

1580

STATE OF ALA. JEFFERSON CO. I CERTIFY THIS INSTRUMENT FILED ON
ASSIGNMENT OF RENTS AND LEASES

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

1986 SEP 22 PM 2:02

RECORDED & MTG. TAX DEED TAX HAS BEEN PD. ON THIS INSTRUMENT.

KNOW ALL MEN BY THESE PRESENTS, that ~~James Wayne Lombard~~ ^{James Wayne Lombard} and wife, Donna Lombard; and Cahaba Park Tire Center, Inc., an Alabama corporation (hereinafter jointly and severally called the "Undersigned") have executed a Mortgage and Security Agreement (hereinafter called the "Mortgage") of even date herewith to CENTRAL BANK OF THE SOUTH, conveying the real estate legally described in Exhibit "A" attached hereto and incorporated herein by reference and being hereinafter referred to as the "Premises", and given to secure, among other indebtedness (hereinafter "other Indebtedness"), a note or notes (hereinafter referred to as the "Note") of the Undersigned in the principal sum of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) and CENTRAL BANK OF THE SOUTH (hereinafter called the "Mortgagee") is the legal owner and holder of the Note and said Mortgage; and

WHEREAS, the Undersigned is desirous of further securing (i) the payment of principal, interest and all other sums now due or hereafter to become due under the Note, including any extensions or renewals thereof, and under the Mortgage, this Assignment and any other document evidencing, securing or relating to the Note or to other Indebtedness of the Undersigned to the Mortgagee, and (ii) the performance of each and every obligation, covenant and agreement of the Undersigned contained in this Assignment, the Note, the Mortgage and in any other document evidencing, securing or relating to the indebtedness evidenced by the Note or to other Indebtedness of the Undersigned to Mortgagee.

NOW, THEREFORE, the Undersigned, for and in consideration of these presents and the mutual agreements herein contained and as further and additional security as aforesaid to the Mortgagee, and in consideration of the sum of ONE DOLLAR (\$1.00) to the Undersigned in hand paid, the receipt whereof is hereby acknowledged, does hereby sell, assign and transfer unto the Mortgagee all leases of all or part of the Premises, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises above described or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Mortgagee under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases and agreements, and all the avails thereof, to the Mortgagee, and the Undersigned does hereby appoint irrevocably the Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Premises as hereinafter provided), to rent, lease or let all or any portion of said Premises to any-

Cahaba Park Tire Center, Inc., a corporation, joins in the making of this Assignment of Rents and Leases to evidence its approval thereof but makes no warranties or representations as to its title to the Premises.

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Jack A

party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases and agreements, written or verbal, or other tenancy existing or which may hereafter exist on said Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Mortgagee would have upon taking possession of the said Premises pursuant to the provisions hereinafter set forth.

The Undersigned represents and agrees that no rent has been or will be paid by any person in possession of any portion of the above-described Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Premises has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Undersigned. The Undersigned waives any right of setoff against any person in possession of any portion of the above-described Premises. The Undersigned agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Premises.

Nothing herein contained shall be construed as constituting the Mortgagee as "mortgagee in possession" in the absence of the taking of actual possession of the said Premises by the Mortgagee pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by the Undersigned.

The Undersigned further agrees to assign and transfer to the Mortgagee all future leases upon all or any part of the above described Premises and to execute and deliver, immediately upon the request of the Mortgagee, all such further assurances and assignment in the Premises as the Mortgagee shall from time to time require.

Although it is the intention of the parties that this Assignment of Rents shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Mortgagee shall not exercise any of the rights and powers conferred upon it herein until and unless a default shall occur in the payment of interest or principal due under the Note or other Indebtedness secured by the above-described Mortgage, or in the performance or observance of any of the conditions or agreements of any instrument now or any time securing or evidencing said Note or other Indebtedness of the Undersigned to the Mortgagee, which is not corrected within any applicable cure period, and nothing herein contained shall be deemed to affect or impair any rights which the Mortgagee may have

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under said Note and Mortgage or any other instrument evidencing, securing or relating to the indebtedness evidenced by said Note, or any other Indebtedness of the Undersigned to the Mortgagee.

In any case in which, under the provisions of the above-described Mortgage, the Mortgagee has a right to institute foreclosure proceedings, whether before or after the entire principal sum secured thereby is declared to be immediately due, or whether before or after institution of legal proceedings or any other action to foreclose the lien thereof, or whether before or after sale thereunder, forthwith, upon demand of the Mortgagee and if and to the extent permitted by law, the Undersigned agrees to surrender to the Mortgagee, and the Mortgagee shall be entitled to take actual possession of, the Premises or any part thereof personally, or by its agents or attorneys, and the Mortgagee in its discretion may, if and to the extent permitted by law as aforesaid, enter upon and take and maintain possession of all or any part of said Premises, together with all the documents, books, records, papers and accounts of the Undersigned or then owner of the Premises relating thereto, and may exclude the Undersigned, its agents or servants, wholly therefrom and may as attorney-in-fact or agent of the Undersigned, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security for the avails, rents, issues, and profits of the Premises, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to the Undersigned except as otherwise required by applicable law, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Undersigned to cancel the same, to elect to disaffirm any lease or sublease made subsequent to the aforesaid Mortgage or subordinated to the lien thereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the above-described Premises that may seem judicious in its discretion, to insure and reinsure the same for all risks incidental to the Mortgagee's possession, operation and management thereof and to receive all such avails, rents, issues and profits.

The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases or rental agreements relating to said Premises, and the Undersigned shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might

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incur under any leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should the Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Mortgagee in connection with any one or more of said leases, the Undersigned agrees to reimburse the Mortgagee for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by the Undersigned, all such costs, expenses and attorneys' fees shall be secured by this Assignment.

The Mortgagee in the exercise of the rights and powers conferred upon it by this Assignment shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as the Mortgagee may determine:

(a) To the payment of the operating expenses of said Premises, including cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agent or agents, if management be delegated to an agent or agents, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) To the payment of taxes and special assessments now due or which may hereafter become due on said Premises;

(c) To the payment of all repairs, decorating, renewals, replacements, alterations, additions, or betterments, and improvements of said Premises, including the cost from time to time of installing, repairing and replacing refrigeration appliances and gas or electric stoves therein, and of placing said Premises in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and

(d) To the payment of any indebtedness evidenced or secured by the Note, the Mortgage or any other document evidencing, securing or related to the indebtedness evidenced by the Note, or any other indebtedness of the Undersigned to the Mortgagee, or any deficiency which may result from any foreclosure sale of the Premises.

The Undersigned does further specifically authorize and instruct each and every present and future lessee or tenant of the whole or any part of the above-described Premises to pay all

unpaid rental agreed upon in any lease or tenancy to the Mortgagee upon receipt of demand from said Mortgagee to pay the same.

It is understood and agreed that the provisions set forth in this Assignment shall be deemed as a special remedy given to the Mortgagee, and shall not be deemed exclusive of any of the remedies granted in the above-described Mortgage, but shall be deemed an additional remedy and shall be cumulative with the remedies therein granted.

Whenever the word "Undersigned" is mentioned herein, it is hereby understood that the same includes both the singular and plural in number and the masculine, feminine or neuter gender, as the context hereof shall require, and shall include and be binding upon successors and assigns (including successors by consolidation) of the Undersigned, and any party or parties holding title to the above-described Premises by, through or under the Undersigned. All of the rights, powers, privileges and immunities herein granted and assigned to the Mortgagee shall also inure to its successors and assigns, including all holders, from time to time, of the above-described Note.

It is expressly understood that no judgment or decree which may be entered on any debt secured or intended to be secured by the above-described Mortgage shall operated to abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment and discharge of any and all indebtedness secured by said Mortgage, in whatever form the said indebtedness may be and until the indebtedness secured by said Mortgage shall have been paid in full and all bills incurred by virtue of the authority herein contained have been fully paid out of rents, issues and profits of the Premises, or by the Undersigned, or until such time as this instrument may be voluntarily released. This instrument shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after sale, until the issuance of a deed pursuant to such foreclosure, unless the indebtedness secured by the above described Mortgage is fully satisfied before the expiration of any period of redemption.

IN WITNESS WHEREOF, the Undersigned has caused this instrument to be executed and delivered in Birmingham, Alabama, this 19th day of September, 1986.

WITNESSES:

[Signature]
[Signature]

CAHABA PARK TIRE CENTER, INC.

By *James Wayne Lombard*
James Wayne Lombard, its President
James Wayne Lombard
James Wayne Lombard

WITNESS:

[Signature]

[Signature]
Donna Lombard

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, Charlotta C. Kelley, a Notary Public in and for said County in said State, hereby certify that James Wayne Lombard, whose name as President of Cahaba Park Tire Center, Inc., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 19th day of September, 1986.

[Signature]
Notary Public

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Notarial Seal

My commission expires: 4/9/90

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, Charlotta C. Kelley, a Notary Public in and for said County in said State, hereby certify that James Wayne Lombard and Donna Lombard, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand this the 19th day of September, 1986.

[Signature]
Notary Public

NOTARIAL SEAL

My commission expires: 4/9/90

EXHIBIT A

Lot 7-A, according to a Resurvey as recorded in Map Book 150, Page 55, in the Probate Office of Jefferson County, Alabama and Map Book 10, Page 28, in the Probate Office of Shelby County, Alabama of Lots 6 and 7, Cahaba Park South.

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STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1986 SEP 22 PM 3:58

Thomas W. ...
JUDGE OF PROBATE

1. Deed Tax	\$	_____
2. Mtg. Tax		_____
3. Recording Fee		20.00
4. Indexing Fee		1.00
TOTAL		<u>21.00</u>

State of Alabama
Jefferson County

I, the Undersigned, as Judge of the Court of Probate,
in and for said County, in said State, hereby certify that
the foregoing is a full, true and correct copy of the
instrument with the filing of same as appears of

record in this office in Vol. 2996 Record of
Deed on page 166

Given under my hand and official seal, this the

22nd day of Sept 1986
Thomas W. ...

Judge of Probate