfully do by virtue of this Deed of Trust.

9.2 Retention of Moneys. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys, except to the extent required by law. The Trustee shall be under no liability for interest on any moneys received by the Trustee hereunder.

9.3 Successor Trustees. Any Trustee may resign by the giving of notice of such resignation in writing to Beneficiary. If the Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to execute the same when requested by Beneficiary so to do, or if, for any reason, with or without cause, Beneficiary shall prefer to appoint a substitute trustee to act instead of the named Trustee or any successor Trustee, Beneficiary shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the named Trustee. The appointment may be executed by any authorized officer or agent of Beneficiary and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the Board of Directors.

9.4 Succession Instruments. Any substitute or successor Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of the Trustee's predecessor in the rights hereunder with like effect as if originally named as Trustee herein. Nevertheless, upon the written request of Beneficiary or of a successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to the successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of

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the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the successor Trustee so appointed in the Trustee's place.

9.5 No Required Action. The Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in or defend any action, suit or other proceeding in connection therewith where, in the Trustee's opinion, such action will be likely to involve expense or liability to the Trustee, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to the Trustee against any and all costs, expense and liabilities arising therefrom. Trustee shall not be responsible for the execution, acknowledgment or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and makes no representation in respect thereof or in respect of the rights, remedies and recourse of Beneficiary.

ARTICLE X MISCELLANEOUS

10.1 Performance at Grantor's Expense. The costs and expenses of performing or complying with any and all of the Obligations shall be borne solely by Grantor. All costs and expenses in connection with attorney's fees and/or filing costs incurred in connection with the preparation hereof and/or the loan transaction secured hereby, shall be borne solely by Grantor. No portion of any costs and expenses shall be, in any manner or to any extent, credited against any installment on or portion of the Note. If, in pursuance of the enforcement of any covenant herein contained, Beneficiary shall pay out any money chargeable to Grantor, or subject to reimbursement by Grantor under the terms of this Deed of Trust, Grantor shall repay the same to Beneficiary immediately at the place where the Note is payable, together with interest thereon at the Maximum Rate from and after the date of Beneficiary's making such payment. The sum of each such payment shall be added to the Obligations and thereafter shall form a part of the same, and, shall be secured by this Deed of Trust and by subrogation to all the rights of the Person, corporation, or body politic receiving such payment.

10.2 Survival of Obligations. Each and all of the covenants, agreements and undertakings of Grantor under the Loan Documents shall survive the execution and delivery of the Loan Documents and the consummation of the Loans and shall continue in full force and effect until the Obligations shall have been paid and performed in full.

10.3 Further Assurances. Grantor, upon the request of Trustee or Beneficiary, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of the Loan Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the Mortgaged Property.

10.4 Recording and Filing. Grantor will cause this Deed of Trust and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and refilled in such manner and in such places as Trustee or Beneficiary shall request, and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

10.5 Notices. All notices or other communications required or permitted to be given pursuant to this Deed of Trust shall be in writing and shall be deemed to have been properly given if mailed by depositing same with the U.S. Postal Service, first-class mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the intended addressee. Either party shall have

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the right to change its address for notice hereunder by the giving of thirty (30) days notice to the other party in the manner set forth.

10.6 No Waiver. Any failure by Beneficiary to insist, or any election by Beneficiary not to insist, upon strict performance by Grantor of any of the terms, provisions or conditions of the Loan Documents, including this Deed of Trust, shall not be deemed to be a waiver of same or of any other terms, provision or condition thereof and Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Grantor of any and all of such terms, provisions and conditions.

10.7 Beneficiary's Right to Perform the Obligations. If Grantor shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then at any time thereafter, and without notice to or demand upon Grantor and without waiving or releasing any other right, remedy or recourse Beneficiary may have because of same, Beneficiary may, but shall not be obligated to, make such payment or perform such act for the account of and at the expense of Grantor, and shall have the right to enter upon or in the Land and Buildings for such purpose and to take all such action thereon and with respect to the Mortgaged Property as Beneficiary may deem necessary or appropriate. If Beneficiary shall elect to pay any Imposition or other sums due with reference to the Mortgaged Property, Beneficiary may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Beneficiary shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. All sums paid by Beneficiary pursuant to this Section and all other sums expended by Beneficiary to which Beneficiary shall be entitled to be indemnified, together with interest thereon at the Maximum Rate from the date of such payment or expenditure, shall constitute additions to the Obligations, shall be secured by the Loan Documents and shall be paid by Grantor to Beneficiary upon demand. GRANTOR INDEMNIFIES AND AGREES TO HOLD BENEFICIARY HARMLESS OF AND FROM ALL LOSSES, EXPENSES, DAMAGE, CLAIMS AND CAUSES OF ACTION, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED OR ACCRUING BY REASON OF ANY ACTS PERFORMED BY BENEFICIARY PURSUANT TO THE PROVISIONS OF THIS SECTION OR BY REASON OF ANY OTHER PROVISION IN THE LOAN DOCUMENTS.

10.8 Covenants Running with the Land. All Obligations contained in the Loan Documents are intended to be, and shall be construed as, covenants running with the Mortgaged Property.

10.9 Successors and Assigns. All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives, and all other Persons claiming by, through or under them.

10.10 Compliance With Usury Law. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Requirements. This Deed of Trust is subject to the provisions set out in the Credit Agreement relating to the payment of interest at the Maximum Rate and to payment or collection of interest in excess of the Maximum Amount, all of which provisions are incorporated herein for all purposes.

10.11 Entire Agreement and Modification. The Loan Documents contain the entire agreements among the parties relating to the subject matter hereof and thereof and all prior agreements relative thereto which are not contained herein or therein are terminated. The Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or

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termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any Person.

10.12 Applicable Law. THE LOAN DOCUMENTS, INCLUDING THIS DEED OF TRUST, HAVE BEEN PREPARED, ARE BEING EXECUTED AND DELIVERED, AND ARE INTENDED TO BE PERFORMED IN THE STATE OF TEXAS, AND THE SUBSTANTIVE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES OF THE STATE OF TEXAS, AND THE APPLICABLE LAWS OF THE U.S. SHALL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT AND INTERPRETATION OF THIS DEED OF TRUST AND ALL OF THE LOAN DOCUMENTS.

10.13 Choice of Forum, Service of Process and Jurisdiction. Any suit, action or proceeding against the Grantor with respect to this Deed of Trust, or any judgment entered by any court in respect hereof, may be brought in the courts of the State of Texas, Harris County, Texas, or in the U.S. courts located in the State of Texas as Beneficiary, in Beneficiary's sole discretion, may elect and the Grantor submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding.

10.14 Deceptive Trade Practices Act. The Grantor acknowledges that the Grantor is a "business consumer" as defined under the Deceptive Trade Practices-Consumer Protection Act, Subchapter E of Chapter 17 of the Texas Business and Commerce Code, a law that gives consumers special rights and protections. The Grantor acknowledges that the Deceptive Trade Practices-Consumer Protection Act is not applicable to the Transactions.

10.15 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, the Obligations and this Deed of Trust shall be subrogated to all of the rights, claims, liens, titles and interests (herein collectively called the "Prior Liens") heretofore existing against the Mortgaged Property to secure the indebtedness so extinguished, extended or renewed and the Prior Liens, if any, are not waived, but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment and satisfaction of the Obligations.

10.16 Relationship. Nothing contained in the Loan Documents is intended to, or shall be construed as, creating to any extent and in any manner whatsoever, any partnership, joint venture, or association among Grantor, Trustee and Beneficiary, or in any manner make Beneficiary or Trustee co-principals with Grantor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

10.17 Headings. The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no manner alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

10.18 Gender. Each gender used herein shall include and apply to all genders, including the neuter.

10.19 Agents. Any right, remedy, privilege, duty or action available to or to be performed by Beneficiary under the Loan Documents may, if and to the extent determined by Beneficiary, be exercised or performed by any agent, attorney, correspondent or other representative of Beneficiary.

10.20 Subordination by Beneficiary. From time to time at Beneficiary's option, by instrument executed by Beneficiary and recorded in the Official Public Records of Real Property where this Deed of Trust has been recorded, Beneficiary may subordinate the lien created by this Deed of Trust to any interest in the Mortgaged Property, including, without limitation, any or all Leases. Any such subordination shall be

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solely at Beneficiary's option, and in no event shall Beneficiary be obligated to subordinate the lien created by this Deed of Trust.

10.21 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one instrument.

10.22 Construction Mortgage. This Deed of Trust secures an obligation incurred for the construction of improvements on the Land and accordingly constitutes a "Construction Mortgage" under the terms of the UCC. Grantor agrees that Grantor shall perform and observe all of Grantor's covenants and agreements as set forth in a construction loan agreement of even date herewith among Grantor and Beneficiary and acknowledges that this document shall also secure performance of the obligations of Grantor thereunder.

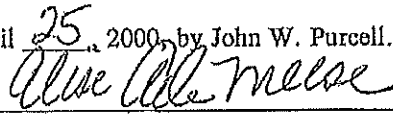
THE WRITTEN CREDIT AGREEMENT, THE LOAN DOCUMENTS DESCRIBED THEREIN AND THIS DEED OF TRUST REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.


John W. Purcell

STATE OF TEXAS

COUNTY OF HARRIS

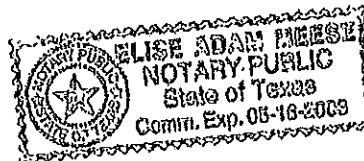
This instrument was acknowledged before me on April 25, 2000, by John W. Purcell.


Notary Public in and for
The State of Texas

My Commission Expires

Printed Name of Notary Public

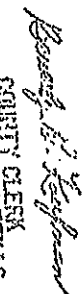
ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on



MAY 5 2000




COUNTY CLERK
HARRIS COUNTY TEXAS

FILED
2000 MAY -5 PM 1:51
COUNTY CLERK
HARRIS COUNTY TEXAS


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Assign U373250

ASSIGNMENT OF LEASES AND RENTS

Ho 1d
CHICAGO TITLE
GF 255 156 NW

532-15-0972

This assignment (the "Assignment") is executed and delivered by JOHN W. PURCELL, also known as JOHN PURCELL (the "Assignor"), whose address is 5222 Holly Street, Bellaire, Texas 77401, to STERLING BANK (the "Bank"), a national banking association, whose address for notice hereunder is 15000 Northwest Freeway, P.O. Box 40333, Houston, Texas 77240-0333.

05/05/00 101312507 U373250

\$21.00

RECITALS

This Assignment is executed and delivered pursuant to the terms of a Construction Loan Agreement (the "Credit Agreement"), dated of even date herewith by and among the Assignor and Volvos Only, Inc. (collectively, sometimes the "Borrowers") and the Bank. Under and pursuant to the terms of the Credit Agreement, Bank has agreed to make loans (the "Loans") to Borrowers. All capitalized terms used herein shall have the same meanings ascribed to them in the Credit Agreement unless otherwise specifically defined in this Assignment.

ASSIGNMENT

Assignor, in consideration of the Loans, and for value received, the receipt and sufficiency of which is acknowledged, agrees with Bank as set out herein.

1. Assignor absolutely and unconditionally grants, transfers and assigns unto Bank, all of Assignor's right, title and interest in and to any and all lease agreements, presently, or in the future in effect, written or oral, (individually a "lease" and collectively the "leases"), to have and to hold the leases unto Bank, forever. Assignor binds Assignor, Assignor's heirs, successors and assigns, to warrant and forever defend title to the leases unto Bank against every person whomsoever lawfully claiming or to claim the same or any part thereof. The leases cover all or portions of the following tract of real property and/or all or a portion of the improvements which are now or may hereafter be located on the real property (collectively, the "Mortgaged Property") described as follows:

A tract of land containing 0.2337 acre located in the James Blessing Survey, Abstract 162, Harris County, Texas, being Lots 9, 10, and 11 of Block 24 of the original subdivision of the Town of Bellaire, as recorded in Volume 3, Page 59 of the Harris County Map Records, and being more particularly described as follows:

COMMENCING at a 3/4 inch pipe found for the Northwest corner of Block 24 same being the Southeast intersection corner of Rice Avenue and Locust Street;

THENCE South, along the East line of Rice Avenue, 90 feet wide, a distance of 186.23 feet to a 5/8 inch iron rod set in concrete for the Northwest corner of Lot 11 and the POINT OF BEGINNING;

THENCE East, along the common line between Lots 11 and 12, a distance of 120.00 feet to a 5/8 inch iron rod set for the Northeast corner of Lot 11;

THENCE South, along the East line of Lots 9, 10, and 11, a distance of 81.90 feet to a "+" cut in concrete in the Northwest line of Bissonnet Street (formerly Richmond Avenue);

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THENCE South, 61 deg. 27 min. 27 sec. West, along the Northwest line of Bissonnet Street, a distance of 6.15 feet to a "+" cut in concrete at the intersection with Spruce Street, 60 feet wide;

THENCE South, 89 deg. 55 min. 07 sec. West, along the North line of Spruce Street and the South line of Lot 9, a distance of 114.60 feet to a "+" cut in concrete for the Southwest corner of Lot 9 and the intersection with Rice Avenue;

THENCE North, along the East line of Rice Avenue and the West line of Lots 9, 10, and 11, a distance of 85.00 feet to the POINT OF BEGINNING, and containing 10,182 square feet of land.

2. Assignor absolutely and unconditionally assigns to Bank all rents, revenue and income arising from the leases, and all renewals and extensions thereof, for the use and occupation of the Mortgaged Property, regardless to whom such rents are payable (collectively, the "rents"), to have and to hold the rents unto Bank, forever. Assignor does hereby bind Assignor, Assignor's heirs, successors and assigns, to warrant and forever defend title to the rents unto Bank against every person whomsoever lawfully claiming or to claim the same or any part thereof.

3. Until there shall occur a Default, as Default is defined in the Credit Agreement, Assignor shall have the right under the limited license granted herein to collect rents. Bank hereby grants to Assignor a limited license to collect, and each tenant under the terms of any lease may pay, rents due directly to Assignor, if, as and when, but not prior to the time, the rents accrue and become due and payable under the terms of the leases.

4. The license herein granted is made on the following terms and conditions:

- A. Assignor shall receive all rents and hold same, as well as the license to receive the rents, as a trust fund to be applied, and Assignor covenants to apply the rents, to the payment of the Obligations, as defined in the Credit Agreement.
- B. As long as the license shall remain in force and effect, and after Assignor has applied the rents in the manner required in Section 4.A, Assignor may use the balance of the rents collected in any manner not inconsistent with the Loan Documents.
- C. For the purposes of this Assignment, rents shall be deemed earned over the entire period to which they relate, and if Bank should acquire the Mortgaged Property and Assignor has received any rents which are properly allocable to a period of time following such acquisition, Assignor will pay the amount thereof to Bank immediately upon demand. Notwithstanding any provision of any other Loan Document which purports to limit Assignor's liability for payment or performance of the Obligations, Assignor shall be fully and personally liable to Bank for any failure to apply rents in the manner and order required in this Assignment.
- D. Without impairing Bank's rights hereunder, Bank may, but only by written instrument, at Bank's option, at any time and from time to time, release to Assignor rents received by Bank, or any part thereof.

5. As among Assignor, Bank, and any person claiming through or under Assignor, other than a tenant which has not received notice of Default, the assignment contained in Section 1 and Section 2 is intended to be absolute, unconditional and presently effective and the provisions of Section 3 and Section 4 are intended solely for the benefit of the tenant under the terms of a lease. The provisions of Sections 3

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and 4 shall never inure to the benefit of Assignor or any person claiming through or under Assignor, other than a tenant which has not received notice of Default. It shall never be necessary for Bank to institute legal proceedings of any kind whatsoever to enforce the provisions of this Assignment.

6. Assignor represents and warrants to Bank the following matters.

- A. Assignor is the owner of all of the landlord's interests in the leases.
- B. The leases are valid and enforceable and have not been altered, modified or amended in any manner whatsoever save as herein set forth.
- C. The tenants named therein and/or the assignees of the tenants therein are not in default under any of the terms, covenants or conditions thereof.
- D. No rent reserved in any lease has been assigned or anticipated and no rent for any period subsequent to the date of this Assignment has been collected in advance of the time when the same became due under the terms of a lease.

7. Prior to Bank releasing this Assignment, Assignor covenants that Assignor will:

- A. Observe and perform all the obligations imposed upon the landlord under the leases and not to do or permit to be done anything to impair the enforceability thereof;
- B. Not collect any of the rents arising or accruing under the leases or from the Mortgaged Property more than one (1) month in advance of the time when the same shall become due;
- C. Not convey or transfer the Mortgaged Property or any interest therein so as to effect directly or indirectly, proximately or remotely, a merger of the estate and right of, or a termination or diminution of the obligations of any tenant under a lease;
- D. Not execute any other assignment of any interest in the leases or assignment of rents arising or accruing from the leases or from the Mortgaged Property;
- E. At Bank's request, execute and deliver all such further assurances and assignments of the leases and rents as Bank shall, from time to time, require;
- F. Not alter, modify or change the terms of any lease or give any consent or exercise any option required or permitted by the terms of any lease without the prior written consent of Bank, or cancel or terminate any lease or accept a surrender thereof;
- G. Not alter, modify or change the terms of any guaranty of any lease or cancel or terminate the guaranty without the prior written consent of Bank; and,
- H. Not consent to any assignment of or subletting under any lease, whether or not in accordance with its terms, without the prior written consent of Bank.

8. Upon or at any time after a Default, Bank's right, title and interest in and to the leases and rents shall be and shall remain absolute and inviolate in accordance with the provisions of this Assignment.

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Bank shall have the complete right and power to terminate the license herein granted by the giving of written notice to Assignor.

9. Upon or at any time after a Default, Bank may, at Bank's option, take possession of the Mortgaged Property and have, hold, manage, lease and operate the Mortgaged Property on such terms and for such period of time as Bank may deem proper. Bank shall have full power to make, from time to time, alterations, renovations, repairs, or replacements to the Mortgaged Property as Bank may deem proper. Any action of the Bank as set out in this Section shall not, in any manner waive a Default, and may be taken by Bank, either in person or by agent, (i) without notice, (ii) without regard to the adequacy of the security for the Obligations, (iii) with or without bringing any legal action or proceedings, or (iv) by a receiver appointed by a court.

10. Upon or at any time after a Default, Bank may, either with or without taking possession of the Mortgaged Property, in Bank's name, demand, sue for or otherwise collect and receive all rents, including those past due and unpaid and apply the rents, income and profits to the payment of: (i) All expenses of managing the Mortgaged Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as Bank may deem necessary or desirable, (ii) all expenses of operating and maintaining the Mortgaged Property, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which the Bank may deem necessary or desirable, (iii) the cost of the completion of all improvements on the Mortgaged Property and all alterations, renovations, repairs or replacements, (iv) all expenses incident to taking and retaining possession of the Mortgaged Property, and (v) the principal, interest and any other amounts due under the terms of the Obligations, together with all costs and reasonable attorney's fees, in such order of priority as to any of the items mentioned in this Section, as Bank, in Bank's sole discretion, may determine, any statute, law, custom or use to the contrary notwithstanding. Bank shall not be liable for Bank's failure to collect or exercise diligence in the collection of any rents, but Bank shall be accountable only for rents that Bank shall actually receive.

11. The exercise by Bank of any remedy granted Bank in this Assignment or the collection of the rents and the application thereof as herein provided shall not be considered a waiver of a Default by Assignor. The enforcement of any remedy or right by Bank, once exercised, shall continue for so long as Bank shall elect, notwithstanding that the collection and application of the rents may have cured the original Default. If Bank shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder or under the Loan Documents may be reasserted at any time and from time to time following any subsequent Default.

12. Bank shall not be liable for any loss sustained by Assignor resulting from Bank's failure to let the Mortgaged Property after a Default or from any other act or omission of Bank in managing the Mortgaged Property after a Default. Bank shall not be obligated to perform or discharge or does Bank hereby undertake to perform or discharge any obligation, duty or liability under the leases or under or by reason of this Assignment. ASSIGNOR SHALL, AND DOES HEREBY INDEMNIFY AND AGREE TO HOLD BANK HARMLESS FROM ANY AND ALL LIABILITY, LOSS, COST, EXPENSE OR DAMAGE WHICH BANK MAY OR MIGHT INCUR UNDER THE LEASES OR UNDER OR BY REASON OF THIS ASSIGNMENT AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST BANK BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON BANK'S PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN THE LEASES. The foregoing shall include, but shall not be limited to, any claims for rents and security deposits paid to Assignor, but not delivered to Bank. Should Bank incur any such liability under the leases, under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney's

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fees shall be deemed to be a part of the Obligations, and all such amounts shall be secured hereby and by the Loan Documents. Assignor shall reimburse Bank therefor, together with interest thereon at the Maximum Rate, immediately upon demand and upon the failure of Assignor to do so, Bank may, at Bank's option, declare all Obligations immediately due and payable.

13. It is specifically understood and agreed that this Assignment shall not (i) operate to place responsibility for the control, care, management or repair of the Mortgaged Property on Bank, (ii) make Bank responsible for the carrying out of any of the terms and conditions of the leases; (iii) operate to make Bank responsible or liable for any waste committed on the Mortgaged Property by any tenant or any other party, (iv) operate to make Bank responsible or liable for any dangerous or defective condition of the Mortgaged Property, or (v) make Bank responsible or liable for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, invitee, employee or stranger.

14. Bank may take or release any security for the payment of the Obligations, may release any party primarily or secondarily liable therefor and may apply any collateral held by Bank to the satisfaction of the Obligations without prejudice to any of Bank's rights under this Assignment.

15. Upon payment in full and the full performance of all Obligations, this Assignment shall terminate. The affidavit, certificate, letter or statement of any officer, agent or attorney of Bank showing any part of the Obligations remain unpaid or unperformed shall be, and shall constitute, conclusive evidence of the validity, effectiveness and continuing force of this Assignment. Any Person, and all tenants in the leases, may, and each are hereby authorized to rely on any affidavit, certificate, letter or statement. Upon receipt from Bank of notice that a Default exists, a tenant under the terms of any lease is authorized and specifically directed to pay all rents due and thereafter becoming due directly to Bank. Assignor indemnifies and agrees to hold each tenant harmless from and against all liability, loss, cost, damage or expense suffered or incurred by a tenant because of a tenant's compliance with any demand by Bank for the payment of rents. The receipt of rents in good funds by Bank shall be a release of a tenant to the extent of all amounts so paid. No tenant under any lease shall be required to take notice of termination of this Assignment until a copy of a written release duly executed by Bank shall have been delivered to the tenant.

16. This Assignment shall not operate in any manner as a payment or satisfaction of all or any portion of the Obligations. The acceptance of this Assignment by Bank shall not, prior to entry upon and the taking of possession of the Mortgaged Property by Bank, be deemed or construed to constitute Bank a "mortgagee in possession" or thereafter or at any time or in any event obligate Bank to appear in or defend any action or proceeding relating to the leases, the rents or the Mortgaged Property.

17. This Assignment is in addition to and not in lieu of the collateral conveyance contained the Deed of Trust, as defined in the Credit Agreement. It is the intent of Assignor and Bank that no conflict exist between the assignment contained herein and the collateral conveyance contained in the Deed of Trust or any other Loan Document. If, and to the extent, however, a conflict is perceived to exist as to the leases and rents, such conflict shall be resolved in favor of the assignment contained in this Assignment.

18. Assignor constitutes and appoints the Bank the true and lawful attorney, coupled with an interest, of the Assignor and in the name, place and stead of Assignor to:

- A. Demand, sue for, attach, levy, recover and receive any sums due under any of the leases and give proper receipts, releases and acquittances for sums paid on the leases, and Assignor does

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hereby authorize and direct any such tenant to deliver all such payments to Bank in accordance with this Assignment; and,

- B. Subject and subordinate, at any time and from time to time, any lease or any part thereof to the lien and security interest of the Deed of Trust or any Loan Document.
- C. Assignor ratifies and confirms all that the Bank, shall do or cause to be done by virtue of the power of attorney granted hereby. The appointment is irrevocable and continuing, and such rights, powers and privileges shall be exclusive in Bank, Bank's successors and assigns, so long as any part of the Obligations remain unpaid and undischarged.
- D. Assignor warrants that Assignor has not at any time prior to the date hereof exercised any right set out and described in Subsection 18.B, and Assignor covenants not to exercise any such right to subordinate any such lease to the lien of the Deed of Trust or to any other mortgage, deed of trust or security agreement or to any ground lease.

19. Nothing contained in this Assignment and no act done or omitted by Bank pursuant to the powers and rights granted Bank hereunder shall be deemed to be a waiver by Bank of Bank's rights and remedies under the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Bank under the terms of the Loan Documents. A default by Assignor hereunder shall constitute a Default in the Loan Documents.

20. Any notice required or permitted to be given hereunder shall be given pursuant to the terms set in the Credit Agreement.

21. THE LOAN DOCUMENTS, INCLUDING THIS AGREEMENT, HAVE BEEN PREPARED, ARE BEING EXECUTED AND DELIVERED, AND ARE INTENDED TO BE PERFORMED IN THE STATE OF TEXAS, AND THE SUBSTANTIVE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES OF THE STATE OF TEXAS, AND THE APPLICABLE LAWS OF THE U.S. SHALL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT AND THE LOAN DOCUMENTS.

22. This instrument shall inure to the benefit of Bank, Bank's successors and assigns, and shall be binding upon Assignor, and Assignor's heirs, successors and assigns, and any subsequent owner of the Mortgaged Property.

THE WRITTEN CREDIT AGREEMENT, THE LOAN DOCUMENTS DESCRIBED THEREIN AND THIS INSTRUMENT REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Executed effective April 14, 2000.


 John W. Purcell 10/11

532-15-0978

STATE OF TEXAS

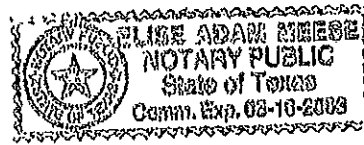
COUNTY OF HARRIS

This instrument was acknowledged before me on April 25, 2000, by John W. Purcell.

*Elise Adam Meese*Notary Public in and for
The State of Texas

My Commission Expires

Printed Name of Notary Public



ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS NULL AND UNENFORCEABLE UNDER FEDERAL LAW
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number
Sequence on the date and at the time stamped hereon by me; and was
DULY RECORDED, in the Official Public Records of Real Property of
Harris County, Texas on

MAY 5 2000



Beverly B. Layman
COUNTY CLERK
HARRIS COUNTY TEXAS

FILED
2000 MAY -5 PM 1:52
Beverly B. Layman
COUNTY CLERK
HARRIS COUNTY TEXAS

-7-

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4:57:04.06.00

#1047133

532-37-0723

U396560

05/18/00 201253395 U396560

\$21.00

SUBORDINATION AGREEMENT

This Subordination Agreement (the "Agreement") is made and entered into effective as of April 25, 2000, by and among JOHN W. PURCELL (the "Borrower"), CARLOS HELANDER and NAOMI STEWART (collectively, the "Creditors") and STERLING BANK (the "Bank"), .

RECITALS

The Borrower proposes to become indebted to the Bank, as the indebtedness will be incurred pursuant to the terms of a Construction Loan Agreement (the "Credit Agreement") and evidenced by a promissory note payable to the Bank. The Borrower is also indebted to the Creditors. The Creditors are willing to subordinate the Creditors' Indebtedness and the Creditors' Liens (each defined below), to the Bank's Indebtedness and the Bank's Liens (each defined below) as herein set forth. The Bank is willing to make the loans to the Borrower, but only conditioned on the execution and delivery of this Agreement.

AGREEMENT

In consideration of the premises and as an inducement to the Bank to make the loans to the Borrower, it is agreed among the parties as follows:

1. "Bank's Indebtedness" means all obligations owed or to be owing by the Borrower to the Bank whether matured or unmatured, absolute or contingent, secured or unsecured, joint or several, due or not due, and whether now existing or hereafter incurred, and all interest now accrued or hereafter accruing thereon.
2. "Bank's Liens" means all liens on property owned by the Borrower and/or others, and held or to be held by the Bank in the future, securing the Bank's Indebtedness, howsoever such liens are or may be created.
3. "Creditors' Indebtedness" means all indebtedness owed or to be owing by the Borrower to either of the Creditors including, without limitation:
 - A. The principal amount of any and all claims, obligations, and liabilities of any nature matured or unmatured, absolute or contingent, secured or unsecured, joint or several, due or not due, and whether now existing or hereafter incurred and all judgments, decrees, and liens therefor together with all interest on the foregoing; and,
 - B. Promissory note dated October 30, 1998, in the original principal sum of \$60,000.00.
4. "Creditors' Liens" means all liens on property of the Borrower held or to be held by the Creditors in the future securing the Creditors' Indebtedness, howsoever such liens are or may be created, including, but expressly not limited to, the liens securing the payment of the promissory note described in Section 3.B, and including:

Vendors lien in deed filed for record under Clerk's File No. T364734 and Deed of Trust filed for record under Clerk's File No. T364735, encumbering the property therein described reference to which instruments and the records thereof being here made for all purposes.

FILE FOR RECORD
8:00 AM

-1-

MAY 18 2000

Benjamin A. Hyman
County Clerk, Harris County, Texas

5142.28398TRG.20A
10:42.04.07.00

532-37-0724

5. "Event of Default" means an Event of Default under and as defined in the Credit Agreement or any of the instruments evidencing and/or securing the Bank's Indebtedness.
6. The Creditors agree that the Creditors will hold all collateral for the Creditors' Indebtedness in trust for the Bank, until the Bank's Indebtedness has been paid in full.
7. The Creditors agree that so long as any of the Bank's Indebtedness remains outstanding, the Creditors will not accept, demand, or take any legal action or accept, demand, or institute any proceedings for the collection of all or any part of the Creditors' Indebtedness. The Creditors' Indebtedness and the Creditors' Liens are and will remain subordinated in all respects to the Bank's Indebtedness and the Bank's Liens.
8. The Creditors agree that in the event either of the Creditors receives any payment on the Creditors' Indebtedness while any sums are owed on the Bank's Indebtedness, the Creditors will hold the same in trust for and immediately pay the same over to the Bank and in the event that the Creditors obtain any lien, judgment, or decree against the Borrower, the Creditors will immediately assign the same to the Bank.
9. Notwithstanding the foregoing, the Bank agrees that so long as no Event of Default shall have occurred, the Borrower may make and the Creditors may accept and absolutely retain, payments of principal and interest as same mature and are due and payable without acceleration on the Creditors' Note. The rights to make and receive the foregoing payments will cease after an Event of Default until the Bank's Indebtedness is paid in full.
10. In the event of bankruptcy of the Borrower or in the event of any other insolvency proceeding involving the Borrower is instituted, the Creditors agree that the Creditors will assign, transfer, and set over to the Bank all of the Creditors' Indebtedness. The Creditors agree that at the request of the Bank, the Creditors will, and the Bank is authorized, but not obligated, in the Creditors' name, to take all necessary steps to file and make all proofs of claims in the name of the Bank as assignee of the Creditors. In the event the Bank receives absolute payment in full, without any condition, of all the Bank's Indebtedness, any excess will be turned over by the Bank to the Creditors up to the amount received by the Bank from the proceeds of the assigned claims.
11. The Bank is hereby authorized, in the Bank's sole discretion, but will not be required to alter the terms or extend the maturity of any portion of the Bank's Indebtedness, release any security and/or obligors thereon, and to accept any renewal notes or notes from time to time from the Borrower, all without notice to, or approval or consent by the Creditors, and without any impairment of the rights of the Bank as against the Creditors hereunder. Any alteration, release, renewal and/or extension by the Bank will not affect the obligations of the Creditors hereunder.
12. Except as permitted in Section 9, the Borrower agrees that the Borrower will make no loans, payments, advances or other distributions of any sort to any person, firm, or corporation in any form so long as any of the Bank's Indebtedness remains outstanding. The Creditors agree that the Creditors will not accept any loans, payments, advances or other distributions of any sort from the Borrower in any form so long as any of the Bank's Indebtedness remains outstanding.

532-37-0725

13. The Borrower agrees to notify the Bank of any legal proceedings taken by the Creditors against the Borrower. The Borrower agrees that the Borrower will, at the Bank's request, defend all proceedings to the best of the Borrower's ability.
14. The Creditors agree that so long as there remains outstanding any of the Bank's Indebtedness, the Creditors will not assign or transfer any of the Creditors' Indebtedness or any instrument evidencing the same except to the Bank. In the event of any purported assignment or transfer, except to the Bank, same will be null and void and the Creditors will thereupon immediately become liable to the Bank in the amount of the indebtedness so assigned or transferred. The Creditors warrant, covenant and agree with the Bank that the Creditors are the owners and holders of all of the Creditors' Indebtedness and of the Creditors' Liens, no encumbrances affect same, no prior assignment of same have been made and the Creditors have full power and authority to enter into this Agreement.
15. The Bank's delay in or failure to exercise any right or remedy will not be deemed a waiver of any obligation of the Creditors or the Borrower or right of the Bank. This Agreement may be modified, and any of the Bank's rights hereunder waived, only by agreement in writing signed by the Bank.
16. This Agreement shall inure to the benefit of and shall bind the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.
17. This Agreement constitutes a continuing agreement of subordination. The Bank may, without notice to the Creditors, lend monies, extend credit, and make other financial accommodations to or for the account of the Borrower on the basis hereof until written notice of revocation of this Agreement as to future transactions will be delivered to the Bank by the Creditors. Any notice of revocation will not affect this Agreement in relation to any obligations or liabilities of the Borrower then existing.
18. Any notice required or permitted to be given hereunder shall be in writing, shall be addressed to the parties hereto at the respective addresses set out below, which may be changed by the giving of written notice to that effect pursuant hereto, and shall be deemed effectively given if, (a) delivered personally, or (b) upon being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested:

If to the Borrower:

JOHN W. PURCELL
5012 Bissonnet
Bellaire, Texas 77401

If to the Subordinate Creditors:

CARLOS HELANDER AND NAOMI STEWART

If to the Bank:

Sterling Bank
15000 Northwest Freeway
P.O. Box 40333
Houston, Texas 77240-8271

19. No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder will operate as a waiver thereof, or will any single or partial exercise of any right hereunder preclude any

532-37-0726

other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

20. All representations, warranties and covenants made by the Creditors or the Borrower or on behalf of the Borrower will be considered to have been relied upon by the Bank and will survive execution and delivery of the Loan Documents regardless of any investigation by or on behalf of the Bank or any discovery of any thereof. This Agreement is a continuing agreement and will, (a) remain in full force and effect until the Bank's Indebtedness has been paid in full, (b) be binding upon the Creditors, the Borrower and Borrower's heirs and assigns and any subsequent holder of Creditors' Indebtedness, and (c) inure to the benefit of and be enforceable by the Bank and the Bank's successors, transferees and assigns of the Bank's Indebtedness. Without limiting the generality of the foregoing, the Bank may assign or otherwise transfer the evidence of any Bank's Indebtedness held by the Bank to any other Person, and such other Person will thereupon become vested with all the rights in respect thereof granted to the Bank herein or otherwise.
21. THIS AGREEMENT HAS BEEN PREPARED, IS BEING EXECUTED AND DELIVERED, AND IS INTENDED TO BE PERFORMED IN THE STATE OF TEXAS, AND THE SUBSTANTIVE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES OF THE STATE OF TEXAS, AND THE APPLICABLE LAWS OF THE U.S. WILL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT.
22. Any suit, action or proceeding with respect to the interpretation or enforcement of this Agreement, or the enforcement of any judgment entered by any court in respect thereof, will be brought in the courts of the State of Texas, Harris County, Texas, or in the U.S. courts located in Southern District of Texas as the Bank, in the Bank's sole discretion, may elect. The parties submit to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding.
 - A. Each of the parties waives, in connection with any such suit, action or proceeding, any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions.
 - B. Each of the parties consents to the service of process of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to each such Person, as the case may be, at its address set forth in Section 17.
 - C. Nothing herein will affect the right of any party to serve process in any other manner permitted by law.
23. Each party waives any right it may have to a trial by jury in respect of any legal proceeding directly or indirectly arising out of, under or in connection with or relating to this Agreement. Except as prohibited by law, each party hereto waives any right it may have to claim or recover in any litigation referred to in this Section any special, indirect, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages, whether such claim is based on contract, tort, duty imposed or implied by law or otherwise. Each party hereto, (a) certifies that no representative, agent or attorney of the Bank has represented, expressly or otherwise, that the Bank would not, in the event of litigation, seek to enforce the foregoing waivers, and (b) acknowledges and agrees that it has

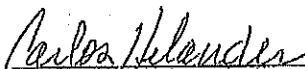
532-37-0727

been induced to enter into this Agreement and the other Loan Documents, as applicable, by, among other things, the mutual waivers and certifications herein.

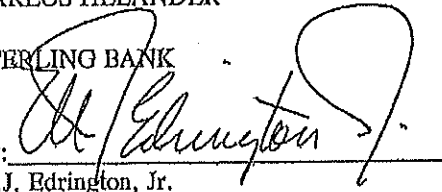
24. The parties acknowledge and agree that this Agreement is independent and distinct from the Loan Documents, including the Credit Agreement. The Creditors acknowledge that the Creditors is not a party to and does not and will not have any rights or benefits thereunder. The Creditors acknowledges that the Creditors has been provided copies of the Loan Documents, that the Creditors has had the opportunity to review the Loan Documents with legal counsel and that this Agreement is to be construed and interpreted as if jointly prepared by the parties.
25. This Agreement may be separately executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed will be deemed to constitute one and the same Agreement.
26. THIS AGREEMENT EMBODIES THE ENTIRE AGREEMENT AND UNDERSTANDING BY AND AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ALL PRIOR AGREEMENTS, CONSENTS AND UNDERSTANDINGS RELATING TO SUCH SUBJECT MATTER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

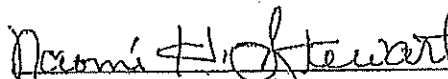
In witness whereof, the parties hereto have duly executed this Agreement as of the date first above written.


JOHN W. PURCELL


CARLOS HELANDER

STERLING BANK

By: 
M.J. Edrington, Jr.
Vice President


NAOMI STEWART

532-37-0728

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on MAY 3, 2000, by John W. Pursell.

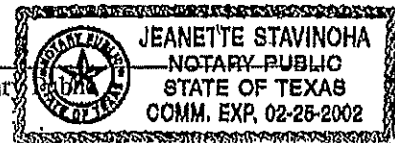
Jeanette Stavinoha

Notary Public in and for
The State of Texas

My Commission Expires

2-25-2002

Printed Name of Notary



STATE OF TEXAS

COUNTY OF HARRIS

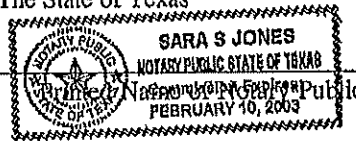
This instrument was acknowledged before me on April 30, 2000, by CARLOS HELANDER.

Sara S. Jones

Notary Public in and for
The State of Texas

My Commission Expires

2-10-03



STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on April 30, 2000, by NAOMI STEWART.

Sara S. Jones

Notary Public in and for
The State of Texas

My Commission Expires

2-10-03



532-37-0729

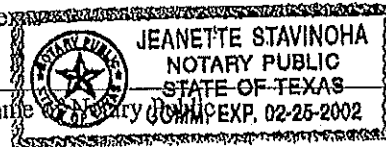
STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on MAY 3, 2000, by M.J. Edrington, Jr., Vice President of Sterling Bank, a state banking corporation, on behalf of the bank.

Jeanette Stavinoha
Notary Public in and for
The State of Texas

My Commission Expires

2-25-2002Printed Name of Notary JEANETTE STAVINOKA

Return to:

STERLING BANK
P. O. BOX 924009
HOUSTON, TEXAS 77292-4009

RECORDERS MEMORANDUM

ALL BLACKOUTS, ADDITIONS AND CHANGES
WERE PRESENT AT THE TIME THE INSTRUMENT
WAS FILED AND RECORDED.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, MORTGAGE, OR USE OF THE DESCRIBED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND UNENFORCEABLE UNDER TEXAS LAW
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was filed in the Public
Records of this State and in the Public Records of this County of
Harris County, Texas on

MAY 18 2000



Beverly H. Ferguson
COUNTY CLERK
HARRIS COUNTY TEXAS

-7-

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U448587

1047133

532-90-1892

CONTRACTOR SUBORDINATION AGREEMENT

Subord

This contractor subordination agreement is made and delivered by Heritage Point Development and Construction, Inc. (the "Contractor") in favor of STERLING BANK (the "Bank") 15000 Northwest Freeway, P.O. Box 40333, Houston, Texas 77240-0333. *lee*

06/15/00 101344162 U448587

\$13.00

RECITALS

John W. Purcell is the owner of the real property (the "Land") located in Harris County, Texas, more particularly described in the Real Property Exhibit attached hereto and made a part hereof for all purposes. John W. Purcell and Volvos Only, Inc. (the "Borrowers") have applied to the Bank for loans (the "Loans") to construct certain improvements (the "Improvements") on the Land.

The Bank, as a condition to the making of the Loans, has required all persons or entities providing improvements, services, labor and/or materials to the Land to subordinate their liens to the liens created or to be created in favor of the Bank to secure the Loans. The Loans are more particularly described in and secured by a Deed of Trust, Security Agreement and Financing Statement (the "Deed of Trust") filed for record under County Clerk's File No. U373249, Official Records of Harris County, Texas.

The Borrowers have entered into a construction contract (the "Contract") with the Contractor providing for the construction of the Improvements on the Land. The Bank, as specific conditions to the making of the Loans, has required the Contractor to, (i) indemnify and hold the Bank, the Borrowers, and the Land harmless, and indemnify them from any and all claims made by any subcontractors, suppliers, materialmen, laborers or other persons who may have any agreement with the Contractor, and (ii) subordinate the Contractor's liens arising under the Contract or otherwise to the liens created or to be created in favor of the Bank to secure the repayment of the Loans.

AGREEMENT

B
L

In consideration of, and as an inducement to the Bank to make the Loans to the Borrowers, the Contractor agrees as set out herein:

1. The Contractor indemnifies and agrees to hold the Bank, the Borrowers and the Land, harmless from any and all claims made by any subcontractors, suppliers, materialmen, laborers or other persons who may have any agreement with the Contractor or claims by, through or under the Contractor, regardless of the nature of the claim. This indemnity includes, and the Contractor agrees to reimburse the Bank and/or the Borrowers for all costs incurred in connection with the defense of any such claims, including reasonable attorney's fees or settlements costs in defense of any such claim.
2. The Contractor agrees that in the event proceeds of the Loans are disbursed by the Bank directly to the Contractor, the proceeds will be received and will be held as a trust fund for the purposes of paying all costs of labor, equipment and supplies used in constructing the Improvements on the Land. Any proceeds of the Loans will be applied first to the payment of the costs incurred by the Contractor before using any part thereof for any other purpose.
3. The Contractor agrees, for the Contractor and for the Contractor's successors, legal representatives, assigns, and for any subcontractors, suppliers, materialmen, laborers or other persons claiming or who could claim under the Contractor, that any and all liens, rights and

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3:48.04.06.00

532-90-1893

interests, whether arising under the Contract, and whether choate or inchoate, and including without limitation, all mechanic's and materialman's liens under the Constitution or statutes of the State of Texas, owned, claimed or held or to be owned, claimed or held by the Contractor, any subcontractors, suppliers, materialmen, laborers or other persons claiming under the Contractor, in and to the Land or Improvements, fixtures and/or personal property now or hereafter constructed, placed or situated thereon, are and shall be in all things subordinate and inferior to the liens and security interests created or to be created for the benefit of the Bank, the Bank's successors and assigns, under and by virtue of the Deed of Trust or other security documents executed by the Borrowers securing the Loans, and any renewals and extensions thereof.

4. In the event of foreclosure of the liens and security interest created or to be created by virtue of the Deed of Trust, or other security document securing the Loans, in whole or in part, and whether the foreclosure is by exercise of power of sale under the Deed of Trust or otherwise, the foreclosure shall cut off, extinguish and in all things terminate all liens, rights and other interests of every kind and nature whatsoever that the Contractor, or anyone claiming under or through the Contractor, may now or hereafter have in and to the Land and the Improvements, fixtures and personal property now or hereafter constructed, placed or situated on the Land.

Executed effective April 14, 2000.

Heritage Point Development and
Construction, Inc.

By: [Signature]

Name: TIM FOOTE

President

CONSTRUCTION SUPERVISOR

STATE OF TEXAS

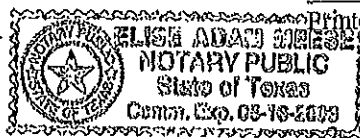
COUNTY OF HARRIS

Before me, an officer duly authorized in the State of Texas to take acknowledgement, on April 25, 2000, personally appeared Tim Foote, known to me to be the person whose name is subscribed to the foregoing instrument, and who swore to me that the statements contained therein are true and correct and who acknowledged to me that the instrument was executed for the purposes and considerations therein expressed.

Given under my hand seal of office on April 25, 2000.

[Signature]
Notary Public in and for
The State of Texas

My commission expires:



Printed Name of Notary Public

FILE FOR RECORD
8:00 AM

JUN 15 2000

[Signature]
County Clerk, Harris County, Texas

5142.28398THQ.D6A
3/48.01.06.00

532-90-1894

REAL PROPERTY EXHIBIT

A tract of land containing 0.2337 acre located in the James Blessing Survey, Abstract 162, Harris County, Texas, being Lots 9, 10, and 11 of Block 24 of the original subdivision of the Town of Bellaire, as recorded in Volume 3, Page 59 of the Harris County Map Records, and being more particularly described as follows:

COMMENCING at a 3/4 inch pipe found for the Northwest corner of Block 24 same being the Southeast intersection corner of Rice Avenue and Locust Street;

THENCE South, along the East line of Rice Avenue, 90 feet wide, a distance of 186.23 feet to a 5/8 inch iron rod set in concrete for the Northwest corner of Lot 11 and the POINT OF BEGINNING;

THENCE East, along the common line between Lots 11 and 12, a distance of 120.00 feet to a 5/8 inch iron rod set for the Northeast corner of Lot 11;

THENCE South, along the East line of Lots 9, 10, and 11, a distance of 81.90 feet to a "+" cut in concrete in the Northwest line of Bissonnet Street (formerly Richmond Avenue);

THENCE South, 61 deg. 27 min. 27 sec. West, along the Northwest line of Bissonnet Street, a distance of 6.15 feet to a "+" cut in concrete at the intersection with Spruce Street, 60 feet wide;

THENCE South, 89 deg. 55 min. 07 sec. West, along the North line of Spruce Street and the South line of Lot 9, a distance of 114.60 feet to a "+" cut in concrete for the Southwest corner of Lot 9 and the intersection with Rice Avenue;

THENCE North, along the East line of Rice Avenue and the West line of Lots 9, 10, and 11, a distance of 85.00 feet to the POINT OF BEGINNING, and containing 10,182 square feet of land.

*Returns
To:*

STERLING BANK
P. O. BOX 924009
HOUSTON, TEXAS 77292-4009

ANY PROVISION HEREIN WHICH DEFERES THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF DILATION OR FORCE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

JUN 15 2000



Benita B. Longfellow
COUNTY CLERK
HARRIS COUNTY TEXAS

ORDINANCE NO. 92-012

AN ORDINANCE AMENDING CHAPTER 24 OF THE CODE OF ORDINANCES OF THE CITY OF BELLAIRE, TEXAS, ENTITLED "PLANNING AND ZONING REGULATIONS," ARTICLE IX, ENTITLED "SPECIFIC USE AMENDMENTS," DIVISION 2 THEREOF, BY ADDING THERETO A NEW SECTION 24-928, BEING THE GRANT OF A SPECIFIC USE AMENDMENT AND PERMIT S-31 TO JOHN PURCELL, INDIVIDUALLY, AND CARLOS HELANDER, OWNER OF CERTAIN PROPERTY LOCATED AT 5012 BISSONNET STREET IN THE CCD-1 ZONING DISTRICT, FOR THE USE OF SAID PROPERTY AS AN AUTOMOBILE REPAIR BUSINESS, SAID PROPERTY BEING LEGALLY DESCRIBED AS HEREIN SET OUT.

WHEREAS, the City of Bellaire, Texas, by Ordinance No. 91-092, duly enacted on the 2nd day of December, 1991, did call a joint public hearing before the City Council of the City of Bellaire, Texas, to be held on the 20th day of January, 1992, at 7:30 o'clock p.m. at the Bellaire Civic Center, 7008 South Rice Avenue, Bellaire, Texas, to hear any and all persons desiring to be heard on or in connection with any matter or question involving an application and request heretofore previously filed by John Purcell, individually, and Carlos Helander, owner of the subject property, for a Specific Use Amendment to Chapter 24 of the Code of Ordinances of the City of Bellaire, entitled "Planning and Zoning Regulations," Article IX thereof, entitled "Specific Use Amendments," Division 2 thereof, for an automobile repair business to be located at 5012 Bissonnet Street in the City of Bellaire, Texas, said property being located in the CCD-1 Zoning District; and

WHEREAS, notice of said joint public hearing having been duly given and published as required by law, said joint public

Attachment: Ord. 92-012 (2280 : Consideration-5012 Bissonnet)

hearing was duly held on the 20th day of January, 1992, at 7:30 o'clock p.m., at which time and place all persons desiring to be heard were heard on or in connection with the application for a Specific Use Amendment to Chapter 24, Article IX, Division 2 thereof, as herein described; and

WHEREAS, the Planning and Zoning Commission of the City of Bellaire did, by letter from John Brentin, Chairman of the Planning and Zoning Commission, dated the 12th day of February, 1992, make a recommendation concerning the amendment of Chapter 24 of the Code of Ordinances of the City of Bellaire by the amendment of Article IX, Division 2 thereof, a copy of which report and recommendation is attached hereto and marked Exhibit "A"; and

WHEREAS, the City Council of the City of Bellaire did duly receive the report and recommendation of the Planning and Zoning Commission of the City of Bellaire and has been fully informed as to the facts and circumstances of the application as herein filed; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF BELLAIRE, TEXAS:

1. That Chapter 24 of the Code of Ordinances of the City of Bellaire, Texas, entitled "Planning and Zoning Regulations," Article IX, entitled "Specific Use Amendments," Division 2 thereof, is hereby amended by adding thereto a new Section 24-928, being the grant of a Specific Use Amendment and Permit S-31 to John Purcell, individually, and to Carlos Helander,

Attachment: Ord. 92-012 (2280 : Consideration-5012 Bissonnet)

owner of said property, for an automobile repair business in the CCD-1 Zoning District on property legally described as:

A tract of land containing 0.2337 acres located in the James Blessing Survey, Abstract 162, Harris County, Texas, being Lots 9, 10 and 11 of Block 24 of the original subdivision of the Town of Bellaire, as recorded in Volume 3, Page 59, of the Harris County Map Records.

2. That the permit holder shall fully comply with the limitations and restrictions as herein set out, and any failure to do so shall constitute a breach of the conditions necessary for the continuation of the permit and cause the permit as herein granted to be null and void. Said conditions are:

- a. That all cars and vehicles remaining overnight shall be parked within an enclosed service bay or within a fenced area provided by the permit holder. Any automobiles dropped off by customers for repairs at any time other than normal business hours, which shall be defined as and include the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, are excepted from this provision; however, the permit holder shall, as soon as practicable, take all steps necessary to cause such dropped off vehicles to be properly secured and screened.
- b. Prior to the commencement of operations as permitted under the terms of this permit, the permit holder shall erect an eight foot (8') screening fence on the north property line of the property as herein described to provide a visual barrier between the property as herein described and the adjacent day care center. The required screening fence shall be installed

commencing at the rear of the building on the west side of the property and continuing to the front building line on the east side of the property as delineated on the site plan as attached to the recommendation of the Planning and Zoning Commission which shall be a part of this permit. The required fence herein shall be constructed in such a manner as to provide for a one hundred percent (100%) visual barrier, and if at any time the fence shall fail to provide the total visual barrier as herein provided, the permit holder shall immediately cause the same to be replaced or repaired. The privileges extended under this permit may not be granted unless the required visual barrier is in place.

- c. The permit holders shall prepare and submit to the Building Official in conjunction with an application for a certificate of occupancy a plan for the reduction of all anticipated noise created by the normal operation of an automotive business so as to not constitute a nuisance to any other persons. The Building Official shall approve the plan, and such approval shall be a condition for the issuance of a Certificate of Occupancy. In the event the Building Official shall determine at any time that the previously approved plan is inadequate to insure for the protection of persons and property against noise to a degree to constitute a nuisance, then the Building Official shall give notice to the permit holders of the additional requirements that must be met, and the permit holders shall be required to complete said measures within ten (10) days thereafter. Failure to do so shall cause this permit to become null and void.

- d. No storage and/or display of merchandise or other property shall be permitted except in an enclosed structure.
- e. The permit holder shall at all times comply with the terms and provisions of the Code of Ordinances of the City of Bellaire, including, without limitations, requirements relating to signs, exterior storage of cars, parts or accessories, and requirements prohibiting sales of cars and boats, and any failure to comply shall constitute grounds for termination of the permit issued hereunder.
- f. The permit holders shall, as a condition of this permit, file with the Building Official a landscaping plan which shall generally describe the type of landscaping materials and plants to be planted within the permeable area adjacent to the street. As a condition for the maintenance of the permit as granted hereunder, the landscape materials as specified in the plan filed with and approved by the Building Official shall be maintained in a healthy, growing state, and if for any reason the condition of the landscaping and planting materials as required should deteriorate, the permit holders shall immediately replace the same in order to maintain full compliance with this requirement.
- g. All mechanical repairs of any type requiring more than thirty (30) minutes from beginning to conclusion shall be performed inside the building located upon the subject property.

3. That the permit granted hereunder shall expire at the expiration of three years from the date this Ordinance is

finally passed and approved and that upon the expiration of the permit as herein provided, all use of the property as permitted hereunder shall stop.

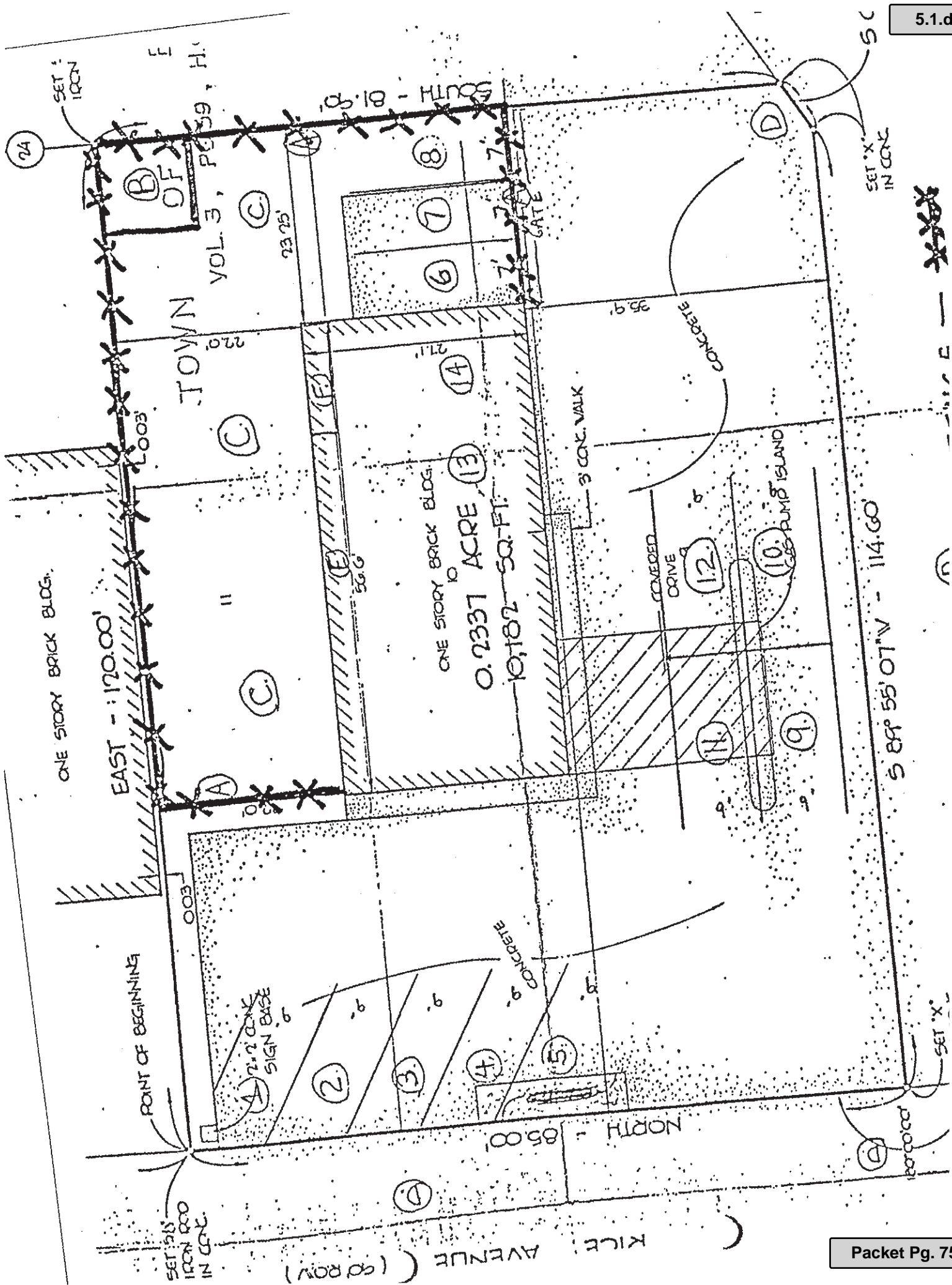
4. That the permit as granted herein shall be subject to such modification, suspension, revocation or other alteration as the City Council of the City of Bellaire shall deem necessary and reasonable and as properly adopted by ordinance at any date subsequent hereto.

PASSED and APPROVED this, the 2nd day of March, 19 92, by vote of 7 "AYE's" in favor and 0 "NO's" against.

Betty J. Janick
Mayor, City of Bellaire, Texas

ATTEST:

Roena Loftin
City Clerk



**Planning and Zoning
Commission**

City Council Chambers, First Floor of
City Hall
Bellaire, TX 77401



Meeting: 05/16/17 06:00 PM
Department: Development Services
Category: Report
Department Head: John McDonald
DOC ID: 2289

**SCHEDULED
ACTION ITEM (ID # 2289)**

Item Title:

Approval of the Commission's Report & Recommendation to City Council regarding the request for a Specific Use Permit at 5012 Bissonnet Street.

Background/Summary:

Attached is a draft report as a starting point for the Commission to finalize its recommendations to City Council on a request for the granting of a specific use permit at 5012 Bissonnet Street.

ATTACHMENTS:

- Report & Recommendation-5012 Bissonnet SUP (PDF)



CITY OF BELLAIRE

Planning and Zoning Commission

May 17, 2017

To: Mayor and City Council
 From: Winfred Frazier, Chairman, Planning & Zoning Commission
 CC: John McDonald, Director of Development Services
 Subject: Report and Recommendation on an application for a Specific Use Permit for 5012 Bissonnet Street.

On Tuesday, April 11, 2017, the Planning & Zoning Commission held a public hearing for the purpose of reviewing an application filed by Moody Soliman, on behalf of Prestige Automotive, for a Specific Use Permit (SUP) as required by Chapter 24, Planning and Zoning, Section 24-536 B. (2) d), to allow for the operation of an automobile service station at 5012 Bissonnet Street, within the Corridor Mixed-Use Zoning District (CMU). The property was previously occupied by Volvos Only, which also operated under a specific use permit with numerous conditions.

Notifications regarding the public hearing were mailed out to all properties within 500 feet of the property in question. Any and all persons desiring to be heard in connection with the Specific Use Permit application were invited to speak before the Commission; however, there were no comments made during the public hearing.

Questions from the Commission included:

- Would there be any changes made to the site?
- Was the applicant aware of the conditions put on the previous SUP, and would the applicant be willing to abide by those conditions if they were to be applied to the new SUP as well?
- Are there any conditions that could be added which would help to update the site and bring it more in line with the current CMU regulations?

The applicant confirmed that no changes were being made to the site. He also assured the Commission that he was aware of the conditions placed on the previous SUP, and that he would be willing to abide by each of them. Mr. McDonald, Director of Development Services, stated that he would take a look at the current design standards within the CMU to determine if any of them would be appropriate to apply, as a condition, to the SUP.

CONSIDERATION

Consideration of the application took place at the Commission's May 16, 2017 meeting.

RECOMMENDATION

The Commission found that the application was _____ with the criteria and standards set forth in Section 24-536 of the City of Bellaire Code of Ordinances, and voted _____ to recommend _____ of the Specific Use Permit at 5012 Bissonnet Street to City Council, with the following conditions:

- 1.
- 2.
- 3.
- 4.

VOTE OF THE COMMISSION

Members present and voting FOR this recommendation to City Council:

Members present and voting AGAINST this recommendation to City Council:

Members absent:

**Planning and Zoning
Commission**

City Council Chambers, First Floor of
City Hall
Bellaire, TX 77401



Meeting: 05/16/17 06:00 PM
Department: Development Services
Category: Plat Vacation
Department Head: John McDonald
DOC ID: 2287

**SCHEDULED
ACTION ITEM (ID # 2287)**

Item Title:

Application filed by James Lassiter, for a total plat vacation of "Amending Plat of Lot 3 and 4, Block 3 of Post Oak Plaza." The property is addressed as 4707 Braeburn Drive.

Background/Summary:

In October 2009, Mr. James Lassiter, owner of Lots 3 and 4 of Block 3, Post Oak Plaza, came before the Planning and Zoning Commission to amend the two lots into a single lot to allow an accessory use on the undeveloped property adjacent to his residence. The Commission approved the amended plat and created Lot 3A.

Mr. Lassiter is back before the Commission seeking a plat vacation to return the parcel to the original two lots. Since the amending plat was originally approved by the Commission, it is within the Commission's authority to approve this vacating plat.

Recommendation:

The Director of Development Services recommends approval of the plat vacation with the condition that the accessory use installed on what was originally Lot 3 be removed prior to the recording of the vacating plat documentation with the Harris County Clerk.

ATTACHMENTS:

- Plat Vacation Application-4707 Braeburn Dr. (PDF)

TOTAL VACATION OF "AMENDING PLAT OF LOT 3 AND 4,
BLOCK 3 OF POST OAK PLAZA"

THE STATE OF TEXAS
COUNTY OF HARRIS

WHEREAS, James M. Lassiter, III, owner(s) of Lots 3 & 4, Block 3, of Post Oak Plaza did heretofore combine the same into the subdivision designated Amending Plat of Lot 3 and 4, Block 3 of Post Oak Plaza, the plat of which is recorded in Volume 633, Page 050 of the Map Records of Harris County, Texas, and WHEREAS, the following lot(s) in said subdivision are now owned by the party indicated, to wit:

LOT 3 OWNER James M. Lassiter, III
LOT 4 OWNER James M. Lassiter, III

WHEREAS, James M. Lassiter, III, who collectively constitute the owners of all original, intact lots in Amending Plat of Lot 3 and 4, Block 3 of Post Oak Plaza, are desirous of vacating said subdivision plat so as to destroy the force and effect of the recording of such subdivision plat insofar and only insofar as the same pertains to Lot(s).

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That James M. Lassiter, III, for and in consideration of the premises and pursuant to the provisions of Chapter 212.013 of the Local Government Code, do hereby vacate Lot(s) 3 & 4 only. Said subdivision shall, however, remain in full force and effect as to all other lots in Post Oak Plaza.

EXECUTED THE DAYS HEREAFTER NOTED.

DATE

5/3/17

OWNER'S SIGNATURE



OWNER'S PRINTED NAME

James Lassiter

Attachment: Plat Vacation Application-4707 Braeburn Dr. (2287 : Plat Vacation-4707 Braeburn)

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me by James M. Lassiter, III, this 3 day of
May, 2017.

SEAL



Deanna Garcia
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires:

2.11.21

Attachment: Plat Vacation Application-4707 Braeburn Dr. (2287 : Plat Vacation-4707 Braeburn)

APPROVAL OF PLAT VACATION

BE IT KNOWN that on the _____ day of _____, 2017, the Planning and Zoning Commission of the City of Bellaire, Texas, did approve a partial vacation of the Post Oak Plaza Subdivision, known as Amending Plat of Lot 3 and 4, Block 3 of Post Oak Plaza, as recorded in Volume 633, Page 050 of the Map Records of Harris County, Texas, upon application therefore by all of the owners of all of the lots in said subdivision.

EXECUTED, this _____ day of _____, 2017.

 Winfred Frazier, Chairman
 Planning and Zoning Commission
 City of Bellaire
 Harris County, Texas

ATTEST:

 Ashley Parcus
 Planning & Zoning Secretary
 City of Bellaire
 Harris County, Texas

Attachment: Plat Vacation Application-4707 Braeburn Dr. (2287 : Plat Vacation-4707 Braeburn)

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Winfred Frazier, known to be the person whose name is subscribed to the foregoing instrument as the Chairman of the Planning and Zoning Commission of the City of Bellaire, Texas, a municipal corporation, and she/he acknowledged to me that she/he executed the same for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS ____ DAY OF _____, 2017.

SEAL

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires:

Attachment: Plat Vacation Application-4707 Braeburn Dr. (2287 : Plat Vacation-4707 Braeburn)

STATE OF TEXAS
COUNTY OF HARRIS

On _____, 2017, the Planning and Zoning Commission of the City of Bellaire, Texas, approved a partial vacation of the Post Oak Plaza Subdivision, known as Amending Plat of Lot 3 and 4, Block 3, of Post Oak Plaza, as described above.

EXECUTED, this _____ day of _____, 2017.

Stan Stanart, County Clerk
Harris County, Texas

By: _____
Deputy

Attachment: Plat Vacation Application-4707 Braeburn Dr. (2287 : Plat Vacation-4707 Braeburn)



CITY PLANNING LETTER

Effective Date: April 24, 2017

April 28, 2017

TO WHOM IT MAY CONCERN:

Record Title In:

JAMES M. LASSITER, III a/k/a JAMES LASSITER

Property Description:

All of AMENDING PLAT OF LOTS 3 AND 4, BLOCK OF POST OAK PLAZA, a Subdivision in HARRIS County, Texas, according to the map or plat thereof recorded in Film Code No. 633050, of the Map Records of HARRIS County, Texas.

Restrictive Covenants:

Covenants, conditions and restrictions recorded under Film Code No. 633050 of the Map Records of HARRIS County, Texas; and Volume 1789, Page 348 of the Deed Records of HARRIS County, Texas; but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law

Attachment: Plat Vacation Application-4707 Braeburn Dr. (2287 : Plat Vacation-4707 Braeburn)

Page 2

Easements:

Building set back line(s) 30 feet in width, along the front property line, as set forth and shown on the recorded plat of said subdivision/addition.

Easement(s) for public utilities 10 feet in width, along the rear property line(s), together with an aerial easement 5 feet wide from a plane 20 feet above the ground attached thereto, as set forth and shown on the recorded plat of said subdivision/addition.

Liens:

Deed of Trust executed by JAMES M. LASSITER, III, an unmarried man to ALLAN B. POLUNSKY, Trustee, dated September 9, 2013, recorded in/under Clerk's File No. 20130472528 of the Real Property Records of HARRIS County, Texas, securing MERS, as nominee for FLORIDA CAPITAL BANK, N.A. DBA FLORIDA CAPITAL BANK MORTGAGE in the payment of one note in the principal sum of Five Hundred Seventy Five Thousand Four Hundred (\$575,400.00), due and payable and bearing interest as therein provided; and all the terms, conditions and stipulations contained therein, including, but not limited to, any additional indebtedness, if any, secured by said instrument.

Homestead Lien Contract and Deed of Trust executed by JAMES MORRIS LASSITER, III to GEORGE MARSHALL, Trustee, dated August 28, 2014, recorded in/under Clerk's File No. 20140394829 of the Real Property Records of HARRIS County, Texas, securing AMEGY BANK NATIONAL ASSOCIATION in the payment of one note in the principal sum of Four Hundred Thousand (\$400,000.00), due and payable and bearing interest as therein provided; and all the terms, conditions and stipulations contained therein, including, but not limited to, any additional indebtedness, if any, secured by said instrument.

Attachment: Plat Vacation Application-4707 Braeburn Dr. (2287 : Plat Vacation-4707 Braeburn)

Page 3

This letter is issued with the express understanding, evidenced by the acceptance thereof, that Title Company does not undertake to give or express any opinion as to the validity or effect of the instruments listed, and this letter is neither a guaranty or warranty of title.

Liability hereunder is limited to the amount paid for same. This report is furnished solely as an accommodation to the party requesting name and should not be relied upon, as a warranty or representation as to the title to the property described herein, and may not be given to or used by any third party. Title Company assumes no liability whatsoever for the accuracy of this report, nor for any omission or error with respect hereto. YOU AGREE TO RELEASE, INDEMNIFY AND HOLD HARMLESS TITLE COMPANY BECAUSE OF ANY NEGLIGENCE BY TITLE COMPANY (WHETHER SOLE, JOINT OR OTHERWISE) FOR ANY CLAIM, LOSS, LIABILITY OR DAMAGES ARISING OUT OF THIS REPORT. This report is not title insurance. If a policy of title insurance is purchased, any liability thereunder shall be determined solely by the terms of such policy.

INNOVATIVE TITLE COMPANY

BY



Marc Steinberg, Manager

Attachment: Plat Vacation Application-4707 Braeburn Dr. (2287 : Plat Vacation-4707 Braeburn)