
**MORTGAGE, ASSIGNMENT OF LEASES
AND SECURITY AGREEMENT**

Dated July 1, 2003

From

**EXPRESS OIL CHANGE, LLC
190 West Valley Avenue
Birmingham, Alabama 35209**

to

**AMSOUTH BANK
1900 5th Avenue North AST UL
Birmingham, Alabama 35203**

**THIS MORTGAGE IS ALSO TO BE INDEXED IN THE INDEX OF UNIFORM
COMMERCIAL CODE FINANCING STATEMENTS**

The amount of the indebtedness secured by this instrument is \$16,707,946.

**For purposes of calculating the tax due upon the recordation of this Mortgage, the
maximum principal amount of the indebtedness secured hereby is \$11,580,000 for the
property located in Alabama.**

**This Mortgage, Assignment of Leases and Security Agreement was prepared by Heyward
C. Hosch of Walston, Wells, Anderson & Bains, LLP, Financial Center, 505 North 20th
Street, Suite 500, Birmingham, Alabama 35203**

STATE OF ALABAMA)
)
_____ COUNTY)

**MORTGAGE, ASSIGNMENT OF LEASES
AND SECURITY AGREEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT dated July 1, 2003 is entered into by EXPRESS OIL CHANGE, LLC, a Delaware limited liability company (the "Issuer"), for the benefit of AMSOUTH BANK, an Alabama banking corporation (the "Credit Obligor").

Recitals

Simultaneously with the delivery of the within referenced Financing Documents the Issuer has delivered this instrument to the Credit Obligor in consideration of, and in satisfaction of certain conditions precedent of the Credit Obligor for, the extension of credit facilities to and for the benefit of the Issuer pursuant to the within referenced Credit Agreement.

The delivery of this instrument will result in direct financial benefits to the Issuer.

Agreement

NOW, THEREFORE, in consideration of the foregoing recitals and to induce the Credit Obligor to enter into the Credit Agreement and to issue the Letter of Credit, and to secure the prompt payment of all amounts due under the Credit Agreement and this Mortgage, and also to secure the full and complete performance of each and every obligation, covenant, duty and agreement of the Issuer contained in this Mortgage and the Credit Agreement:

ARTICLE I

Definitions and Other Provisions of General Application

For all purposes of this Mortgage, except as otherwise expressly provided or unless the context otherwise requires:

(1) **Capitalized terms used herein without definition shall have the respective meanings assigned thereto in the Indenture.**

(2) The terms defined in this Article have the meanings assigned to them in this Article. Singular terms shall include the plural as well as the singular and vice versa and words connoting one gender shall refer to all genders.

(3) All references in this instrument to designated "articles", "sections" and other subdivisions are to the designated articles, sections and subdivisions of this instrument as originally executed.

(4) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Mortgage as a whole and not to any particular article, section or other subdivision.

Accounts shall mean all accounts, Accounts Receivable, Chattel Paper, chattel mortgages, leases, Instruments, Documents, promissory notes, contracts for receipt of money, conditional sales contracts, and evidences of Debt of or owing to or acquired by Issuer whether now existing or hereafter arising, including, without limitation, (i) all accounts and other rights to payment of money which arise or result from Issuer's selling or other disposition of Issuer's goods or the providing of services by the Issuer, (ii) the proceeds of any insurance and (iii) the return of unearned insurance premiums.

Accounts Receivable shall mean a right to payment for goods sold or leased or for services rendered by the Issuer, whether or not evidenced by an Instrument or Chattel Paper, and shall include a right to payment which has been earned under a Contract Right.

Borrowing Base shall mean the sum of (i) 50% of the then Net Outstanding Amount of Eligible Accounts plus (ii) 50% of the value of the then Eligible Inventory.

Borrowing Base Certificate shall mean the monthly certificate to be delivered to the Credit Obligor by the Issuer providing information regarding the calculation of the Borrowing Base, in substantially the form set out on Exhibit C.

Chattel Paper shall have the meaning attributed to that term under the Alabama Uniform Commercial Code.

Collateral shall mean all property and rights mortgaged, assigned, pledged or otherwise subject to the lien of this Mortgage.

Condemnation Awards shall have the meaning stated in the third Granting Clause of Article II.

Contract Right shall mean any right to payment under a contract not yet earned by performance, whether or not evidenced by an Instrument or Chattel Paper.

Credit Agreement shall mean that certain Credit Agreement dated July 1, 2003 between the Issuer and the Credit Obligor, including any amendments or supplements to such instrument entered into pursuant to the applicable provisions thereof.

Credit Amount shall mean the maximum amount available to be drawn under the Letter of Credit, as reduced from time to time and reinstated from time to time pursuant to the terms and conditions of the Letter of Credit.

Credit Documents shall mean collectively each of the following as any of the same may at any time be amended, supplemented or restated:

- (a) Credit Agreement,
- (b) Mortgage,
- (c) Credit Guaranty, and
- (d) Subordination Agreement dated July 1, 2003 among James O. Lunceford, J. Timothy Lunceford, Marsha L. Daniel, the Issuer and the Credit Obligor.

Credit Guaranty shall mean collectively each Credit Guaranty Agreement dated July 1, 2003 from each of the Guarantors to the Credit Obligor.

Credit Obligor shall mean AmSouth Bank, and its successors and assigns.

Document shall have the meaning attributed to that term under the Alabama Uniform Commercial Code.

Eligible Account shall mean and include only such Accounts Receivable which are not more than 90 days past due, according to the terms shown on the invoice (or the date of the invoice where terms are not specifically stated), as the Credit Obligor reasonably deems eligible based on such credit and collateral considerations as the Credit Obligor reasonably deems appropriate. Without limiting the generality of the foregoing, the Credit Obligor may exclude any Account Receivable from Eligible Accounts if:

- (i) The subject goods have been shipped or delivered to a Purchaser on a bill-and-hold, guaranteed sale, consignment, approval or sale-or-return basis or subject to any other repurchase or return agreement; or
- (ii) Any material part of the subject goods has been returned, rejected, lost or damaged; or
- (iii) The Purchaser is located outside the United States, and the subject goods have not been shipped on the security of a banker's acceptance or letter of credit applicable to the Credit Obligor and pledged to the Credit Obligor, or the Account Receivable is not payable in United States dollars; or
- (iv) The Purchaser is also the Issuer's supplier or creditor, unless the Purchaser is the Valvoline Company, a division of Ashland, Inc.; or
- (v) The Account Receivable is not evidenced by an invoice in form reasonably acceptable to Credit Obligor; or
- (vi) More than 50% in amount of the other Accounts Receivable of the Purchaser are more than 60 days past due; or
- (vii) The Account Receivable arises out of transactions with an employee, officer, agent, director, stockholder, Affiliate or subsidiary of the Issuer; or

(viii) The general creditworthiness and financial condition of the Purchaser are not reasonably acceptable to the Credit Obligor; or

(ix) The Credit Obligor reasonably believes that the collection of such Account Receivable is insecure or that such Account Receivable may not be paid by reason of the Purchaser's financial ability to repay; or

(x) Any of the representations and warranties set forth in Section 4.08 of this Agreement are not true and correct with respect to such Account Receivable.

Eligible Inventory shall mean and include only such Inventory of raw materials and finished goods (not including supplies, parts or work-in-process) which is held at locations disclosed to the Credit Obligor in writing, is in good and salable condition, meets all standards imposed by any governmental agency, or department or subdivision thereof, having regulatory authority over such goods or over their use or sale, is currently usable or salable in the normal course of the Issuer's business and is not obsolete or unmerchantable, as the Credit Obligor, in its reasonable judgment, shall deem eligible, based on such credit and collateral considerations as the Credit Obligor reasonably deem appropriate. The value of Eligible Inventory in calculating the Borrowing Base shall be computed at the lower of cost or market.

Environmental Laws means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Asset Conservation, Lender Liability, and Deposit Insurance Act of 1996, 42 U.S.C. §9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U. S. C. §9601 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §11001 et seq.; the Clean Air Act of 1966, as amended, 42 U.S.C. §7401 et seq.; the National Environmental Policy Act of 1975, 42 U.S.C. §4321; the Rivers and Harbours Act of 1899, 33 U.S.C. §401 et seq.; the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 et seq.; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §651 et seq.; and the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §300(f) et seq.; and all rules, regulations and guidance promulgated or published thereunder, and any state, regional, county or local statute, law, rule, regulation or ordinance relating to public health, safety or the environment, including, without limitation, those relating to (i) releases, discharges, emissions or disposals to air, water, land or groundwater, (ii) to the use, handling or disposal of polychlorinated biphenyls (PCB's), asbestos or urea formaldehyde, (iii) to the treatment, storage, disposal or management of Hazardous Substances (including, without limitation, petroleum, crude oil or any fraction thereof), and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the Project or the adjacent or surrounding property, (iv) to the exposure of persons to toxic, hazardous, or other controlled, prohibited or regulated substances, and (v) to the transportation, storage, disposal, management or release of gaseous or liquid substances, and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

Equipment shall mean all equipment, machinery, goods and other items of tangible personal property (not included in Inventory) used or useful in connection with the present or future business of the Issuer including without limitation the property described on Exhibit B.

Event of Default shall have the meanings stated in Article VII. An Event of Default shall "exist" if an Event of Default shall have occurred and be continuing.

Financing Documents shall mean collectively the Indenture and the Credit Documents.

General Intangibles shall mean all general intangibles as defined in the Alabama Uniform Commercial Code and all causes in action, causes of action and other intangible personal property of the Issuer of every kind and

nature (other than Accounts) including, without limitation, corporate or other business records, inventions, designs, patents, patent applications, trademarks, trade names, trade secrets, good will, copyrights, registrations, licenses, franchises, tax refund claims and any guarantee claims, security interests or other security now or hereafter held by or granted to the Issuer to secure payment by a Purchaser of any of the Accounts.

Governmental Authority shall mean any federal, state, county, municipal, or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

Ground/Improvement Leases shall mean those certain lease agreements more particularly described on Exhibit D attached hereto whereby the User leases the real property, improvement, benefiting easements, and all other right, title and leasehold interest in and to the Leased Property.

Guarantors shall mean collectively Richard A. Brooks and Joe E. Watson, Jr. and the respective heirs, executors, administrators and assigns thereof.

Hazardous Substance means any substance identified as hazardous under any of the Environmental Laws; provided, however, that Hazardous Substances shall not include (i) cleaning and other maintenance-related materials and supplies in type and quantity customary for buildings of the nature of the Property of the Issuer being used in a customary and safe manner, (ii) medical waste incident to operation of a health care facility being handled and disposed of in a customary and safe manner, and (iii) motor oil and other petroleum products being stored, transported, disposed of, used or sold by Issuer in the conduct of its business in a customary and safe manner and not in violation of any Environmental Laws.

Hedge Agreement shall mean an agreement (including terms and conditions incorporated by reference therein and all schedules thereto and confirmations thereof) in any notional principal amount (which notional amount may reduce periodically under the agreement) from time to time and at any time executed and delivered by the Issuer and the Credit Obligor: (a) which provides for an interest rate, currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign exchange transaction, cross-currency rate swap, currency option, any combination thereof, or option with respect to, any of the foregoing or any similar transactions, for the purpose of hedging the Issuer's exposures to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (including any such or similar agreement or transaction entered into by the Credit Obligor in connection with any other agreement or transaction between the Issuer and the Credit Obligor) and (b) a master agreement for any of the foregoing agreements referenced in (a) together with all supplements.

Indenture shall mean that certain Trust Indenture of even date between the Issuer and the Trustee, including any amendments or supplements to such instrument from time to time entered into pursuant to the applicable provisions thereof.

Instrument shall have the meaning attributed to that term under the Alabama Uniform Commercial Code.

Inventory shall mean goods, merchandise and other personal property now or hereafter held by the Issuer for sale or lease or furnished or to be furnished under contracts of service or otherwise, raw materials, parts, finished goods, work-in-process and supplies and materials used or consumed, or to be used or consumed, in the Issuer's present or any future business, and all such property the sale, lease or other disposition of which has given rise to Accounts and which has been returned to or repossessed or stopped in transit by the Issuer.

Leased Property shall mean all real and personal property subject to the demise of any of the Ground/Improvement Leases.

Leases shall have the meaning stated in the fifth Granting Clause of Article II.

Letter of Credit shall mean the letter of credit with respect to the Notes to be issued by the Credit Obligor in favor of the Trustee pursuant to the Credit Agreement.

Mortgage shall mean this instrument as originally executed or as it may from time to time be supplemented, modified or amended by one or more instruments entered into pursuant to the applicable provisions hereof.

Net Outstanding Amount of Eligible Accounts shall mean the net outstanding amount of all then Eligible Accounts after eliminating from the aggregate face amount thereof all payments, adjustments, discounts, credits and allowances applicable thereto and all amounts due thereon considered by the Credit Obligor difficult to collect or uncollectible by reason of return, rejection, repossession or loss of, or damage to, the merchandise covered thereby, disputes, financial difficulty of the Purchaser or otherwise, all as determined by the Credit Obligor in its sole reasonable discretion.

Obligations shall mean:

- (1) all letter of credit commissions, fees, charges and costs becoming due and payable under the Credit Agreement in accordance with the terms thereof;
- (2) all amounts becoming due and payable under the Credit Agreement in accordance with the terms thereof as reimbursement of amounts paid by the Credit Obligor under the Letter of Credit;
- (3) all late charges and all interest on late payments becoming due and payable under the Credit Agreement;
- (4) all amounts becoming due and payable under the Credit Agreement upon the occurrence and continuance of an Event of Default under the Credit Agreement;
- (5) all amounts becoming due and payable under the Credit Agreement as reimbursement of increased costs to the Credit Obligor caused by changes in laws or regulations or in the interpretation thereof;
- (6) all other amounts becoming due and payable under the Credit Agreement, including without limitation all obligations of the Issuer under Section 9.03 of the Credit Agreement;
- (7) all amounts becoming due and payable by any Obligor under or with respect to any Hedge Agreement;
- (8) all amounts becoming due and payable by any Obligor under the terms of this Mortgage (including but not limited to reimbursement for advancements made by the Credit Obligor under this Mortgage) and any other security agreements, guarantees, mortgages or other documents now or hereafter evidencing or securing the obligations of the Obligors under the Credit Documents; and
- (9) the due and punctual payment and performance of all agreements and obligations of every kind or character of the Issuer under the Credit Documents including, without limitation, the obligation of the Issuer to cause the Project to be completed and placed in service, free and clear of liens and encumbrances other than Permitted Encumbrances, in accordance with the Credit Agreement;
- (10) all other indebtedness, obligations (including obligations of performance) and liabilities of the Issuer to the Credit Obligor of every kind and description whatsoever, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, or acquired by

the Credit Obligor from any source, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument there may be evidenced or whether they are evidenced by any agreement or instrument, and whether incurred as maker, endorser, surety, guarantor or otherwise, and any and all extensions, restatements and renewals of any of the same; and

(11) all renewals and extensions of any or all the obligations of the Obligor described in paragraphs (1) through (10) above (including without limitation any renewal or extension of, and any substitute for, the Letter of Credit), whether or not any renewal or extension agreement is executed in connection therewith.

Obligors shall mean the Issuer and the Guarantors collectively, and individually, an "Obligor".

Permitted Encumbrances shall mean restrictions, exceptions, reservations, conditions, limitations, interests and other matters appearing of public record prior to the recordation of this Mortgage.

Person shall include natural persons, sole proprietorships, corporations (which shall be deemed to include business trusts), unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships, governments (whether national, federal, state, county, city, municipal or otherwise) and any governmental instrumentality, division, agency, body or department.

Personal Property and Fixtures shall mean all personal property and fixtures constituting part of the Collateral.

Project shall mean the Project Site, the Personal Property and Fixtures and all other property and rights referred to or intended so to be in Granting Clauses I and II.

Project Site shall have the meaning stated in the first Granting Clause of Article II.

Purchaser shall include any buyer or lessee of Inventory from the Issuer, any customer for whom services have been rendered or materials furnished by the Issuer and any other Person who is now or may become obligated to the Issuer on an Account.

Rents shall have the meaning stated in the fifth Granting Clause of Article II.

Special Funds shall mean all funds and accounts established pursuant to the Indenture.

Trustee shall mean The Bank of New York Trust Company of Florida, N.A., and its successors and assigns as trustee, under the Indenture.

ARTICLE II

Granting Clauses

As security for the Obligations, the Issuer has bargained and sold and does hereby grant, bargain, sell, transfer, assign, set-over and convey to the Credit Obligor, its successors and assigns, the property and interests in property described in the following Granting Clauses, and the Issuer has granted and does hereby grant to the Credit Obligor security title to and a continuing security interest in said property and interests in property and all proceeds and products thereof:

I.

(Project Site and Buildings)

The real property described on Exhibit A attached hereto and interests therein, together with all easements, permits, licenses, rights-of-way, contracts, leases, tenements, hereditaments, appurtenances, rights, privileges and immunities pertaining or applicable to said real property and interests therein, together with all buildings, structures and improvements now or hereafter located on such real property (the "Project Site").

II.

(Personal Property and Fixtures)

(1) All of the Accounts, Equipment, Inventory, and General Intangibles of the Issuer, now existing and acquired or created from time to time hereafter, whether in transit or in the constructive, actual or exclusive possession of the Issuer or of the Credit Obligor or held by the Issuer or others for the Credit Obligor's account and wherever the same may be located, including, without limiting the generality of the foregoing, all Inventory which may be located on the premises of the Issuer or upon the premises of any carriers, forwarding agents, truckers, warehousemen, vendors, selling agents, processors or other third parties;

(2) All goods represented by Accounts, Equipment, Inventory, and General Intangibles;

(3) All such goods that may be reclaimed or repossessed from or returned by Purchasers;

(4) All of the Issuer's rights as an unpaid vendor or lien or, including stoppage in transit, replevin, detinue and reclamation;

(5) Any other property of the Issuer now or hereafter held by the Credit Obligor or by others for the Credit Obligor's account;

(6) All proceeds and products of, and additions and accessions to, any of the items described in (1) through (5) above; and

(7) All books and records (including, without limitation, customer lists, credit files, magnetic, digital and laser tapes and disks, electronic and computer storage media, computer programs, print-outs, and other computer materials and records) of Issuer pertaining to any of (1) through (6) above;

III.

(Condemnation Awards and Insurance Proceeds)

Subject to the provisions hereof respecting application of the following for the purposes and on the terms and conditions set forth herein: (i) all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Issuer with respect to the Collateral as a result of the exercise of the right of eminent domain, any damage to or destruction of the Collateral or any part thereof, or any other injury to or decrease in the value of the Collateral (herein referred to as "Condemnation Awards"), and (ii) all right, title and interest of the Issuer in and to any policies of insurance (and the proceeds thereof) with respect to any damage to or destruction of the Collateral.

IV.

(Special Funds)

Money and investments from time to time on deposit in, or forming a part of, the funds and accounts established under the Indenture (herein referred to as the "Special Funds"), subject to the prior lien of the Indenture with respect to the Special Funds and the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

V.

(Leases and Rents)

(a) All written or oral leases or other agreements for the use or occupancy of all or any portion of the Collateral with respect to which the Issuer is the lessor and any and all extensions and renewals thereof, now or hereafter existing (collectively, the "Leases");

(b) Any and all guaranties of performance by lessees under the Leases;

(c) The immediate and continuing right to collect and receive all the rents, income, receipts, revenues, issues and profits now due or that may hereafter become due or to which the Issuer may now be or may hereafter (including during the period of redemption, if any) become entitled to demand or claim, arising or issuing from or out of the Leases or from or out of the Collateral, or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, liquidated damages upon default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Collateral, together with any and all rights and claims of any kind that the Issuer may have against any such lessee under the Leases or against any sublessees or occupants of the Collateral, all such moneys, rights and claims described in this subparagraph (c) being hereinafter referred to as the "Rents"; provided, however, that so long as no Event of Default has occurred under this Mortgage, the Issuer shall have the right under a license granted hereby (but limited as provided in Section 8.07 of this Mortgage) to collect, receive and retain the Rents (but not prior to accrual thereof); and

(d) Any award, dividend or other payment made hereafter to the Issuer in any court procedure involving any of the lessees under the Leases in any bankruptcy, insolvency or reorganization proceeding in any state or federal court and any and all payments made by lessees in lieu of rent, the Issuer hereby appointing the Credit Obligor as the Issuer's irrevocable attorney-in-fact to appear in any action and collect any such award, dividend or other payment.

VI.

(Leasehold Estate, Options, and Future Title)

The leasehold estate and interests of the User in and to the Leased Property under the Ground/Improvement Leases, together with all right, title and interest of the User in and to all buildings, structures, improvements and fixtures now or hereafter located upon the Leased Property, together with all right, title and interest of the User in and to all easements, permits, licenses, rights-of-way, contracts, leases, tenements, hereditaments, appurtenances, rights, privileges, and immunities pertaining or applicable to the Leased Property and interests therein, together with all right, title and interest of the User in and to (i) all other rights, titles and privileges under the Ground/Improvement Leases, and (ii) all modifications, extensions and renewals of the Ground/Improvement

Leases and (iii) all options to purchase the Leased Property, or any part thereof, including without limitation each of the options to purchase set forth in the Ground/Improvement Leases, and (iv) all other, further, or additional title (including without limitation fee simple title), estate, options, privileges, interest or rights which the User may now or hereafter acquire in and to the Leased Property.

VII.

(Other)

Any and all other real or personal property of every kind and nature from time to time hereafter by actual delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to the Credit Obligor as and for additional security hereunder by the Issuer or by anyone in the behalf of, or with the written consent of, the Issuer.

All of the property described in the foregoing Granting Clauses I through VII, both inclusive, is herein sometimes together referred to as the "Collateral."

PROVIDED: no submission by the Issuer to the Credit Obligor of a schedule or other particular identification of Collateral shall be necessary to vest in the Credit Obligor security title to and a security interest in each and every item of Collateral of the Issuer now existing or hereafter created and acquired, but rather such title and security interest shall vest in the Credit Obligor immediately upon the creation or acquisition of any item of Collateral hereafter created or acquired, without the necessity for any other or further action by the Issuer or by the Credit Obligor and the Issuer shall take such steps and observe such formalities as the Credit Obligor may request from time to time to create and maintain in favor of the Credit Obligor, in accordance with the terms of this Agreement, a valid and first lien upon, security interest in and pledge of all of the Collateral and all other security which the Issuer may grant to the Credit Obligor, whether now existing or created or acquired from time to time hereafter.

TO HAVE AND TO HOLD the Collateral, together with all the rights, privileges and appurtenances thereunto belonging, unto the Credit Obligor, its successors and assigns, forever.

ARTICLE III

Representations and Warranties

To induce the Credit Obligor to enter into the Credit Agreement and to issue the Letter of Credit, the Issuer represents and warrants that:

(1) Valid Title and Related Warranties. The Issuer is lawfully seized of an indefeasible estate in fee simple in and to, and good title to, the Project Site; the Issuer owns valid leasehold estates in the Leased Property; the Issuer has a good right to sell and mortgage the Collateral; the Collateral is subject to no liens, encumbrances or security interests other than Permitted Encumbrances; and the Issuer will forever warrant and defend the title to, and mortgages upon and security interests in, the Collateral unto the Credit Obligor against the claims of all Persons whomsoever, except those claiming under Permitted Encumbrances. It is expressly understood and agreed that, with respect to the Special Funds, the lien created by this Mortgage is junior and subordinate to the lien created by the Indenture.

(2) Maintenance of Lien Priority; Further Assurances. The Issuer shall take all steps necessary to preserve and protect the validity and priority of the liens on and security interests in the

Collateral created hereby. The Issuer shall execute, acknowledge and deliver such additional instruments as the Credit Obligor may deem necessary in order to preserve, protect, continue, extend or maintain the lien and security interest created hereby as a lien on and security interest in the Collateral subject only to Permitted Encumbrances, except as otherwise permitted under the terms of this Mortgage. The Credit Obligor shall hold the Collateral, and shall record the pledge thereof and security interest therein made by this Mortgage, in such manner, name, and places as the Credit Obligor shall deem necessary and desirable to fully perfect, preserve, and protect the interest of the Credit Obligor in the Collateral created hereby as a valid first-priority claim therein and the Credit Obligor may do all things and execute and deliver all writings of any kind whatsoever which are necessary or desirable to effect the foregoing under the Alabama Uniform Commercial Code or other applicable state and federal law. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens and security interests hereby created shall be paid by the Issuer.

(3) Records of Collateral. The Issuer will hold in its principal place of business, or other location approved by the Credit Obligor, and make available to the Credit Obligor as requested, all of the Issuer's records containing any entries as to Collateral. Upon request of the Credit Obligor such records will be segregated and marked by the Issuer with the Credit Obligor's name in a manner, satisfactory to the Credit Obligor.

(4) Rights to Location of Collateral. The Issuer shall obtain a waiver of any lien claims or rights which any owners or mortgagees of any real estate (or of any possessory interest therein) on which the Collateral, or any part thereof, is now or hereafter may be located, may have with respect to the Collateral, or shall secure an agreement wherein such persons subordinate their rights, titles, interests and lien claims to the Credit Obligor's security interest in the Collateral. The Issuer shall provide the Credit Obligor with copies of all agreements between the Issuer and any warehouse at which any Inventory may, from time to time, be kept.

(5) Collateral Evidenced by Instruments or Documents. Immediately upon the Issuer's receipt of any Collateral which is evidenced or secured by an agreement, Instrument, Document or Chattel Paper, the Issuer shall deliver the original thereof (or each executed original counterpart if more than one) or appropriately mark the same, to or as requested by the Credit Obligor, together with appropriate endorsements or assignments in form and substance acceptable to the Credit Obligor.

(6) Verification of Accounts. Any of the Credit Obligor's officers, employees or agents shall have the right, after reasonable notice to the Issuer, at any time or times hereafter, in the Credit Obligor's name or in the name of the Issuer, to verify with any Person the validity or amount of, or any other matter relating to, any Accounts by mail, telephone, telegraph or otherwise. The Issuer shall keep accurate and complete records of its Accounts and shall deliver to the Credit Obligor not later than the last Business Day of each month a detailed aged trial balance, in form and substance acceptable to the Credit Obligor, of all then-existing Accounts specifying the names, addresses, face value and dates of invoices for each purchaser obligated on an Account so listed, for the then immediately preceding month, and, upon reasonable demand, shall make available for inspection and copy the original copy of all documents (including, without limitation, proof of shipment and delivery, sales journals, contracts, bills of lading, warehouse receipts, purchase orders, invoices, customer statements, repayment histories, completion certificates or other proof of the satisfactory performance of the services that gave rise to an Account, and present status reports) evidencing or relating to the Accounts so scheduled and such other matters and information relating to the then-existing Accounts as the Credit Obligor shall reasonably request.

(7) Schedule of Inventory. The Issuer shall keep correct and accurate daily records of the Inventory, itemizing and describing the kind, type, quality and quantity of Inventory, the Issuer's cost therefor and selling price thereof, and the daily withdrawals therefrom and additions thereto. The Issuer shall furnish to the Credit Obligor, semiannually in each calendar year, a current schedule of inventory

("Schedule of Inventory"), in form and substance satisfactory to the Credit Obligor evidencing the results of (a) a physical inventory conducted during the Issuer's then-current fiscal quarter and supported by copies of its perpetual inventory calculations, or (b) a physical inventory conducted during such calendar month. Such Schedule of Inventory shall provide the Credit Obligor with such information as the Credit Obligor shall reasonably request. Upon demand, the Issuer shall provide the Credit Obligor with the original copy of all documents related to such Inventory, including, without limitation, invoices related to the Issuer's purchase thereof.

(8) The Ground/Improvement Leases. The Issuer does hereby represent, warrant and covenant that:

(i) The Ground/Improvement Leases are valid and subsisting leases of the Leased Property for the terms therein set forth and the Ground/Improvement Leases are in full force and effect.

(ii) All rent reserved in the Ground/Improvement Leases has been paid to the extent payable prior to the date hereof.

(iii) To the best knowledge of the Issuer, there is no existing default under the provisions of any of the Ground/Improvement Leases or in the observance of any of the terms, covenants, conditions or warranties thereof on the part of the Issuer to be observed and performed.

ARTICLE IV

Covenants of Issuer

SECTION 4.01

Payment of Taxes and Other Assessments

The Issuer will pay or cause to be paid all taxes, assessments and other governmental, municipal or other public dues, charges, fines or impositions imposed or levied upon the Collateral or on the interests created by this Mortgage or with respect to the filing of this Mortgage when and as the same become due and payable, and any tax or excise on rents or other tax, however described, assessed or levied by any state, federal or local taxing authority as a substitute, in whole or in part, for taxes assessed or imposed on the Collateral or on the lien and other interests created by this Mortgage when and as the same become due and payable, and the Issuer will deliver receipts therefor to the Credit Obligor or, in the case of mortgage filing privilege taxes, pay to the Credit Obligor an amount equal to the taxes. The Issuer may, at its own expense, in good faith contest any such taxes, assessments and other governmental charges and, in the event of any such contest, may permit the taxes, assessments or other governmental charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of such contested items shall be effectively stayed. If any tax or assessment is levied, assessed or imposed by any governmental authority on the Credit Obligor as a legal holder of any of the Obligations or any interest in this Mortgage (other than federal and state income taxes), then unless all such taxes and assessments are paid by the Issuer promptly after they become due and payable but in any event before they become delinquent; provided, however, that Credit Obligor shall have given at least a thirty (30) day written notice to Issuer of such tax obligation with a demand that Issuer pay such tax obligations (and in the opinion of counsel for the Credit Obligor, such payment by the Issuer is lawful and does not place the Credit Obligor in violation of any law), the Credit Obligor may, at its option, declare the existence of an Event of Default under this Mortgage.

SECTION 4.02

Insurance

(a) The Issuer shall keep or cause to be kept the Collateral insured against loss or damage by fire, windstorm, extended coverage perils, vandalism, malicious mischief and such other hazards, casualties or other contingencies as from time to time may be required by the Credit Obligor in accordance with the provisions of the Credit Agreement. All such policies shall name the Credit Obligor as a named insured and provide that any losses payable thereunder shall (pursuant to loss payable clauses, in form and content acceptable to the Credit Obligor, to be attached to each policy) be payable to the Credit Obligor and provide that the insurance provided thereby, as to the interest of the Credit Obligor, shall not be invalidated by any act or neglect of the Issuer, nor by the commencement of any proceedings by or against the Issuer in bankruptcy, insolvency, receivership or any other proceedings for the relief of a debtor, nor by any foreclosure, repossession or other proceedings relating to the property insured, nor by any occupation of such property or the use of such property for purposes more hazardous than permitted in the policy. The Issuer shall cause duplicate originals of any and all such insurance policies to be deposited with the Credit Obligor. At least thirty days prior to the date the premiums on each such policy or policies shall become due and payable, the Issuer shall furnish to the Credit Obligor evidence of the payment of such premiums. The Issuer will cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to the Credit Obligor) to give the Credit Obligor at least thirty business days, prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. The Issuer agrees that the Issuer will not take any action or fail to take any action, which action or inaction would result in the invalidation of any insurance policy required hereunder.

(b) As further security for the Obligations, the Issuer hereby assigns and pledges to the Credit Obligor each and every policy of insurance covering the Collateral, including all proceeds and returned premiums. With respect to all such insurance policies, the Credit Obligor is hereby authorized, but not required, on behalf of the Issuer, to collect for, adjust or compromise any losses under any such insurance policies. The loss, injury or destruction of the Collateral or any part of either thereof shall not abate, satisfy or release any of the Obligations.

(c) The Credit Obligor may apply, at its option (exercisable only upon prior consultation with the Issuer if no Event of Default shall have occurred and be continuing), the loss proceeds (less expenses of collection) on the Obligations, in any order and amount, and whether or not due, or hold such proceeds as a cash collateral reserve against the Obligations (as provided in Section 8.02 of the Credit Agreement) or apply such proceeds to the restoration of the Collateral or to release the same to the Issuer, but no such application, holding in reserve or release shall cure or waive any default by the Issuer; provided, however, if no Event of Default shall have then occurred and be continuing, if the ratio of the value of the Collateral, without taking into account the value of the property with respect to which such proceeds of insurance is made available, as then determined by the Credit Obligor, based on the then most recent appraisals of the Collateral, to the Credit Amount is equal to or greater than 1.25, the Credit Obligor shall release such proceeds to or upon the order of the Issuer.

(d) In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the Collateral in extinguishment of all or any part of the Obligations, complete title to all insurance policies held by the Credit Obligor with respect to the foreclosed property and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of such Collateral.

SECTION 4.03

Condemnation Awards

The entire proceeds of any Condemnation Award shall be paid to the Credit Obligor and, after first applying such award to the payment of all costs and expenses (including attorneys' fees) reasonably incurred in the collection thereof, shall be applied as provided in Section 4.02(c). No such application shall cure or waive any default of the Issuer.

SECTION 4.04
Property and Fixtures

Waste, Demolition, Alteration or Replacement; Removal of Personal

The Issuer will cause the Collateral and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, will not commit or permit waste thereon, will not remove, demolish or materially alter the design or structural character of any building now or hereafter erected on the Project Site without the express prior written consent of the Credit Obligor, will comply with all laws and regulations of any Governmental Authority with reference to the Collateral and the manner and use of the same, and will from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be preserved and maintained. The Issuer agrees not to remove any of the Personal Property and Fixtures included in the Collateral unless the same is immediately replaced with like property of at least equal value and utility.

SECTION 4.05 **Compliance by Issuer with Terms of Other Financing Documents**

The Issuer shall comply, fully and faithfully, with all of its respective obligations under the other Financing Documents. If the Issuer fails or refuses to do so, the Credit Obligor may, but shall not be required to, perform any and all of such obligations of the Issuer under the other Financing Documents, including but not limited to the payment of any or all sums due from the Issuer thereunder. Any sums so paid by the Credit Obligor shall constitute part of the Obligations and shall be secured hereby.

SECTION 4.06 **Environmental Compliance and Indemnity**

(a) The Issuer shall (1) not, and shall not permit any other person to, bring any Hazardous Substances onto the Project Site except any such Hazardous Substances that are used in the ordinary course of the contemplated businesses as to be conducted on the Project Site and that are handled, stored, used and disposed of in accordance with applicable Environmental Laws; (2) if any other Hazardous Substances are brought or found on the Project Site, immediately remove and properly dispose of the same in accordance with applicable Environmental Laws; (3) cause the Project Site and the operations conducted thereon (including all operations conducted thereon by other persons) to comply with all Environmental Laws; (4) permit the Credit Obligor from time to time to inspect the Project Site and observe the operations thereon; (5) undertake any and all preventive, investigatory and remedial action (including emergency response, removal, clean up, containment and other remedial action) that is (A) required by any applicable Environmental Law or (B) necessary to prevent or minimize any property damage (including damage to any of the Project Site), personal injury, or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Project Site or the operations on the Project Site; (6) give notice to the Credit Obligor in writing if the Issuer should become aware of (A) any material spill, release or disposal of any Hazardous Substances, or imminent threat thereof, at the Project Site, in connection with the operations on the Project Site, or at any adjacent property that could migrate to, through or under the Project Site, (B) any material violation of Environmental Laws regarding the Project Site or operations on the Project Site, and (C) any material investigation, claim or threatened claim under any Environmental Law, or any notice of violation under any Environmental Law, involving the Issuer or the Project Site; and (7) deliver to the Credit Obligor, at the Credit Obligor's request, copies of any and all documents in the Issuer's possession or to which the Issuer has access relating the matters identified in Section 4.06(a)(6), including laboratory analyses, site assessments or studies, environmental audit reports and other environmental studies and reports.

(b) If the Credit Obligor at any time reasonably believes that the Issuer is not complying with all applicable Environmental Laws or the requirements hereof regarding the same, or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Project Site, the Credit Obligor may require the Issuer to furnish to the Credit Obligor an environmental audit or site assessment reasonably satisfactory to the Credit Obligor with respect to the matters of concern to the Credit Obligor. Such audit or assessment shall be performed at the expense of the Issuer by a qualified consultant approved by the Credit Obligor, which approval Credit Obligor agrees not to unreasonably withhold.

(c) The Issuer hereby warrants that, to its actual knowledge, without independent investigation and except as described on Schedule 4.06 hereto, (1) there are no civil, criminal or administrative environmental proceedings involving the Project Site that are pending or to the Issuer's knowledge threatened; (2) the Issuer knows of no facts or circumstances that might give rise to such a proceeding in the future; (3) the Project Site is in compliance with all applicable federal, state and local statutory and regulatory environmental requirements; and (4) the Project Site is free from any and all Hazardous Substances.

(d) The Issuer shall defend, indemnify and save harmless the Credit Obligor from and against any and all liabilities, claims, causes of action, judgments, damages, fines, penalties, response costs, and other losses, costs and expense of any nature whatsoever, including reasonable attorneys' fees and costs of investigation and litigation, asserted against or suffered by the Credit Obligor that are related to or arise out of or result from any violation of, or non-compliance of the Project Site with, Environmental Laws, or the presence of Hazardous Substances on or under or included in the Project Site during the time the Issuer has any interest in the Project Site or is otherwise in possession of the Project Site and any investigation, clean up or removal of, or other remedial action or response costs with respect to, any Hazardous Substances located on or under or included in the Project Site, or any part thereof, during the time the Issuer has any interest in the Project Site or is otherwise in possession of the Project Site that may be required by any Environmental Law or Governmental Authority (specifically including without limitation any and all liabilities, damages, fines, penalties, response costs, investigatory or other costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq.) and including without limitation claims alleging non-compliance with Environmental Laws which seek relief under or are based on state or common law theories such as trespass or nuisance.

(e) The provisions of this Section 4.06 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and the foreclosure of this Mortgage and shall remain in full force and effect with respect to claims and losses asserted against or suffered by the Credit Obligor until commencement of an action with respect to any event or occurrence shall be prohibited by law.

SECTION 4.07 Borrowing Base

(a) The Issuer shall maintain at all times a Borrowing Base of an amount not less than \$410,000, as set forth on the Borrowing Base Certificate, from and after the date hereof until the amounts paid by the Issuer to the Credit Obligor pursuant to Section 2.02(f)(3) of the Credit Agreement shall have equaled or exceeded \$1,010,000.

(b) The Issuer shall deliver the Borrowing Base Certificate to the Credit Obligor on the first Business Day of each month.

SECTION 4.08 Covenants Regarding Ground/Improvement Leases

The Issuer covenants and agrees that the Issuer will:

(1) Performance of Ground/Improvement Leases. At all times promptly and faithfully keep and perform all the terms, covenants and conditions contained in the Ground/Improvement Leases by the lessee therein to be kept and performed and in all respects conform to and comply with the terms and conditions of the Ground/Improvement Leases; and the Issuer further covenants not to do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will impair or tend to impair the security of this Mortgage or will be grounds for declaring a forfeiture or termination of the Ground/Improvement Leases. The Issuer will take all action necessary to keep the Ground/Improvement Leases in full force and effect.

(2) No Modification of Ground/Improvement Leases. Not modify, extend or in any way alter the terms of the Ground/Improvement Leases or cancel or surrender the Ground/Improvement Leases,

or waive, excuse, condone or in any way release or discharge the lessor(s) thereunder of or from the obligations, covenants, conditions and agreements by said lessor(s) to be done and performed; and the Issuer hereby expressly assigns, transfers and conveys to the Credit Obligor all right, power and authority to cancel, surrender, terminate, release, amend, modify or alter in any way the terms and provisions of the Ground/Improvement Leases, and any attempt on the part of the Issuer to exercise any such right without the express prior written consent of the Credit Obligor (which shall not be unreasonably withheld, delayed or conditioned) shall constitute a default under the terms hereof.

(3) Right of Credit Obligor to Cure Default. Give immediate notice to the Credit Obligor of any default under the Ground/Improvement Leases. Upon the occurrence thereof (or any event which, upon the giving of notice or the lapse of time, or both, would constitute such a default or event of default), the Credit Obligor shall have the right, but shall be under no obligation, to take such action as may be appropriate to cure or prevent such default or event of default under the Ground/Improvement Leases. The Credit Obligor and any person designated by the Credit Obligor shall have, and is hereby granted, the right to enter upon the Collateral for the foregoing purpose and all moneys expended by the Credit Obligor in connection therewith (including, but not limited to, reasonable attorneys' fees and disbursements), together with interest thereon at the rate set forth in Section 2.06 of the Credit Agreement, or such lesser rate as shall be the maximum amount permitted by law, shall be payable by the Issuer to the Credit Obligor forthwith upon demand by the Credit Obligor, and shall be secured by this Mortgage. In the event of any failure by the Issuer to pay, observe or perform any covenant on the part of the Issuer to be paid, observed and performed under the Ground/Improvement Leases, the payment or performance by the Credit Obligor in behalf of the Issuer of said Ground/Improvement Leases covenant shall not remove or waive, as between the Issuer and the Credit Obligor, the corresponding default under the terms hereof, and any such failure aforesaid shall be subject to all of the rights and remedies of the Credit Obligor hereunder available on account of any default.

ARTICLE V

Transfer of, or Liens on, Collateral

(a) The Issuer covenants and agrees that, except as provided in the Credit Agreement and hereinafter in this Article V, it will not, without the express prior written consent of the Credit Obligor, sell, transfer, convey or otherwise dispose of, or create, or permit or suffer to exist, any lien, security interest or other encumbrance (other than Permitted Encumbrances) on, all or any part of the Collateral (including but not limited to any Leases and Rents) or any interests therein. Any sale, transfer, conveyance, other disposition or act of creating, permitting or suffering to exist any lien, security interest or other encumbrance in violation of this Article V shall be null, void and of no effect. It is expressly provided, however, that should a mechanic's lien or similar lien be placed against any portion of the Collateral, the Issuer shall have thirty (30) days thereafter within which to have such lien bonded off the real estate and may contest such lien so long as such lien shall not jeopardize the Collateral.

(b) The Issuer may sell or otherwise dispose of any property which is held by the Credit Obligor as part of the Collateral, provided that the Issuer, prior to or simultaneously with such sale or disposition, in exchange for the release of the interest of the Credit Obligor in such property, deposits with the Credit Obligor in escrow an amount equal to the appraised value of such property based upon an appraisal acceptable to the Credit Obligor (in its sole reasonable discretion) made within 12 months of the date of such sale for disposition by application to the optional redemption of the Notes or, with the consent of the Credit Obligor, the acquisition of capital assets of the Issuer, or some combination thereof.

ARTICLE VI

Defeasance

If (i) the Issuer shall pay in full and discharge all the Obligations; and (ii) the Issuer shall then have kept and performed each and every obligation, covenant, duty, condition and agreement in this Mortgage and the Credit Agreement imposed on or agreed to by it; and (iii) the Letter of Credit shall then be terminated; then this Mortgage and the grants and conveyances contained herein shall become null and void, and the Collateral shall revert to the Issuer, and the entire estate, right, title and interest of the Credit Obligor shall thereupon cease; and the Credit Obligor shall, upon the request of the Issuer and at the Issuer's cost and expense, deliver to the Issuer proper instruments acknowledging satisfaction of this instrument and terminating all financing statements filed in connection herewith; otherwise, this Mortgage shall remain in full force and effect. Notwithstanding anything to the contrary contained in this Article VI or elsewhere in this Mortgage, it is expressly understood and agreed that, although there may be from time to time occasions when no Obligations shall be outstanding, this Mortgage and the lien thereof and security interests created thereby shall nevertheless remain in full force and effect, and none of the estate, right, title and interest of the Credit Obligor passing by this Mortgage shall divest nor shall the Collateral revert to the Issuer and the Issuer, so long as any one or more or all of the following circumstances exist:

- (1) the Credit Obligor has any obligation to issue the Letter of Credit; or
- (2) the Letter of Credit has been issued and is outstanding; or
- (3) any Obligations are outstanding.

ARTICLE VII

Events of Default

Any one or more of the following shall constitute an event of default (an "Event of Default") under this Mortgage (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

- (1) default in the performance, or breach, of any material covenant, condition or agreement on the part of the Issuer contained in Section 4.02, or Article V hereof; or
- (2) default in the performance, or breach, of any material covenant or warranty of the Issuer in this Mortgage (other than a covenant or warranty, a default in the performance or breach of which is elsewhere in this Section specifically described), and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the Issuer by the Credit Obligor a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, unless the nature of the default is such that it can be remedied but cannot be remedied within the 30-day period and the Credit Obligor agrees in writing to an extension of time (which agreement shall not be unreasonably withheld, conditioned or delayed) and the Issuer institutes corrective action within the period agreed upon and diligently pursues such action until the default is remedied; or
- (3) The loss, theft, damage or destruction of any uninsured material portion of the Collateral, or the sale, transfer, pledge or encumbrance, of, or the making of any levy, seizure or attachment on, any material portion of the Collateral and the failure by Issuer within 30 days of any such event to deposit with

Credit Obligor the value of such Collateral, or to effect the release of such levy, seizure or attachment of such Collateral; or

(4) The filing or recording of any federal or other tax lien in excess of One Hundred Thousand Dollars (\$100,000) against any of the Collateral and the failure to have the same discharged after the period of contest in good faith as provided in Section 4.01 hereof; or

(5) the interest of the Credit Obligor in the Collateral shall become endangered by reason of the enforcement of any material lien or encumbrance thereon (other than Permitted Encumbrances or the lien of the Indenture with respect to the Special Funds); or

(6) the lien or security interest created by this Mortgage is invalid or unenforceable as to any material part of the Obligations or is invalid or unenforceable as to any material part of the Collateral; or

(7) the occurrence of an Event of Default under the Credit Agreement or under any of the other Financing Documents and the expiration of the applicable grace period, if any, specified therein.

ARTICLE VIII

Rights of Credit Obligor Upon Default

SECTION 8.01 Acceleration of Indebtedness

If an Event of Default exists, the Credit Obligor, at its sole option, may (a) notify the Trustee that an event of default, as therein defined, under the Credit Agreement has occurred and is continuing (it being agreed that the occurrence of an Event of Default hereunder shall constitute an event of default under the Credit Agreement) and (b) with or without giving the foregoing notice to the Trustee, by notice to the Issuer, effective upon dispatch, declare all of the Obligations, including but not limited to the obligation of the Issuer to reimburse the Credit Obligor under the Credit Agreement, to be forthwith due and payable, whereupon all the Obligations shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Issuer, and the Credit Obligor may immediately enforce payment of all such amounts and exercise any or all of its rights and remedies under this Mortgage and the Financing Documents and available at law or equity.

SECTION 8.02 Operation of Collateral by Credit Obligor; Increase in Value to Credit Obligor

(a) In addition to all other rights herein and in the Credit Agreement conferred on the Credit Obligor, if an Event of Default exists, the Credit Obligor (or any person, firm or corporation designated by the Credit Obligor) may, but shall not be obligated to, enter upon and take possession of any or all of the Collateral, exclude the Issuer therefrom, and hold, use, administer, manage and operate the same to the extent that the Issuer could do so, without any liability to the Issuer resulting therefrom; and the Credit Obligor may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of the Issuer with respect to the Collateral.

(b) Upon and after the occurrence and continuance of an Event of Default, all earnings, profits and increases in value with respect to the Collateral shall inure to the benefit of and be retained by the Credit Obligor as part of the Collateral.

SECTION 8.03**Judicial Proceedings; Right to Receiver**

If an Event of Default exists, the Credit Obligor, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit for a foreclosure of its lien on and security interest in the Collateral, to sue the Issuer for damages on account of or arising out of said default or breach, or to sue the Issuer for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy, whether under this Mortgage, the Credit Agreement or otherwise. The Credit Obligor shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to any party except the Issuer, of a receiver of the rents, issues and profits of the Collateral, with power to lease and control the Collateral and with such other powers as may be deemed necessary.

SECTION 8.04**Foreclosure Sale**

This Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Credit Obligor shall be authorized, at its option, whether or not possession of the county Collateral is taken, after giving 21 days' notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale together with a description of the property to be sold by publication in some newspaper published in the county in which the Collateral to be sold is located, to sell, or cause to be sold, all and singular the Collateral, and all the estate, right, title and interest therein, in front of the courthouse door of the County Courthouse of the county in which the Collateral to be sold is located, at public outcry, between the hours of 11:00 A.M. and 4:00 P.M., local time, to the highest bidder for cash, or otherwise foreclose this Mortgage as provided by applicable law. The Credit Obligor, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Collateral, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale any part or all of the Collateral, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Issuer hereby waiving the application of any doctrine of marshalling or like proceeding. If the Credit Obligor, in the exercise of the power of sale herein given, elects to sell the Collateral in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Collateral not previously sold shall have been sold or all the Obligations shall have been paid in full. The Issuer hereby waives any equitable rights otherwise available to it with respect to marshalling of assets hereunder, or to require the Credit Obligor to exhaust its remedies against any Person. Notwithstanding the foregoing, Credit Obligor shall with respect to any foreclosure offer such Collateral for sale alternatively en masse for one total price and in parcels for individual prices, it being understood that multiple parcels of real estate comprise a portion of the Collateral, each of which could be sold independent of the others.

SECTION 8.05**Personal Property and Fixtures**

(a) The Credit Obligor shall have and may exercise with respect to any or all of the Personal Property and Fixtures all rights, remedies and powers of a mortgagee under Alabama law or a secured party under the Alabama Uniform Commercial Code with reference to the Personal Property and Fixtures or any other items in which a security interest has been granted herein, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Personal Property and Fixtures and any part or parts thereof in any manner, to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Personal Property and Fixtures or their value and without the necessity of a court order. The Credit Obligor shall have, among other rights, the right to take possession of the Personal Property and Fixtures and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by the Credit Obligor, at its option and in its sole discretion, to repair, restore or otherwise prepare the Personal Property and Fixtures for sale or lease or other use or

disposition. To the extent permitted by law, the Issuer each expressly waives any notice of sale or any other disposition of the Personal Property and Fixtures and any rights or remedies of the Credit Obligor with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Personal Property and Fixtures or to the exercise of any other right or remedy of the Credit Obligor existing after default. To the extent that such notice is required and cannot be waived, the Issuer each agrees that if such notice is given to the Issuer in accordance with the provisions of Section 9.08 below, at least ten days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

(b) The Issuer agrees that the Credit Obligor may sell or dispose of the Personal Property and Fixtures in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. The Issuer hereby grant to the Credit Obligor the right, at its option after default, to transfer at any time to itself or its nominee the Personal Property and Fixtures or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as additional Collateral or to apply it on the Obligations in such order and manner as the Credit Obligor may elect. The Issuer covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Personal Property and Fixtures or any part thereof shall be full proof of the matters stated therein, and no other proof shall be required to establish the legal propriety of the sale or other action taken by the Credit Obligor and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

SECTION 8.06 Conveyance After Sale

The Issuer hereby authorizes and empowers the Credit Obligor or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Issuer, to execute and deliver to the purchaser or purchasers of any of the Collateral sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

SECTION 8.07 Rents and Leases

(a) If an Event of Default exists, the Credit Obligor, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases):

(1) to terminate the license granted to the Issuer in Article II hereof to collect the Rents, and, without taking possession, in the Credit Obligor's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the Obligations in such order and amounts as the Credit Obligor may choose (or hold the same in a reserve as security for the Obligations);

(2) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Collateral or any part thereof for the account of the Issuer, make, modify, enforce, cancel or accept surrender of any of the Leases, remove and evict any sublessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses the Credit Obligor shall deem proper to protect the security hereof, as fully and to the same extent as the Issuer could do if in possession, and in such event to apply any funds so collected to the operation and management of the Collateral (including payment of reasonable management, brokerage and attorney's fees) and payment of the Obligations in such order and amounts as the Credit Obligor may choose (or hold the same in reserve as security for the Obligations);

(3) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Issuer under this Mortgage.

(b) The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Collateral or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Credit Obligor, once exercised, shall continue for so long as the Credit Obligor shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the Credit Obligor shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

SECTION 8.08 Collateral Reserve Account.

Upon the occurrence of an Event of Default (and the expiration of any applicable grace periods) upon request by the Credit Obligor, all remittances in payment of the Accounts shall be deposited with the Credit Obligor, or such other bank or banks as the Credit Obligor may require, in an account or accounts designated as the Credit Obligor may require (collectively, the "Collateral Reserve Account"). Such deliveries and deposits shall be made by the Issuer daily, and each deposit shall be accompanied by a report prepared by the Issuer in such form as the Credit Obligor shall require. The Credit Obligor may at its option also deposit to the Collateral Reserve Account any remittances made to the Credit Obligor or otherwise received by the Credit Obligor. Funds in the Collateral Reserve Account shall not be subject to withdrawal by the Issuer, but at all times shall be subject to the control of the Credit Obligor, and may only be applied against the Obligations, when due and payable, from time to time at the sole discretion of the Credit Obligor; provided, however, the amounts in the Collateral Reserve Account shall be held and invested as provided in Section 8.02 of the Credit Agreement.

SECTION 8.09 General Rights after Event of Default.

(a) Upon the occurrence of an Event of Default under this Mortgage, the Credit Obligor shall have, in addition to any other rights under this Mortgage or under applicable law, the right without notice to the Issuer (or with notice to the Issuer if notice is required and cannot be waived under applicable law) to take any or all of the following actions at the same or different times:

(1) To notify Purchasers that Accounts have been assigned to the Credit Obligor, demand and receive information from Purchasers with respect to Accounts, forward invoices to Purchasers directing them to make payments to the Credit Obligor, collect all Accounts in the Credit Obligor's or the Issuer's name and take control of any cash or non-cash proceeds of Collateral;

(2) To enforce payment of any Accounts, to prosecute any action or proceeding with respect to Accounts, to extend the time of payment of any and all Accounts, to make allowances and adjustments with respect thereto and to issue credits in the name of the Credit Obligor or the Issuer;

(3) To receive all amounts (including principal, interest and premium) payable with respect to the Collateral, including interest accrued and to accrue thereon, and transfer or register all or any part of the Collateral into the name of the Credit Obligor or its nominee and cause new certificates or instruments or other writings to be issued in such name, or cause such recordation or registration to be made in such name, as may then be applicable or pertinent to the Collateral;

(4) To exercise, in addition to all other rights which it has under this Agreement or other applicable law, all of the rights and remedies of a secured party upon default under the Uniform Commercial Code as in effect in Alabama.

(b) The Issuer hereby constitutes and appoints the Credit Obligor, or any other person whom the Credit Obligor may designate, as the Issuer's attorney-in-fact, at the Issuer's sole cost and expense, to exercise at

any time after the occurrence of an Event of Default (and the expiration of any applicable grace periods), all or any of the following powers which, being coupled with an interest, shall be irrevocable until the Credit Obligor's security interest shall have been terminated in writing as set forth in this Mortgage:

- (1) To receive, take, endorse, assign and deliver to the Collateral Reserve Account or in the name of the Issuer any and all checks, notes, drafts and other instruments relating to Accounts;
- (2) To transmit to Purchasers notice of the Credit Obligor's interest in the Accounts and to demand and receive from such Purchasers at any time, in the name of the Credit Obligor for deposit into the Collateral Reserve Account or of the Issuer or of the designee of the Credit Obligor, information concerning the Accounts and the amounts owing thereon;
- (3) To notify Purchasers to make payments on the Accounts directly to the Credit Obligor for deposit into the Collateral Reserve Account or to a lock box designated by Credit Obligor; and
- (4) To take or to bring, in the name of the Credit Obligor or in the name of the Issuer, all steps, action, suits or proceedings deemed by the Credit Obligor necessary or desirable to effect collection of the Accounts.
- (5) To exercise all of the Issuer's rights and remedies with respect to the collection of the Accounts;
- (6) To settle, adjust, compromise, extend, renew, discharge or release the Accounts in whole or in part;
- (7) To settle, adjust or compromise any legal proceedings brought to collect the Accounts;
- (8) To sell or assign the Accounts upon such terms, for such amounts and at such time or times as the Credit Obligor deems advisable;
- (9) To take control, in any manner, of any item of payment on, or proceeds of, Collateral;
- (10) To prepare, file and sign the Issuer's name on any notice of lien, assignment or satisfaction of lien or similar document in connection with the Accounts;
- (11) To transfer the Collateral or any part thereof into the name of the Credit Obligor for deposit into the Collateral Reserve Account and realize upon all payments thereon or proceeds thereof; and
- (12) To do all other reasonable acts and things necessary to carry out the rights and interests of the Credit Obligor under this Mortgage.

(c) Said attorney or designee shall not be liable for any acts or omissions nor for any error or judgment or mistake of fact or law taken in good faith without negligence, willful misconduct or violation of a material provision of this Agreement.

SECTION 8.10 Application of Proceeds

After an Event of Default shall have occurred and be continuing, all payments then held or thereafter received by the Credit Obligor as proceeds of the Collateral, as well as any and all amounts realized by the Credit Obligor in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by the Credit Obligor as follows:

(1) to reimburse the Credit Obligor for any payments made by the Credit Obligor under the Letter of Credit, to accrued but unpaid commissions, fees, costs and charges under the Credit Agreement, and to the payment of all costs and expenses of any kind then or thereafter at any time reasonably incurred by the Credit Obligor in exercising its rights under this Mortgage and under the Credit Agreement or otherwise reasonably incurred by the Credit Obligor in collecting or enforcing payment of the Obligations, as well as to the payment of any other amount then or thereafter at any time owing by the Issuer to the Credit Obligor under the Credit Agreement or under this Mortgage, all in such priority as among such principal, interest, costs, fees, expenses and other amounts as the Credit Obligor shall elect;

(2) any balance remaining after payment in full of all amounts referred to in paragraph (1) above shall be applied by the Credit Obligor to any other Obligations then owing by the Issuer to the Credit Obligor;

(3) any balance remaining after payment in full of all amounts referred to in paragraphs (1) and (2) above shall be held by the Credit Obligor as a cash collateral reserve against the making of any payment under the Letter of Credit (if then outstanding); and

(4) any balance remaining after payment in full of all amounts referred to in paragraphs (1), (2) and (3) above shall be paid by the Credit Obligor to the Issuer or to whomever else may then be legally entitled thereto.

SECTION 8.11 Multiple Sales

The Credit Obligor shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring all of the Obligations due. Any such sale may be made subject to the unmatured part of the Obligations, and such sale, if so made, shall not in any manner affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this Section. Several sales may be made under the provisions of this Section without exhausting the right of sale for any remaining part of the Obligations whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Collateral for any matured part of the Obligations without exhausting any power of foreclosure and the power to sell the Collateral for any other part of the Obligations, whether matured at the time or subsequently maturing.

SECTION 8.12 Waiver of Appraisement Laws

The Issuer waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Collateral (commonly known as appraisement laws) or (ii) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws).

ARTICLE IX

Provisions of General Application

SECTION 9.01 Provisions Regarding Remedies

(a) The exercise by the Credit Obligor of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose

the lien and security interest granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon.

(b) No failure or delay on the part of the Credit Obligor in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder.

(c) The remedies provided in this Mortgage and in the Credit Agreement are cumulative and not exclusive of any remedies provided by law.

(d) No amendment, modification, termination or waiver of any provisions of this Mortgage or the Credit Agreement, nor consent to any departure by the Issuer therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Credit Obligor, and then such waiver of consent shall be effective only in the specific instance and for the specific purpose for which given.

(e) No notice to or demand on the Issuer in any case shall entitle the Issuer to any other or further notice or demand in similar or other circumstances.

SECTION 9.02 Landlord-Tenant Relationship

Any sale of the Collateral under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Issuer.

SECTION 9.03 Enforceability

If any provision of this Mortgage is now, or at any time hereafter becomes, invalid or unenforceable, all other provisions hereof shall remain in full force and effect and shall be construed in favor of the Credit Obligor to effectuate the provisions hereof.

SECTION 9.04 Application of Payments

If the lien or the security interest created by this Mortgage is invalid or unenforceable as to any part of the Obligations or is invalid or unenforceable as to any part of the Collateral, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Obligations that is not secured or not fully secured by the lien or security interest created hereby.

SECTION 9.05 Advances by Credit Obligor

If the Issuer shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of taxes, assessments and other charges, the maintenance, presentation, or perfection of the Collateral, or any other term or covenant herein contained, the Credit Obligor may (but shall not be required to) make advances to effect performance of the same, and where necessary enter or take possession of the Collateral for the purpose of performing any such term or covenant. The Issuer agrees to repay all sums advanced upon demand, with interest from the date such advances are made, at the rate set forth in Section 2.06 of the Credit Agreement (to the fullest extent permitted by applicable law), and all sums so advanced, with interest, shall be secured hereby.

SECTION 9.06 Release or Extension by Credit Obligor

The Credit Obligor, without notice, may release any part of the Collateral or any Person liable for the Obligations without in any way affecting the rights of the Credit Obligor hereunder as to any part of the Collateral not expressly released and may agree with any party with an interest in the Collateral to extend the time for payment of all or any part of the Obligations or to waive the prompt and full performance of any term, condition or covenant of this Mortgage or the Credit Agreement.

SECTION 9.07 Partial Payments

Acceptance by the Credit Obligor of any payment of less than the amount due on the Obligations shall be deemed acceptance on account only, and the failure of the Issuer to pay the entire amount then due shall, subject to the Section 7(a) of the Credit Agreement, be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Obligations has been paid, the Credit Obligor shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the existence of an Event of Default.

SECTION 9.08 Addresses for Notices

(a) Any request, demand, authorization, direction, notice, consent, or other document provided or permitted by this Mortgage to be made upon, given or furnished to, or filed with, the Issuer or the Credit Obligor shall be sufficient for every purpose hereunder if in writing and (except as otherwise provided in this Mortgage) either (i) delivered personally to the party or, if such party is not an individual, to an officer, or other legal representative of the party to whom the same is directed, or (ii) mailed by certified mail, postage prepaid and addressed as set forth on the cover hereof.

(b) The Issuer and the Credit Obligor may specify a different address for the receipt of such documents by mail by giving notice of the change in address to the other parties identified in this subsection.

(c) Any such notice or other document shall be deemed to be received (i) as of the date delivered, if delivered personally in accordance with subsection (a) of this Section, or (ii) as of five (5) days after the date deposited in the mail, if mailed in accordance with subsection (a) of this Section, or (iii) upon confirmation of receipt if sent by telecopy in accordance with subsection (a) of this Section.

SECTION 9.09 Construction of Mortgage

This Mortgage may be construed as a mortgage, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and security interest created hereby and the purposes and agreements herein set forth.

SECTION 9.10 Effect of Headings and Table of Contents

The article and section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 9.11 Date of Mortgage

The date of this Mortgage is intended as and for a date for the convenient identification of this Mortgage and is not intended to indicate that this Mortgage was executed and delivered on said date.

SECTION 9.12 Governing Law

This Mortgage shall be construed in accordance with and governed by the laws of the State of Alabama.

SECTION 9.13 Counterparts

This Mortgage may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.


SECTION 9.14 No Obligations with Respect to Leases

The Credit Obligor shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to the Leases, or any of the other Collateral (unless expressly assumed by the Credit Obligor under a separate agreement in writing), and this Mortgage shall not be deemed to confer on the Credit Obligor any duties or obligations that would make the Credit Obligor directly or derivatively liable for any person's negligent, reckless or willful conduct. The Issuer agrees to defend, indemnify and save harmless the Credit Obligor from and against any and all claims, causes of action and judgments relating to the Issuer's performance of its duties, responsibilities and obligations under Leases and with respect to any of the other Collateral.

IN WITNESS WHEREOF, the Issuer has caused this instrument to be executed in its name, under seal, and the same attested, by officers thereof duly authorized thereunto.

EXPRESS OIL CHANGE, LLC

By: **Express Management, Inc.**
as Manager

By: 
Richard A. Brooks
Its: Authorized Officer

STATE OF ALABAMA
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Richard A. Brooks, whose name as President of Express Management, Inc., a corporation acting as the Manager of Express Oil Change, LLC, an Delaware limited liability company, is signed to the foregoing Mortgage, Assignment of Leases and Security Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority executed the same voluntarily for and as the act of such corporation acting as aforesaid.

Given under my hand and seal this the 15th day of July, 2003.



Notary Public

NOTARIAL SEAL

My commission expires: June 19, 2004

EXHIBIT A

[Legal Description]

Commence at the SW corner of the South half of the East one half SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 11, Township 16 South, Range 3 West and run North along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ line for 660.0 feet; thence East 329.86 feet; thence angle right $89^{\circ}08'$ and run South 400.02 feet for the point of beginning; thence continue along last described course for 228.60 feet to the Northerly right of way of Fieldstown Road; thence angle right $91^{\circ}13'10''$ and run Westerly along said right of way 56.91 feet to a point of curve of a curve to the left, having a radius of 7,683.44 feet and a central angle of $0^{\circ}24'54''$; thence continue in a Westerly direction and along the arc of said curve and right of way 55.65 feet to a point on curve; thence right $89^{\circ}12'24''$ from the tangent of said point on curve and run Northerly 228.60 feet; thence angle right $91^{\circ}06'14''$ and run Easterly 112.53 feet to the point of beginning. Said property in Jefferson County, Alabama.

EXHIBIT A

[Legal Description]

Lot 9A, according to the a Resurvey of a part of Lot 10 and the West ½ of Lot 9, Block 25, as recorded in Map Book 163, page 98, in the Probate Office of Jefferson County, Alabama.

EXHIBIT A

[Legal Description]

Lot 1 and 2, Block 16A, according to the Survey of East Lake, as recorded in Map Book 1, page 217, in the Probate Office of Jefferson County, Alabama.

EXHIBIT A

[Legal Description]

Lot 1, according to the Survey of Olshan's Addition to Crestline Gardens, as recorded in Map Book 66, page 65, in the Probate Office of Jefferson County, Alabama.

EXHIBIT A

[Legal Description]

Lot B, according to the Survey of Green Valley Village, as recorded in Map Book 77, page 70, in the Probate Office of Jefferson County, Alabama.

EXHIBIT A

[Legal Description]

Lot 1, according to the Survey of Express Oil Change Resurvey, as recorded in Map Book 202, page 31, in the Probate Office of Jefferson County, Alabama.

EXHIBIT A

[Legal Description]

Part of Lot 1-B-1, a Resurvey (Part of Lot 2-B of a Resurvey of Part of Lot 2 East Town, as recorded in Map Book 66, page 55, Jefferson County, Alabama, and situated in the South half, Section 30, Township 16 South, Range 1 West, Jefferson County) as recorded in the Office of the Judge of Probate, Jefferson County, Alabama, in Map Book 92, page 83 and being more particularly described as follows:

Beginning at the Southwest corner of said Lot 1-B-1 and being on the East right of way line of Huffman Pinson Road, run in a Northerly direction along said East line of Huffman Pinson Road for a distance of 215.25 feet to an existing iron pin; thence turn an angle to the right of $117^{\circ}08'$ and run in a Southeasterly direction for a distance of 193.09 feet to an existing P.K. nail; thence turn an angle to the right of $80^{\circ}35'33''$ and run in a Southerly direction for a distance of 176.73 feet to an existing iron pin, being on the South line of said Lot 1-B-1; thence turn an angle to the right of $91^{\circ}29'42''$ and run in a Northwesterly direction along the South line of said Lot 1-B-1 for a distance of 125.0 feet, more or less, to the point of beginning.

Situated in Jefferson County, Alabama, Birmingham Division.

EXHIBIT A

[Legal Description]

Lot 7 and 8, according to the Survey of James B. Clow & Sons, Inc. Addition to the City of Tarrant, as recorded in Map Book 45, page 2, in the Probate Office of Jefferson County, Alabama.

EXHIBIT A

[Legal Description]

That part of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 1, Township 19 South, Range 3 West, situated in Jefferson County, Alabama, more particularly described as follows:

Begin at the Southeast corner of said $\frac{1}{4}$ - $\frac{1}{4}$ Section and run thence Northwardly along the East line thereof for a distance of 397.5 feet; thence turn an angle of $86^{\circ} 58'$ to the left and run Westwardly to a point which is 136 feet East of the Easterly line of the present right-of-way of the Montgomery Highway, as measured along said last described line extended, said point being the Point of Beginning of the tract here described; from Point of Beginning thus obtained continue Westwardly along said last described line for a distance of 136 feet, more or less, to the Easterly line of the said right-of-way of the Montgomery Highway, as more particularly described in deed to Jefferson County recorded in Volume 4838, Page 176, in the Office of the Judge of Probate of Jefferson County, Alabama; run thence Northeastwardly along the Easterly line of said right-of-way for a distance of 202 feet, more or less, to a point; thence turn an angle to the right of 90° and run Southeasterly for 120 feet to a point, then turn an angle to the right and run Southwesterly a distance of 140 feet, more or less, to the Point of beginning, except the South 10 feet of the above described parcel reserved as easement or public road as set out in deed to W. O. Cox recorded in Volume 5147, Page 134.

EXHIBIT A

[Legal Description]

PARCEL I

Commence at the Northwest corner of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 13, Township 19 South, Range 3 West, and run East along the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ Section for a distance of 542.99 feet; thence $89^{\circ}04'$ to the right and run South for a distance of 195.54 feet to a point; thence $125^{\circ}28'42''$ to the left and run Northeasterly for a distance of 169.64 feet to a point; thence $88^{\circ}22'20''$ to the right and run Southeasterly for a distance of 73.97 feet to the point of beginning; thence continue along the last described course for a distance of 120.0 feet to the point on the Northwest right-of-way line of Lorna Road; thence $90^{\circ}00'$ to the left and run Northeasterly along said right-of-way line for a distance of 75.0 feet to a point; thence $90^{\circ}00'$ to the left and run Northwesterly for a distance of 120.0 feet to a point; thence $90^{\circ}00'$ to the left and run southwesterly for a distance of 75.0 feet to the point of beginning.

TOGETHER with a non-exclusive Access Easement more particularly described in instrument dated October 1, 1987 from Bill L. Harbert to Michael E. Osborn recorded in Real 3252, Page 377 in the Jefferson County Probate Office.

PARCEL II

Part of the East $\frac{1}{4}$ of Section 13, Township 19 South, Range 3 West, Jefferson County, Alabama, being more particularly described as follows: From the Northwest corner of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 13, run in an easterly direction along the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section for a distance of 542.99 feet; thence turn an angle to the left of $90^{\circ}56'$ and run in a Northerly direction for a distance of 54.22 feet to an existing iron pin; thence turn an angle to the right of $89^{\circ}59'$ and run in an Easterly direction for a distance of 5.14 feet to an existing iron pin being the point of beginning; thence continue in an Easterly direction along last mentioned course for a distance of 137.33 feet to an existing iron pin; thence turn an angle to the right of $44^{\circ}55'46''$ and run in a Southeasterly direction for a distance of 88.15 feet to an existing iron pin; thence turn an angle to the left of $31^{\circ}40'54''$ and run in a Southeasterly direction for a distance of 45.20 feet to an existing iron pin; thence turn an angle to the right of $131^{\circ}17'45''$ and run in a Southwesterly direction for a distance of 150.73 feet to an existing nail set in asphalt; thence turn an angle to the right of $88^{\circ}22'20''$ and run in a Northwesterly direction for a distance of 200.62 feet to an existing iron pin being the point of beginning. Containing 19,052 square feet, more or less, or 0.437 acres, more or less.

TOGETHER WITH Access Easement recorded in Real 3252, page 377, in the Probate Office of Jefferson County, Alabama.

TOGETHER WITH Utility Easement recorded in Real 3377, page 227, in the Probate Office of Jefferson County, Alabama.

EXHIBIT A

[Legal Description]

A parcel of land situated in the SW ¼ of the SE ¼ and the NW ¼ of SE ¼ of Section 8, Township 16 South, Range 1 East, Jefferson County, Alabama, more particularly described as follows:

Commence on the NW corner of the NE ¼ of the SW ¼ of said Section 8, run thence Southeastwardly at an angle of 50°36' from the North line of said ¼ - ¼ Section for 842.98 feet; thence run right 13°21'30" and continue Southeastwardly for 981.47 feet to a point on the Northwestern right of way line of US Highway #11, said point also being on the curve having radius of 4808.08 feet; thence turn left 95°37' to tangent and run Northeastwardly along the arc of said curve as it curves to the right and along said right of way line for 60.14 feet to the end of said curve; thence turn right 90° to tangent and run Southeastwardly for 80 feet to a point on the SE right of way line of said Highway #11; thence turn left 90° and run Northeastwardly along said Southeastwardly right of way line for 908.46 feet to the point of beginning of the property herein described; thence continue Northeastwardly along said Southeasterly right of way line for 600 feet; thence turn right 90° and run Southeastwardly for 441.72 feet to a point on the NW right of way line of a 100-foot wide Southern Railroad right of way; thence run right 85°52'30" and run Southwestwardly along said Southern Railroad right of way for 601.56 feet; thence turn right 94°07'30" and run Northwesterly for 484.99 feet to the point of beginning; being situated in Jefferson County, Alabama.

EXHIBIT A

[Legal Description]

Lots 3 and 4, Block 438, according to the Survey of West Lake Highlands, as recorded in Map Book 2, page 7, in the Probate Office of Jefferson County, Alabama, Bessemer Division.

EXHIBIT A

[Legal Description]

A parcel of land located in the southwest quarter of Section 29, Township 12 South, Range 6 East, Etowah County, Alabama and being more particularly described as commencing at the northwest corner of the SW¼ of the SW¼ of said Section 29; thence east along the north line of said quarter, a distance of 711.0 ft.; thence southeasterly with a deflection angle to the right of 67°48'30" (67°50'52", measured), a distance of 274.30 ft. (274.42 ft., measured) to an existing iron stake and the point of beginning of herein described parcel of land; thence northwesterly and turning a deflection angle to the left of 116°58' (117°22'50", measured), a distance of 151.34 ft. (150.32 ft., measured), to an existing iron stake; thence southerly and turning a deflection angle to the right of 117°09' (117°12'00", measured), a distance of 142.59 ft. (142.77 ft., measured) to the northerly right of way of Rainbow Drive; thence southwesterly, along said Rainbow Drive, and turning a deflection angle to the right of 63°46' (63°43'17", measured) a distance of 149.35 ft. (149.60 ft., measured) to an existing iron stake; thence northerly and turning a deflection angle to the right 116°03' (116°27'33", measured) a distance of 139.64 ft. (140.29 ft., measured), to the points of beginning, containing 0.435 acres, more or less.

EXHIBIT A

[Legal Description]

Lots 18 and 19, Block 5, as shown on the Map of East Broad Street Addition to Gadsden, Alabama, as recorded in the Office of the Probate Judge of Etowah County, Alabama in Plat Book "C", at Page 14; lying and being in Gadsden, Etowah County, Alabama.

EXHIBIT A

[Legal Description]

LOT 1

COMMENCE AT THE NORTHEAST CORNER OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 13, T18N, R18E, MONTGOMERY COUNTY, ALABAMA AND RUN S87°30'W, 1,528.5 FEET TO A POINT ON THE SOUTHEAST RIGHT OF WAY OF EASTERN BOULEVARD (300' RIGHT OF WAY); THENCE ALONG SAID SOUTHEAST RIGHT OF WAY RUN S23°34'W, 728.98 FEET TO A 1" OPENED TOP PIPE FOUND AT THE INTERSECTION OF THE SOUTHEAST RIGHT OF WAY OF EASTERN BOULEVARD AND THE SOUTH LINE OF A 70' EASEMENT FOR INGRESS AND EGRESS (MONTICELLO DRIVE) AND THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING, LEAVING THE SOUTHEAST RIGHT OF WAY OF EASTERN BOULEVARD AND ALONG THE SOUTH LINE OF SAID MONTICELLO DRIVE RUN S84°37'42"E, 180.00 FEET TO A REBAR SET (CA-8031LS); THENCE LEAVING SAID SOUTH LINE OF MONTICELLO DRIVE RUN S23°34'00"W, 150.00 FEET TO A NAIL SET IN CONCRETE; THENCE RUN N84°37'42"W, 180.00 FEET TO A RAILROAD SPIKE FOUND ON THE SOUTHEAST RIGHT OF WAY OF EASTERN BOULEVARD; THENCE ALONG SAID SOUTHEAST RIGHT OF WAY RUN N23°34'00"E, 180.00' TO THE POINT OF BEGINNING.

ABOVE DESCRIBED PROPERTY LYING IN THE SOUTHEAST 1/4 OF SECTION 13, T18N, R18E, MONTGOMERY COUNTY, ALABAMA AND CONTAINING 0.59 ACRES MORE OR LESS.

EASEMENT FOR INGRESS AND EGRESS

COMMENCE AT THE NORTHEAST CORNER OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 13, T18N, R18E, MONTGOMERY COUNTY, ALABAMA AND RUN S87°30'W, 1,528.5 FEET TO A POINT ON THE SOUTHEAST RIGHT OF WAY OF EASTERN BOULEVARD (300' RIGHT OF WAY); THENCE ALONG SAID SOUTHEAST RIGHT OF WAY RUN S23°34'W, 653.37 FEET TO THE INTERSECTION OF THE SOUTHEAST RIGHT OF WAY OF EASTERN BOULEVARD AND THE NORTH LINE OF A 70' EASEMENT FOR INGRESS AND EGRESS (MONTICELLO DRIVE) AND THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING, LEAVING THE SOUTHEAST RIGHT OF WAY OF EASTERN BOULEVARD AND ALONG THE NORTH LINE OF SAID MONTICELLO DRIVE RUN S84°37'42"E, 985.54 FEET; THENCE S15°11'W, 71.0 FEET NORTH LINE OF MONTICELLO DRIVE; THENCE THENCE ALONG SAID SOUTH LINE RUN N84°37'42"W, 996.43 FEET TO THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PROPERTY AND THE SOUTHEAST RIGHT OF WAY OF EASTERN BOULEVARD; THENCE ALONG SAID SOUTHEAST RIGHT OF WAY RUN N23°34'E, 73.61 FEET TO THE POINT OF BEGINNING.

ABOVE DESCRIBED EASEMENT LYING IN THE SOUTHEAST 1/4 OF SECTION 13, T18N, R18E, MONTGOMERY COUNTY, ALABAMA AND CONTAINING 1.59 ACRES MORE OR LESS.

EXHIBIT A

[Legal Description]

PARCEL I:

Commencing at a point purported to be the Northwest corner of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 31, Township 9 South, Range 5 East in Marshall County, Alabama; thence South $0^{\circ}38'14''$ West 529.28 feet to a nail found in William Street, the point of beginning for the property herein described; thence leaving said William Street North $88^{\circ}32'19''$ East 167.87 feet to an iron pin set; thence South $0^{\circ}31'29''$ East 111.05 feet to an iron pin set on the North margin of a road; thence along the North margin of said road South $87^{\circ}36'09''$ West 170.23 feet to a bolt found in said William Street; thence along said William Street North $0^{\circ}38'14''$ East 113.89 feet to the point of beginning.

PARCEL II:

Commencing at a point purported to be the Northwest corner of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 31, Township 9 South, Range 5 East in Marshall County, Alabama; thence South $0^{\circ}38'14''$ West 529.28 feet to a nail found in William Street; thence leaving said William Street North $88^{\circ}32'19''$ East 167.87 feet to an iron pin set, the point of beginning for the property herein described; thence North $88^{\circ}32'19''$ East 82.10 feet to an iron pin found; thence South $0^{\circ}48'43''$ West 109.82 feet to an iron pin found on the North margin of a road; thence along the North margin of said road South $87^{\circ}36'09''$ West 79.57 feet to an iron pin set on the North margin of said road; thence leaving the North margin of said road North $0^{\circ}31'29''$ West 111.05 feet to the point of beginning.

All being situated in Marshall County, Alabama.

EXHIBIT A

[Legal Description]

A parcel of land located in the southeast quarter of the northeast quarter of Section 17, Township 15 South, Range 8 East, Calhoun County, Alabama and being more particularly described as commencing at an iron pin found on the west right-of-way of the Anniston-Jacksonville Highway (Alabama Highway #21, also known as McClellan Boulevard) at Station No. 195+00; thence run north $81^{\circ}30'$ west, a distance of 61.50 ft. (61.37 feet, measured), to an existing iron stake on the east right-of-way of the Anniston-Weaver Road; thence northerly at an interior angle of $87^{\circ}28'$ ($92^{\circ}15'$, measured), 125.0 ft. along the east right-of-way of said Anniston-Weaver Road; thence southeasterly, at an interior angle of $76^{\circ}01'$ ($73^{\circ}05'19''$, measured), a distance of 115.79 ft. (115.40 feet, measured) to the west right-of-way of the Anniston-Jacksonville Highway (Alabama Highway #21) and an iron pin found; thence southwesterly at an interior angle of $79^{\circ}42'$ ($79^{\circ}19'42''$, measured) along said right-of-way, a distance of 106.0 ft. to the point of beginning, containing 0.226 acres, more or less.

EXHIBIT A

[Legal Description]

A certain parcel of land located in the City of Oxford, Alabama, and being more particularly described as commencing at the southwest corner of Section 20, Township 16 South, Range 8 East, Calhoun County, Alabama; thence north $87^{\circ}32'30''$ east, along the south line of said Section 753.31 ft.; thence north $02^{\circ}27'30''$ west, a distance of 411.50 ft. to the point of beginning of herein described parcel of land; thence continue north $02^{\circ}27'30''$ west, a distance of 125.0 ft.; thence south $87^{\circ}41'$ west, a distance of 155.97 ft. to the eastern right of way line of Alabama Highway #21 (Quintard Drive); thence along a curve to the left having a radius of 9,722.13 ft. a chord bearing and a distance of south $10^{\circ}08'$ east, 125.0 ft.; thence north $88^{\circ}13'$ east, 139.27 ft. to the point of beginning containing 0.42 acres, more or less.

EXHIBIT A

[Legal Description]

A PARCEL OF LAND SITUATED IN THE NE¼ OF THE NW¼ OF SECTION 27, TOWNSHIP 16 SOUTH, RANGE 8 EAST, CALHOUN COUNTY, ALABAMA, MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 27, (SAID CORNER HAVING BEEN RECREATED FROM A SURVEY BY JAMES W. BARRY, SR., ALABAMA REG. NO. 5341, SAID SURVEY BEING DATED JULY 19, 1990); THENCE SOUTH 00°00'10" EAST, ALONG THE WEST BOUNDARY OF SAID SECTION 27, A DISTANCE OF 40.0 FT. TO A POINT CALCULATED ON THE OLD SOUTH RIGHT OF WAY OF U. S. HIGHWAY NO. 78; THENCE NORTH 89°59'50" EAST, ALONG SAID CALCULATED OLD SOUTH RIGHT OF WAY A DISTANCE OF 1,284.49 FT.; THENCE SOUTH 00°00'10" EAST, A DISTANCE OF 41.25 TO AN EXISTING REBAR AND A CAP ON THE SOUTH RIGHT OF WAY OF SAID U.S. HIGHWAY NO. 78, SAID POINT BEING THE POINT OF BEGINNING OF HEREIN DESCRIBED PARCEL OF LAND; THENCE NORTH 89°59'14" EAST, ALONG THE NEW SOUTH RIGHT OF WAY OF SAID U.S. HIGHWAY NO. 78, A DISTANCE OF 87.86 FT. TO A CONCRETE MONUMENT STAMPED 650+00, 80 FT., AND; THENCE SOUTH 84°18'07" EAST, (SOUTH) 84°49'25" EAST, MEASURED) ALONG SAID RIGHT OF WAY A DISTANCE OF 82.54 FT.; THENCE SOUTH 00°00'00" WEST, (SOUTH 00°09'22" WEST, MEASURED), A DISTANCE OF 144.14 FT. TO AN EXISTING IRON PIN; THENCE SOUTH 60°23'45" WEST, A DISTANCE OF 179.83 FT. TO AN EXISTING IRON PIN; THENCE SOUTH 90°00'00" WEST (SOUTH 89°46'05" EAST, MEASURED), A DISTANCE OF 13.64 FT. TO AN EXISTING IRON PIN; THENCE NORTH 00°00'00" EAST (NORTH 00°02'25" EAST, MEASURED), A DISTANCE OF 241.15 FT. (240.63 FT., MEASURED), TO THE POINT OF BEGINNING CONTAINING 0.774 ACRES, MORE OR LESS.

EXHIBIT A

[Legal Description]

Lots 3, 4, 5, 6, 7 and the south ½ of Lot 8, Block 2, according to Nickerson-Scott Survey, as recorded in Map Book 3, page 34, in the Probate Office of Shelby County, Alabama.

EXHIBIT B
TO
MORTGAGE, ASSIGNMENT OF LEASES
AND SECURITY AGREEMENT

Description of Personal Property and Fixtures

All building materials, equipment, fixtures, tools, apparatus and fittings of every kind or character now owned or hereafter acquired by Express Oil Change, LLC for the purpose of, or used or useful in connection with, the Project, wherever the same may be located, including, without limitation, all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wires, wiring, engines, boilers, furnaces, tanks, motors, generators, switchboards, telephones, telecopy, and other communication equipment and facilities, computers, printers, copy machines, fire detection, suppression and extinguishment facilities, elevators, escalators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, stoves, refrigerators, dishwashers, hot water heaters, garbage disposers, trash compactors, other appliances, carpets, rugs, window treatments, lighting, fixtures, pipes, piping, decorative fixtures, and all other building materials, equipment and fixtures of every kind and character used or useful in connection with the Project, including the personal property (if any) described on the attached pages.

EXHIBIT C
TO
MORTGAGE, ASSIGNMENT OF LEASES
AND SECURITY AGREEMENT

TO: AmSouth Bank

Monthly **Borrowing Base Certificate** for the period ended _____, 20__.

- | | | |
|----|--|---------|
| 1) | Accounts receivable
per aging dated _____ | _____ |
| 2) | Ineligible Accounts | |
| | A) Accounts aged over
90 days _____ | |
| | B) Ineligible Accounts
per Agreement _____ | [_____] |
| 3) | Net Outstanding Eligible
Accounts (line 1 - line 2) | _____ |
| 4) | Inventory Balance at _____ | _____ |
| 5) | Ineligible Inventory | |
| | A) Ineligible Inventory
per Agreement _____ | [_____] |
| 6) | Eligible Inventory
(line 4 - line 5) | _____ |
| 7) | Collateral Value | |
| | A) Accounts at 50%
of line 3 _____ | |
| | B) Inventory at 50%
of line 6 _____ | |
| 8) | Total value of Net
Outstanding Eligible Accounts,
and Eligible Inventory
(line 7(A) + 7(B))
(the "Borrowing Base") | _____ |

EXHIBIT D
TO
MORTGAGE, ASSIGNMENT OF LEASES
AND SECURITY AGREEMENT

Ground/Improvement Leases

3rd Avenue West, Birmingham, Alabama

That certain Lease Assignment dated April 18, 2003 by and between Anmar Enterprises, Inc., an Alabama corporation ("Anmar") and Express Oil Change, LLC, a Delaware limited liability company, whereby that certain Lease Agreement dated October 17, 1989 by and between Anmar and James W. Parker was assigned to User.

Huffman, Alabama

That certain Assignment and Assumption Agreement dated February 29, 1996 by and between Express Oil Change, Inc., an Alabama corporation ("Express") and Express Oil Change, LLC, a Delaware limited liability company, whereby that certain Ground Lease dated July 3, 1991, by and between Express and Parkway East Associates, a New Jersey limited partnership was assigned to User.

Drake Avenue, Huntsville, Alabama

That certain Ground Lease dated June 1, 1997, by and between Ben R. Stevens and Huntsville Express, Inc., as the same was assigned to User of even date herewith.

South Parkway, Huntsville, Alabama

That certain Lease Agreement dated January 27, 1997, by and between Sharron P. Culpepper and Mark A. Pressage and Huntsville Express, Inc., as the same was assigned to User of even date herewith.

Hoover, Alabama

That certain Lease Agreement dated February 27, 1996, by and between Jim Lunceford, Inc. and User.