

STATE OF ALABAMA

COUNTY OF SHELBY

**MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FINANCING STATEMENT**

This MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FINANCING STATEMENT (hereinafter referred to as the "**Mortgage**") is entered into as of the 29th day of November, 2004, by BIG 10 TIRE STORES, INC., an Alabama corporation (hereinafter referred to as "**Borrower**") and REGIONS BANK (hereinafter referred to as "**Bank**");

W I T N E S S E T H

WHEREAS, Borrower owns a fee simple interest in and to the Mortgaged Property, as hereinafter defined; and

WHEREAS, the Bank is willing to lend Borrower money for its operations and development provided that Borrower mortgages its interest in said property to Bank; and

WHEREAS, Borrower is willing to mortgage its interest in the hereinbelow described real property to the Bank as security for the loan by the Bank to Borrower.

NOW, THEREFORE, in consideration of the premises, the parties hereto do hereby enter into this Mortgage:

ARTICLE 1.

DEFINITIONS

As used herein, the following terms shall have the following meanings:

- 1.1. **Bank**. The above defined Bank, its successors and assigns.
- 1.2. **Borrower**. The above defined Borrower, whether one or more, and all persons succeeding to the Borrower's interest, including all subsequent owners of the Mortgaged Property as defined below, or any part thereof.
- 1.3. **Buildings**. Any and all structures or other buildings, covered garages, utility sheds, workrooms, air conditioning towers, open parking areas, streets, curbs, lighting and additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land (as defined below), or any part thereof.

1.4. Environmental Laws. Any and all state, federal and local statutes, regulations, ordinances or case law now or hereafter relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Waste Management Minimization Act, Section 22-30-1, et seq., of the 1975 Code of Alabama, as amended, or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

1.5. Event of Default. Any happening or occurrence described in ARTICLE 6 below, or elsewhere in this Mortgage.

1.6. Fixtures. All materials, supplies, equipment, apparatus and other things owned or hereafter acquired by Borrower and now or hereafter attached to, installed in or used in connection with any of the Buildings or the Land, including, but not limited to, any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning devices, sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, elevators, gas and electric machinery, appurtenances and equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities, whether or not situated in easements.

1.7. Governmental Authority. Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

1.8. Hazardous Substances. Materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

1.9. Impositions. All real estate and personal property taxes; water, gas, sewer, electricity and other utility rates and charges; charges for any easement, license or agreement maintained for the benefit of the Mortgaged Property; and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior to or after execution hereof may be assessed, levied or imposed upon the Mortgaged Property, upon this Mortgage and the proceeds derived therefrom by ownership, use, occupancy or enjoyment thereof.

1.10. Indebtedness. (i) the principal of, interest on and all other amounts, payments and premiums due under the Note (as defined below) or secured by the Security Documents (as defined below); and (ii) such additional sums with interest thereon, as may hereafter be borrowed from Bank,

its successors or assigns, by the then record owner of the Mortgaged Property or Borrower, when evidenced by a promissory note or other instrument reciting that they are secured by this Mortgage together with an appropriate instrument modifying this Mortgage accordingly; and (iii) any and all other indebtedness, obligations and liabilities of any kind of Borrower to Bank, now or hereafter existing, absolute or contingent, joint and/or several, secured or unsecured, due or not due, arising by operation of law or otherwise, or direct or indirect, including indebtedness, obligations and liabilities of Borrower to Bank as a member of any partnership, joint venture, association or other group, and whether incurred by Borrower as principal, surety, endorser, guarantor, accommodation party or otherwise.

1.11. Land. The real estate described in **Exhibit A** attached hereto and incorporated herein and all rights, titles and interests appurtenant thereto.

1.12. Leases. Any and all leases, subleases, licenses, concessions or other agreements (written or verbal, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, the Mortgaged Property, and all other agreements, such as utility contracts, maintenance agreements and service contracts, which in any way relate to the use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property.

1.13. Legal Requirements. (i) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Borrower or the Mortgaged Property, including the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (ii) if applicable, Borrower's presently or subsequently effective Articles of Incorporation, or any other instruments creating or governing Borrower, (iii) any and all covenants, conditions or restrictions applicable to the Mortgaged Property or the ownership, use or occupancy thereof, (iv) any and all Leases, (v) any and all covenants, conditions or restrictions applicable to the Mortgaged Property to which Borrower may be bound.

1.14. Loan Agreement. That certain Loan Agreement dated November 29, 2004 between Bank and Borrower pertaining to the funding of the principal amount of the Note.

1.15. Mortgaged Property. The Land, the Buildings, Fixtures, Personalty, Leases and Rents (as defined below), together with:

(a) All rights, privileges, tenements, hereditaments, rights-of-way, easements and appurtenances in anywise appertaining thereto, and all right, title and interest of Borrower, if any, in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;

(b) All betterments, improvements, additions, alterations, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein;

(c) All Borrower's right, title and interest in and to any awards remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Buildings, Fixtures or Personalty, including, but not

limited to, those for any vacation of, or change of grade in, any streets affecting the Land or Buildings and those for municipal utility districts or other utility costs incurred or deposits made in connection with the Land; and

(d) Any and all other security and collateral, of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. As used in this Mortgage, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

1.16. Note. The Promissory Note of even date herewith, executed by Borrower payable to the order of Bank, in the principal amount of Fifteen Million Seven Hundred Fifty-Eight Thousand Two Hundred Seventy-One and 01/100ths Dollars (\$15,758,271.01), and any and all renewals, rearrangements, amendments, modifications, enlargements or extensions of such Promissory Note or of any promissory note or notes given therefor.

1.17. Obligations. Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, as set forth in the Security Documents.

1.18. Permitted Encumbrances. The outstanding liens, easements, building lines, restrictions, security interests and other matters (if any), as reflected on **Exhibit B** attached hereto, and the lien and security interests created by the Security Documents.

1.19. Personalty. All the right, title and interest of Borrower in and to all furniture, furnishings, equipment, machinery, goods, general intangibles, money, insurance proceeds, accounts, contract rights, inventory, all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Borrower with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and all other personal property (other than the Fixtures) of any kind of character as defined in and subject to the provisions of the Alabama Uniform Commercial Code (Article 9A -- Secured Transactions), which are now or hereafter located or to be located upon, within or about the Land and the Buildings, which are or may be used in or related to the planning, development, financing or operation of the Mortgaged Property, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof.

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

1.21. Security Documents. The Loan Agreement, the Note, this Mortgage and any and all other documents now or hereafter executed by Borrower to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

ARTICLE 2.

GRANT

To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, the Borrower has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY the Mortgaged Property unto Bank; subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property unto Bank forever, and the Borrowers does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Mortgaged Property unto Bank against every person whomsoever lawfully claiming or to claim the same or any part thereof; providing always, that if Borrower shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall perform and discharge (or cause to be performed and discharged) the Obligations on or before the dates same are to be performed and discharged, then the liens, security interests, estates and rights granted by the Security Documents shall be void; otherwise, they shall remain in full force and effect.

ARTICLE 3.

WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents to Bank as follows:

3.1. Organization and Power. Borrower is a corporation duly organized, validly existing and in full force and effect under the laws of the State of Alabama, and is duly qualified to do business and in good standing in the States of Florida and Georgia, and (ii) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications and documentation to own and operate the Mortgaged Property and to carry on its business as now being and as proposed to be conducted.

3.2. Validity of Security Documents. The execution, delivery and performance by Borrower of the Security Documents and the borrowing evidenced by the Note (a) are within Borrower's powers and have been duly authorized by the members of Borrower, and all other requisite action for such authorization has been taken, (b) have received all requisite prior governmental approval in order to be legally binding and enforceable in accordance with the terms thereof; and (c) to Borrower's actual knowledge, will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under any present Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Borrower's property or assets, except as contemplated by the provisions of the Security Documents. The Security Documents constitute the legal, valid and binding obligations of Borrower and others obligated under the terms of the Security Documents.

3.3. Information. All information, reports, papers and data given to Bank with respect to Borrower are accurate, complete and correct in all material respects and do not omit any fact the inclusion of which is necessary to prevent the facts contained therein from being materially misleading. All information, reports, papers and data which purport to be estimates, projections or

the like given to Bank by Borrower with respect to the Mortgaged Property in connection with the Loan evidenced by the Security Documents, to the knowledge of Borrower (having made reasonable inquiry into the reasonableness of such information, reports, papers and data), are reasonable estimates of such estimates, projections and the like.

3.4. Title to Mortgaged Property and Lien of This Instrument. Borrower has good and indefeasible title to the Land and Buildings. Borrower has or will have good and indefeasible title to the Improvements, in fee simple, and has good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances. Subject to the Permitted Encumbrances, this Mortgage constitutes a valid, subsisting first mortgage in the Land, Buildings and Fixtures, and a valid, subsisting security interest in and to the Personalty, Leases and Rents, all in accordance with the terms hereof.

3.5. Taxes and Other Payments. Borrower has all Federal, state, county, municipal and city income and other tax returns required to have been filed by them and have paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by them, and Borrower has no actual knowledge of any basis for any additional assessment in respect of any such taxes.

3.6. Environmental Matters.

(a) Borrower, after due inquiry, to the best of its knowledge, information, and belief, represents and warrants that the Mortgaged Property does not contain, and will not contain any Hazardous Substances while any part of the Indebtedness secured by this Mortgage is unpaid, including without limitation: (i) any storage tanks, either above ground or below ground; (ii) any asbestos in any form; (iii) any polychlorinated biphenyls ("PCBs"), in the form of electrical transformers or capacitors, fluorescent light fixtures with ballasts, or any other device or form; (iv) any landfill, debris storage, trash dump, chemical storage or chemical dump; or (v) any urea formaldehyde foam insulation.

(b) Borrower further represents and warrants that the Mortgaged Property and all of Borrower's operations on the Mortgaged Property, will comply in all respects with all Environmental Laws.

(c) Borrower represents and warrants that to its actual knowledge: (i) there are no pending claims or threats of pending claims against Borrower or the Mortgaged Property by private, governmental or administrative authorities relating to environmental impairment or regulatory requirements; and (ii) there are no areas on, under or above the Mortgaged Property where any Hazardous Substances have been released, disposed of or found.

(d) Borrower hereby agrees to give immediate notice to Bank of: (i) any notice of a violation of any Environmental Laws; (ii) any facts or circumstances Borrower reasonably believes could form the basis for any claim against the Borrower relating to environmental matters, including, but not limited to, any claims arising from past or present environmental practices asserted under any Environmental Laws.

(e) Borrower hereby agrees that a violation of any representation or warranty contained herein shall be a default in this Mortgage and the Indebtedness secured hereby, and that upon such default, Bank may rescind this Mortgage or render it null and void at Bank's option, provided, however, that prior to the declaration of default for violation of this Paragraph 3.6, Bank shall give Borrower thirty (30) days notice thereof and opportunity to cure said default. Borrower further agrees that upon any default of any kind in the terms of this Mortgage or the Indebtedness secured hereby, Bank shall have the right to make environmental inspections, inquiries, audits, evaluations and assessments of the Mortgaged Property, and the Borrower agrees to cooperate fully in any such environmental inspections, inquiries, audits, evaluations and assessments. Borrower hereby agrees to indemnify and hold harmless Bank, its participants, successors and assigns, from all losses, costs, damages, claims, and expenses of any kind including, but not limited to, Bank's attorneys' fees and expenses of any cleanup, removal or remedial action, that arise out of: (a) the presence of or contamination by any hazardous wastes, pollutants, asbestos or other toxic substances relating to the Mortgaged Property or Borrower's operations on the Mortgaged Property; (b) the violation of any representation or warranty set forth in this Mortgage, or Borrower's failure to perform any obligations required under this Mortgage; or (c) failure of the Borrower or the Mortgaged Property to fully comply with all environmental laws, requirements, rules, and regulations. This indemnification shall survive payment of the Indebtedness secured by this Mortgage and the Bank's exercise of any right or remedy under this Mortgage and all loan documents executed by Borrower. This indemnity shall continue without time limit.

ARTICLE 4.

AFFIRMATIVE COVENANTS

Borrower hereby unconditionally covenants and agrees with Bank as follows:

4.1. Payment and Performance. Borrower will pay the Indebtedness as and when called for in the Security Documents and on or before the due dates thereof, and will perform all of the Obligations in full and on or before the dates the same are to be performed.

4.2. Existence. Borrower will preserve and keep in full force and effect its existence, rights and franchises.

4.3. Compliance with Legal Requirements. Borrower will promptly and faithfully, and will cause the operation of the Mortgaged Property to comply with, conform to and obey all present and future Legal Requirements, whether or not same shall necessitate structural changes in, or improvements to, the Mortgaged Property.

4.4. Lien Status. Borrower will protect the first security interest status of this Mortgage and will not, except for the Permitted Encumbrances and the liens created by this Mortgage, place, or permit to be placed, or otherwise mortgage, hypothecate or encumber the Mortgaged Property with any other lien or security interest of any nature whatsoever (statutory, constitutional or contractual), regardless of whether same is allegedly or expressly inferior to the lien and security interest created by this Mortgage, and if any such lien or security interest is asserted against the Mortgaged Property,

Borrower will promptly, and at its own cost and expense, (a) pay the underlying claim in full or take such other action so as to cause same to be released; and (b) within fifteen (15) days from the date such lien or security interest is asserted, give Bank notice of such lien or security interest. Such notice shall specify who is asserting such lien or security interest and shall detail the origin and nature of the underlying claim giving rise to such asserted lien or security interest. No provision hereof shall require Borrower to pay any claims for labor, materials or services which Borrower in good faith disputes and which Borrower, at its own expense, is currently and diligently contesting; provided, however, that Borrower shall, within sixty (60) days after the filing of any claim or lien that is disputed or contested by Borrower, obtain and record, if required, a bond that is in an amount and in form and substance reasonably satisfactory to Bank.

4.5. Payment of Impositions. Borrower will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof, or the day any fine, penalty, interest or cost may be added thereto or imposed, or the day any lien may be filed, for the nonpayment thereof (if such day is used to determine the due date of the respective item); provided, however, that Borrower may, if permitted by law and if such installment payment would not create or permit the filing of a lien against the Mortgaged Property, pay the Impositions in installments whether or not interest shall accrue on the unpaid balance of such Impositions; provided further, however, that Borrower may, in good faith, in lieu of paying such Impositions as they become due and payable, by appropriate proceedings, contest the validity thereof, and pending such contest, Borrower shall not be deemed in default hereunder because of such nonpayment if, prior to delinquency of the asserted Impositions, Borrower furnishes to Bank an indemnity bond, conditioned that such Impositions with interest, costs and penalties, be paid as herein stipulated, secured by a deposit, in cash, or security acceptable to Bank or with a surety acceptable to Bank, in the amount of the Imposition being contested by Borrower and a reasonable additional sum to pay all possible costs, interest and penalties imposed or incurred in connection therewith, and if Borrower promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, before such judgment becomes final; and provided further, that in any event, each contest shall be concluded and the Imposition, penalties, interest and costs shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment.

In the event of enactment of any law imposing payment of all or any portion of such Impositions upon Bank, or the rendering by any court of competent jurisdiction of a decision that the undertaking by the Borrower as herein provided, to pay such Impositions is legally inoperative or that the payment of such would result in a violation of the applicable usury laws, then all sums hereby secured, without any deduction, shall at the option of Bank become immediately due and payable, notwithstanding anything contained herein or any law heretofore or hereafter enacted, to the contrary.

4.6. Repair. Borrower will keep the Mortgaged Property in first class order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Borrower will also use its best efforts to prevent any act or occurrence

which might materially impair the value or usefulness of the Mortgaged Property for its intended use, as set forth in the Security Documents. In instances where repairs, replacements, renewals, additions, betterments, improvements or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste or destruction thereof, Borrower shall proceed to construct same, or cause same to be constructed, notwithstanding anything to the contrary contained in Paragraph 5.2 hereinbelow; provided, however, that in instances where such emergency measures are to be taken, Borrower will notify Bank, in writing, of the commencement of same and the measures to be taken, and when same are completed, the completion date and the measures actually taken.

4.7. Insurance. Borrower, at Borrower's sole cost and expense, will obtain and maintain in accordance with the terms of the Loan Agreement, insurance upon and relating to the Mortgaged Property, insuring against personal injury and death, loss by fire and such other hazards, flood, casualties and contingencies as are normally and usually covered by extended coverage policies in effect where the Land is located and such other risks as may be specified by Bank in said Loan Agreement or from time to time, all in such amounts and with such insurers of recognized responsibility as are reasonably acceptable to Bank. Borrower shall also obtain and maintain a policy of comprehensive general liability insurance with general aggregate limits of not less than \$3,000,000.00 naming Bank as an additional insured thereunder. Each such insurance policy shall provide by way of endorsements, riders or otherwise that (a) proceeds will be payable to Bank as its interest may appear; (b) the coverage of beneficiary shall not be terminated, reduced or affected in any manner regardless of any breach or violation by Borrower of any warranties, declarations or conditions in such policy; (c) no such insurance policy shall be cancelled, endorsed, altered or reissued to effect a change in coverage for any reasons and to any extent whatsoever unless such insurer shall have first given Bank thirty (30) days prior written notice thereof; and (d) Bank may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance, and such payments shall be accepted by the insurer to prevent same. Bank shall be furnished with the original of each such initial policy coincident with the execution of this Mortgage and satisfactory evidence of each renewal policy prior to the expiration of the initial or each preceding renewal policy, together with receipt or other evidence that the premiums thereon have been paid. At Bank's request, Borrower shall furnish to Bank, on or before thirty (30) days after the close of each of Borrower's fiscal years, a statement of the amounts of insurance maintained in compliance with this Paragraph 4.7 and the Loan Agreement, of the risks covered by such insurance and of the insurance company or companies which carry such insurance.

4.8. Application of Insurance Proceeds.

(a) Unless Bank and Borrower otherwise agree in writing, the proceeds of the insurance described in Paragraph 4.7 hereinabove shall be used for restoration, repair or replacement (hereinafter referred to as the "Work") of the Mortgaged Property, provided such restoration is economically feasible and the security of this Mortgage is not thereby materially impaired, and such proceeds shall be paid out by Bank from time to time to Borrower (or, at the option of Bank, jointly to Borrower and the persons furnishing labor and/or material incident to such restoration, repair or replacement or directly to such persons) as the Work progresses, subject to the following conditions:

(i) if the cost of the Work is estimated by Bank to exceed \$100,000.00, prior to the commencement therefor (other than Work to be performed on an emergency basis to protect the Mortgaged Property or prevent interference therewith),

(1) Borrower shall have prepared, submitted to Bank and obtained Bank's written approval (such approval not to be unreasonably withheld) of the plans and specifications for such Work;

(ii) each request for payment by Borrower shall be made on ten (10) days prior written notice to Bank and shall be accompanied by a certificate by Borrower stating, among such other matters as may be reasonably required by Bank, that:

(1) all of the Work completed has been done in substantial compliance with the approved plans and specifications (if any be required under Paragraph 4.8(a)(i)(1) hereinabove);

(2) the sum requested is justly required to reimburse Borrower for payments by Borrower to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials);

(3) when added to all sums previously paid out by Borrower, the sum requested does not exceed the value of the Work done to the date of such certificate; and

(4) the amount of insurance proceeds remaining in the hands of Bank will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail, as the Bank may require, an estimate of the cost of such completion);

(iii) each request shall be accompanied by waivers of lien, satisfactory in form and substance to Bank, covering that part of the Work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to Bank that there has not been filed with respect to the Mortgaged Property any mechanic's lien or other lien, affidavit or instrument asserting any lien or lien rights with respect to the Mortgaged Property;

(iv) there has not occurred any Event of Default since the hazard, casualty or contingency giving rise to payment of the insurance proceeds;

(v) in the case of the request for the final disbursement, such request is accompanied by a copy of any Certificate of Occupancy or other certificate required by any Legal Requirement to render occupancy of the damaged portion of the Mortgaged Property lawful; and

(vi) if, in the Bank's good faith judgment, the amount of such insurance proceeds will not be sufficient to complete the Work (which determination may be made prior to or during the performance of the Work), Borrower shall deposit with Bank, immediately upon a request therefor, an amount of money which when added to such insurance proceeds, will be sufficient, in

Bank's good faith judgment, to complete the Work. If upon completion of the Work any portion of the insurance proceeds has not been disbursed to Borrower (or one or more of the other aforesaid persons) incident thereto, Bank may, at Bank's option, disburse such balance to Borrower or, in case there is a continuing Event of Default, apply such balance toward the payment of the Indebtedness. Nothing herein shall be interpreted to prohibit Bank from applying at any time the whole or any part of such insurance proceeds to the curing of an Event of Default.

(b) Notwithstanding the foregoing, if no Event of Default is then existing, and the loss to the Mortgaged Property resulting from any insured casualty is not greater than \$100,000.00, Bank shall release such insurance proceeds received by Bank to Borrower who shall promptly repair, replace or restore the property destroyed or damaged to substantially the same condition as prior to the event causing such damage or destruction (without the necessity of complying with the requirements of Paragraph 4.8(a)) with such changes, alterations or modifications as will not materially impair the operating utility of the Mortgaged Property.

4.9. Restoration Following Casualty. Borrower further agrees that, if any act or occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtained or obtainable), shall result in damage to or loss or destruction of the Mortgaged Property, Borrower will give notice thereof to Bank and, if so instructed by Bank, will promptly (at Borrower's sole cost and expense in excess of any available insurance proceeds) commence and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction.

4.10. Performance of Leases. Borrower will (a) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon it under each of the Leases, (b) not voluntarily terminate, cancel or waive its rights or the obligations of any other party under any of the Leases except in the ordinary course of business, (c) use all reasonable efforts to maintain each of the Leases in force and effect during the full term thereof, and (d) appear in and defend any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants and agreements of it or the other party or parties thereof.

4.11. Inspection. Borrower will permit Bank, and its agents, representatives and employees, to inspect the Mortgaged Property at all reasonable times and in any reasonable manner.

4.12. Hold Harmless. Borrower will defend, at its own cost and expense, and hold Bank harmless from any action, proceeding or claim affecting or arising upon the Mortgaged Property or as a result of the Security Documents, and all costs and expenses incurred by Bank in protecting its interests hereunder in such an event (including all court costs and attorneys' fees) shall be borne by Borrower.

4.13. Books and Records. Borrower will maintain full and accurate books of account and other records reflecting the results of its operations of the Mortgaged Property and will furnish, or cause to be furnished, to Bank the financial statements and other reports required under the Loan Agreement. At any time and from time to time, Borrower shall deliver to Bank such other financial

data as Bank shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property, and Bank shall have the right, at reasonable times and upon reasonable notice, to audit, examine and make copies or extracts of Borrower's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Bank and Bank's representatives for such purpose at the address specified herein for Borrower or at such other location as Bank may approve.

ARTICLE 5.

NEGATIVE COVENANTS

Borrower hereby covenants and agrees with Bank that until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1. Use Violations. Borrower will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance, or (d) makes void, voidable or cancellable, or increases the premium of, any insurance then in force with respect thereof.

5.2. Alterations. Borrower will not commit or permit any waste of the Mortgaged Property and will not (subject to the provisions of Paragraphs 4.6 and 4.9 hereinabove), without the prior written consent of Bank, which consent will not be unreasonably withheld, make or permit to be made any material alterations or additions to the Plans or the Mortgaged Property.

5.3. Replacement of Fixtures and Personalty. Borrower will not, without the prior written consent of Bank, permit any of the Fixtures or Personalty to be removed at any time from the Land or Buildings unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value owned by Borrower, free and clear of any lien or security interest except such as may be first approved, in writing, by Bank.

5.4. No Sale or Further Encumbrances. Borrower will not, without the prior written consent of Bank sell, transfer, convey or assign all, or any portion of, its interest in the Mortgaged Property, or create or place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge on, or conditional sale or other title retention agreement, regardless of whether same are expressly subordinate to the liens of the Security Documents, with respect to the Mortgaged Property, the Leases or the Rents other than the Permitted Encumbrances. If any lien or claim is asserted against the Mortgaged Property, Borrower shall perform its obligations with respect thereto as specified in Paragraph 4.4 above.

ARTICLE 6.
EVENTS OF DEFAULT

The term "Event of Default," as used in the Security Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

6.1. Payment of Indebtedness. If Borrower shall fail, refuse or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Security Documents or at a date fixed for prepayment, or by acceleration or otherwise, subject to all applicable notice and grace periods, if any.

6.2. Performance of Obligations. If Borrower shall fail, refuse or neglect to perform and discharge fully and timely any of the Obligations as and when called for, Bank shall send written notice thereof to Borrower, and if such failure, refusal or neglect shall remain uncured for a period of thirty (30) days after the sending of such notice; provided, however, that if such default is curable but requires work to be performed, acts to be done or conditions to be remedied which by their nature, cannot be performed, done or remedied, as the case may be, within such thirty (30) day period, no Event of Default shall be deemed to have occurred if Borrower commences same within such thirty (30) day period and thereafter diligently and continuously prosecutes the same to completion within ninety (90) days after the sending of such notice.

6.3. False Representation. If any representation, warranty or statement made by Borrower or Guarantor in, under or pursuant to the Security Documents or any affidavit executed in connection with the Security Documents shall be false or misleading in any material respect.

6.4. Voluntary Bankruptcy. If Borrower shall (a) voluntarily be adjudicated a bankrupt or insolvent, (b) procure the voluntary or involuntary appointment of a receiver, trustee or liquidator for itself or for all or any part of its property, (c) file any petition seeking a discharge, rearrangement or reorganization of its debts pursuant to the bankruptcy laws or any other debtor relief laws of the United States or any state or any other competent jurisdiction, (d) make a general assignment for the benefit of its creditors, or (e) admit in writing its inability to pay its debts as they mature.

6.5. Involuntary Bankruptcy. If (a) a petition is filed against Borrower seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or other competent jurisdiction, or (b) a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Borrower, a receiver or trustee for it or for all or any part of its property, and such petition, order, judgment or decree is not dismissed with prejudice, stayed or vacated, as appropriate, within sixty (60) days from the date of filing or entry thereof.

6.6. Dissolution or Change of Ownership. If without Bank's prior written consent, Borrower shall dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or shall attempt to do any of the same, or if there shall be any change of ownership resulting in a change of control in Borrower; provided, however, transfers made for estate planning purposes

shall be permitted, provided that Borrower obtains Bank's prior consent, which consent shall not be unreasonably withheld, delayed or conditioned.

6.7. Destruction of Improvements. If the Mortgaged Property is demolished, destroyed, condemned or substantially damaged or changed so that (in Bank's good faith judgment) it cannot be restored or rebuilt with available funds to its present condition within a reasonable period of time.

6.8. Default or Foreclosure of Other Liens. If there has been a default under any lien or security interest on the Mortgaged Property (without hereby implying Bank's consent to the existence, placing, creating or permitting of any such lien or security interest) or if the holder of said lien or security interest institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

6.9. Cross Default. A default by Borrower in the due, prompt and complete observance and performance of any other debt or security instrument executed with respect to the Indebtedness or a default by Borrower under any instrument or document executed in favor of Bank.

6.10. Loan Agreement. If there occurs an "Event of Default" as defined in the Loan Agreement described in Paragraph 1.5 hereinabove.

ARTICLE 7.

DEFAULT AND FORECLOSURE

7.1. Remedies. If an Event of Default shall occur, Bank may, at Bank's election, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration. Declare the Principal Balance (defined hereby as meaning the then unpaid principal balance on the Note), the accrued interest and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Borrower), whereupon the same shall become immediately due and payable.

(b) Entry on Mortgaged Property. Enter upon the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Borrower remains in possession of all or any part of the Mortgaged Property after an Event of Default and without Bank's prior written consent thereto, Bank may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title and writ of restitution. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default then would have existed in the absence of such sentence.

(c) Operation of Mortgaged Property. Hold, lease, manage, operate or otherwise use or permit the use of the Mortgaged Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Bank may deem to be prudent and

reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Bank shall deem necessary or desirable), and apply all Rents and other amounts collected by Bank in connection therewith in accordance with the provisions of Paragraph 7.8 below.

(d) Foreclosure and Sale. Sell or offer for sale the Mortgaged Property in such portions, order and parcels as Bank may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction. Such sale shall be made at the courthouse door of the county wherein the Land (or any of that portion thereof to be sold) is located after giving notice of the time, place and terms of sale and that portion of the Mortgaged Property to be sold by publication once a week for three (3) successive weeks prior to said sale in a newspaper of general circulation published in said county. At any such sale (i) whether made under the power herein contained, the Alabama Uniform Commercial Code, any other Legal Requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Bank to have physically present, or to have constructive possession of, the Mortgaged Property (Borrower hereby covenanting and agreeing to deliver to Bank any portion of the Mortgaged Property not actually or constructively possessed by Bank immediately upon demand by Bank), and the title to and right or possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale; (ii) each instrument of conveyance executed by Bank shall contain a general warranty of title, binding upon Borrower; (iii) each and every recital contained in any instrument of conveyance made by Bank shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Indebtedness, advertisement and conduct of such sale in the manner provided herein and otherwise by law; (iv) any and all prerequisites to the validity thereof shall be conclusively presumed to have been performed; (v) the receipt of Bank or of such other party or officer making the sale shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money, and no such purchaser or purchasers, or his or their assigns, or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or non-application thereof; (vi) to the greatest extent permitted by law, Borrower shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold, and such sale shall be a perpetual bar, both at law and in equity, against Borrower and against any and all other persons claiming or to claim the property sold or any part thereof, by, through or under Borrower; and (vii) to the extent and under such circumstances as are permitted by law, Bank may be a purchaser at any such sale.

(e) Trustee or Receiver. Upon or at any time after commencement of foreclosure of the lien and security interest provided for herein or any legal proceeding hereunder, make application to a court of competent jurisdiction as a matter of strict right and without notice to Borrower or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, for appointment of a receiver of the Mortgaged Property, and Borrower does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Paragraph 7.8 below.

(f) Others. Exercise any and all other rights, remedies and recourses granted under the Security Documents (including, without limitation, those set forth in Paragraph 9.6 hereinbelow) or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

7.2. Separate Sales. The Mortgaged Property may be sold in such manner and order as Bank, in its sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

7.3. Remedies, Cumulative, Concurrent and Nonexclusive. Bank shall have all rights, remedies and recourses granted in the Security Documents and available at law or equity (including specifically those granted by the Alabama Uniform Commercial Code in effect and applicable to the Mortgaged Property, the Leases or any portion thereof) and same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Borrower or others obligated under the Note, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Bank, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive.

7.4. No Conditions Precedent to Exercise of Remedies. Neither Borrower nor any other person hereafter obligated for payment of all or any part of the Indebtedness or fulfillment of all or any of the Obligations shall be relieved of such obligation by reason of (a) the failure of Bank to comply with any request of Borrower or of any other person so obligated to foreclose the lien of this Mortgage or to enforce any provisions of the other Security Documents, (b) the release, regardless of consideration, of the Mortgaged Property or the addition of any other property to the Mortgaged Property, (c) any agreement or stipulation between any subsequent owner of the Mortgaged Property and Bank extending, renewing, rearranging or in any other way modifying the terms of the Security Documents without first having obtained the consent of, given notice to or paid any consideration to Borrower or such other person, and in such event, Borrower and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement unless expressly released and discharged, in writing, by Bank, or (d) by any other act or occurrence, save and except the complete payment of the Indebtedness and the complete fulfillment of all of the Obligations.

7.5. Release of and Resort to Collateral. Bank may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, interests created in or evidenced by the Security Documents or their status as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Bank may resort to any other security therefor held by Bank, in such order and manner as Bank may elect.

7.6. Waiver of Redemption, Notice and Marshaling of Assets. To the greatest extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Borrower by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default (except as may be provided for in Paragraph 6.2

hereinabove) or of Bank's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Security Documents, and (c) any right to a marshaling of assets or a sale in inverse order of alienation.

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

7.8. Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operation or other use of the Mortgaged Property or the Leases shall be applied by Bank (or the receiver, if one is appointed), to the extent that funds are so available therefrom, in the following order of priority:

(a) First, to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (i) trustees' and receivers' fees, (ii) court costs, (iii) attorneys and accountants' fee, (iv) costs of advertisement, and (v) the payment of any and all Impositions, liens, or security interests (without in any way implying Bank's prior consent to the creation thereof);

(b) Second, to the payment of all amounts, other than principal and accrued but unpaid interest due under the Note, which may be due to Bank under the Security Documents, together with interest thereon as provided therein;

(c) Third, to the payment of all of the principal, interest and any other Indebtedness not paid under Paragraph 7.8(a) or 7.8(b) above;

(d) Fourth, to the payment of any indebtedness or obligations of Borrower to Bank secured by a subordinate mortgage on or security interest in the Mortgaged Property; and

(e) Fifth, to Borrower or any other party lawfully entitled to receive the same, in the order and in amounts as determined by law.

7.9. Acceleration Following Certain Events. Notwithstanding anything to the contrary herein contained or inferable from any provision hereof, upon the occurrence of any Event of Default, as defined in either Paragraph 6.3 or Paragraph 6.4 hereinabove, the Principal Balance, unpaid accrued interest and any other accrued but unpaid portion of the Indebtedness shall immediately become due and payable in full without the necessity of further action on the part of Bank, and Borrower hereby expressly waives any requirements of notice of such acceleration of maturity of the Indebtedness.

ARTICLE 8.

CONDEMNATION

8.1. General. Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceeding for the condemnation of the Mortgaged Property, Borrower shall notify Bank of such fact. Borrower shall then, if requested by Bank, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall cause any awards or settlements to be paid over to Bank for disposition pursuant to the terms of this Mortgage. Borrower may be the nominal party in such proceeding, but Bank shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice; and Borrower will deliver, or cause to be delivered, to Bank such instruments as may be requested by it from time to time to permit such participation. If the Mortgaged Property is taken or diminished in value, or if a consent settlement is entered by or under threat of such proceeding, the award or settlement payable to Borrower by virtue of its interest in the Mortgaged Property shall be, and by these presents is, assigned, transferred and set over unto Bank to be held by it, in trust, subject to the lien and security interest of this Mortgage, and disbursed as follows:

(a) If:

- (i) all of the Mortgaged Property is taken,
- (ii) so much of the Mortgaged Property is taken, or the Mortgaged Property is so diminished in value, that the remainder thereof cannot (in Bank's good faith judgment) continue to be operated for the purpose it was being used immediately prior to such taking or diminution,
- (iii) an Event of Default shall have occurred, or
- (iv) the Mortgaged Property is partially taken or diminished in value and (in Bank's good faith judgment) need not be rebuilt, restored or repaired in any manner, then in any such event, the entirety of the sums so paid to Bank shall be applied by it in the order recited in Paragraph 8.2 hereinbelow; or

(b) If:

- (i) only a portion of the Mortgaged Property is taken and the portion remaining can (in Bank's good faith judgment), with rebuilding, restoration or repair, be profitably operated for the purpose referred to in Paragraph 8.1(a)(ii) hereinabove,
- (ii) none of the other facts recited in Paragraph 8.1(a) hereinabove exists,
- (iii) Borrower shall deliver to Bank plans and specifications for such rebuilding, restoration or repair acceptable to Bank, which acceptance shall be evidenced by Bank's written consent thereto, and

(iv) Borrower shall thereafter commence the rebuilding, restoration or repair and complete same, all in substantial accordance with the plans and specifications and within three (3) months after the date of the taking or diminution in value and shall otherwise comply with Paragraph 4.8 hereinabove, then such sums shall be paid to Borrower to reimburse Borrower for money spent in the rebuilding, restoration or repair; otherwise same shall be applied by Bank in the order recited in Paragraph 8.2 hereinbelow.

8.2. Application of Proceeds. All proceeds received by Bank with respect to a taking or diminution in value of the Mortgaged Property shall be applied in the following order of priority:

(a) First, to reimburse Bank for all costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of the said proceeds;

(b) Thereafter, the balance, if any, shall be applied in the order of priority recited in Paragraphs 7.8(b) through 7.8(e) hereinabove; provided, however, that if such proceeds are required under Paragraph 8.1(b) hereinabove to be applied to the rebuilding, restoration or repair of the Mortgaged Property, the provisions of Paragraph 4.8 hereinabove shall determine the conditions precedent for utilizing such proceeds for such purpose.

ARTICLE 9.

SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS

9.1. Security Interest and Assignment. This Mortgage shall be construed as a mortgage on real property and it shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Mortgage shall terminate, as provided in ARTICLE 2 hereinabove, a first and prior security interest under the Alabama Uniform Commercial Code with respect to the Personality, Fixtures, Leases and Rents. Further, this Mortgage shall also be construed as and shall constitute and serve as an assignment of rents and an assignment of leases with respect to the Rents and Leases. To this end, Borrower has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Bank a first and prior security interest and all of Borrower's right, title and interest in, to, under and with respect to the Personality, Fixtures, Leases and Rents to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations.

(a) Limited License. Provided that there exists no Event of Default under this Mortgage or under any other Security Documents, Borrower shall have the right under a limited license granted hereby, and Bank hereby grants to Borrower a limited license (the "License") to collect all of the Rents arising from or out of the Leases or any renewals or extensions thereof, or from or out of the Mortgaged Property or any part thereof. Borrower shall receive such Rents and hold them as a trust fund to be applied, and Borrower hereby covenants to apply the Rents so collected, first to the payment of the Indebtedness; second to the satisfaction and discharge of the Obligations; third, to the payment of the Impositions; and fourth, to the satisfaction and discharge of

all obligations under the Leases. Thereafter, so long as there exists no Event of Default hereunder or under any of the other Security Documents, Borrower may use the Rents in any manner not inconsistent with the Security Documents. The License shall be revoked automatically upon the occurrence of an Event of Default hereunder or under any of the Security Documents.

(b) Affirmative Covenants. Borrower shall (i) duly and punctually observe, perform and discharge, all and singular the obligations, terms, covenants, conditions and warranties of the Leases, (ii) give prompt notice to Bank of any failure on the part of Borrower to observe, perform and discharge the same or of any claim made by any lessee of any such failure by Borrower, (iii) notify and direct, in writing, each and every present or future lessee or occupant of the Mortgaged Property or of any part thereof that any security deposit or other deposits heretofore delivered to Borrower have been retained by Borrower or assigned and delivered to Bank, as the case may be, (iv) enforce, short of termination of the Leases, or secure in the name of Bank, the performance of each and every obligation, term, covenant, condition and agreement in the Leases to be performed by any lessee or any guarantor, (v) appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with the Leases or the obligations, duties, or liabilities of Borrower and any lessee thereunder, do so in the name and on behalf of Bank upon request by Bank, but at the expense of Borrower, and pay all costs and expenses of Bank, including reasonable attorney's fees and disbursements, in any action or proceeding in which Bank may appear, (vi) keep the Mortgaged Property leased at a good and sufficient rental and on other terms and conditions acceptable to Bank, (vii) if requested by Bank, deliver to Bank executed copies of all existing and future Leases when executed upon all or any part of the Mortgaged Property, (viii) at the request of Bank, specifically transfer and assign such future Leases upon the same terms and conditions as herein contained, and such other terms as Bank may request, and (ix) make, execute and deliver to Bank upon demand and at any time or times, any and all assignments and other documents and other instruments which Bank may deem advisable to carry out the true purposes and intent of this agreement, which consent shall not unreasonably be withheld.

(c) Negative Covenants. Except in the ordinary course of business, Borrower shall not, without the prior written consent of Bank, (i) cancel, terminate or consent to any surrender of any Lease, (ii) commence any action of ejectment or any summary proceedings for dispossession of any lessee under any Lease or exercise any right of recapture provided in any Lease, (iii) materially modify or in any way alter the term of any Lease, (iv) waive or release any lessee or any guarantors from any obligations or conditions to be performed by any lessee or any guarantor, (v) lease any part of the Mortgaged Property or renew or extend the term of any Lease unless an option therefor was originally so reserved by the lessee and for a fixed and definite rental, (vi) consent to any modification of the express purposes for which the Mortgaged Property or any portion thereof has been leased, (vii) unless otherwise permitted under a Lease, consent to any subletting of the Mortgaged Property or any part thereof, to any assignment of any Lease by any lessee thereunder, or to any assignment or further subletting of any sublease, (viii) receive or collect any Rents from any lessee for a period of more than one month in advance (whether in cash or by evidence of indebtedness), (ix) pledge, transfer, mortgage or otherwise encumber or assign future payments of Rents, or (x) waive, excuse, condone, discount, set off, compromise or in any manner release or discharge any lessee under any Lease of and from any obligations, covenants, conditions, and

agreements to be kept, observed and performed by such lessee including the obligation to pay Rents thereunder in any manner and at any time and place specified therein.

(d) Appointment of Attorney-in-Fact. Subject to the License as described and limited in Paragraph 9.1(a) above, Borrower hereby constitutes and appoints Bank the true and lawful attorney-in-fact, coupled with an interest, of Borrower, empowered and authorized in the name, place and stead of Borrower to demand, sue for, attach, levy, recover and receive the Rents, or any premium or penalty payable upon the exercise by any lessee under any Lease of a privilege of cancellation originally provided in any such lease, and to give proper receipts, releases, and acquittances therefore and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion of the Indebtedness or the Obligations selected by Bank, notwithstanding the fact that such portion of the Indebtedness or the Obligations may not then be due and payable or that such portion of the Indebtedness or the Obligations is otherwise adequately secured; and Borrower does hereby authorize and direct any such lessee to deliver such payment to Bank, in accordance with this assignment and Borrower hereby ratifies and confirms all that its said attorney shall do or cause to be done by virtue of the powers granted hereby. The foregoing appointment is irrevocable and continuing and such rights, powers and privileges shall be exclusive in Bank, its successors and assigns, so long as any part of the Indebtedness or the Obligations secured hereby remain unpaid and undischarged. A lessee need not inquire into the authority of Bank to collect any Rents, and its obligations to Borrower shall be absolutely discharged to the extent of any payment to Bank. Subject to the License, Borrower hereby constitutes and appoints Bank the true and lawful attorney-in-fact, coupled with an interest, of Borrower, empowered and authorized in the name and stead of Borrower to subject and subordinate at any time any Lease or any part thereof to the lien and security interest of this Mortgage and the Security Documents, or to request or require such subordination, where such reservation, option or authority was reserved to the Borrower under any such Lease or in any case where the Borrower otherwise would have the right, power or privilege so to do. The foregoing appointment is irrevocable and continuing and such rights, powers and privileges shall be exclusive in Bank, its successors and assigns, so long as any part of the Indebtedness or the Obligations secured hereby remain unpaid and discharged, and Borrower hereby warrants that Borrower has not at any time prior to the date hereof exercised any such right, and Borrower hereby covenants not to exercise any such right to subordinate any such lease to the lien of this Mortgage or the Security Documents, or to any other mortgage, deed of trust or security agreement or to any ground lease, without the prior written consent of Bank.

(e) No Obligation of Bank. Bank shall not be liable for any loss sustained by Borrower resulting from Bank's failure to let the Mortgaged Property after default or from any other act or omission of Bank in dealing with the Mortgaged Property after default, unless such loss is caused by Bank's gross negligence.

Bank shall not be obligated to perform or discharge, nor does Bank hereby undertake to perform or discharge, any obligation, duty or liability under any of the Leases or under or by reason of this assignment and Borrower shall, and does hereby agree, to indemnify Bank for, and to hold Bank harmless from, any and all liability, loss or damage which may or might be incurred under said Leases or under or by reason of this assignment and from any and all claims and demands whatsoever which may be asserted against Bank by reason of any alleged obligations or undertaking

on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Bank incur any such liability under the Leases or under or by reason of this assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and Borrower shall reimburse Bank therefor immediately upon demand and upon the failure of Borrower so to do, Bank may, at its option, upon the continuation of such condition for five (5) days after written notice to Borrower declare all sums evidenced by the Note and secured hereby and by the Security Documents immediately due and payable. It is further understood that this assignment shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Property upon Bank, nor for the carrying out of any of the terms and conditions of said Leases; nor shall it operate to make Bank responsible or liable for any waste committed on the Mortgaged Property by the tenants or any other parties, or for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

(f) No Waiver of Bank's Rights. Nothing contained in this assignment and no act done or omitted by Bank pursuant to the powers and rights granted to it hereunder shall be deemed to be a waiver by Bank of its rights and remedies under the Note, the other provisions of this Mortgage, or the other Security Documents, and this assignment is made and accepted without prejudice to any of the rights and remedies possessed by Bank under the terms of the Note, the other provisions of this Mortgage, or the other Security Documents. The right of Bank to collect the principal sum, interest and indebtedness under the Note or other Indebtedness and to enforce any security therefor held by it may be exercised by Bank either prior to, simultaneously with, or subsequent to any action taken by it under this assignment.

9.2. Financing Statements. Borrower hereby authorizes Bank, now and from time to time in the future, as Bank may determine, in Bank's sole discretion, to file any and all financing statements as necessary to perfect the security interests and mortgage granted by Borrower to Bank herein and any modifications, renewals, extensions, releases, or terminations thereof, in any public office Bank, in Bank's sole discretion, deems necessary. This authorization is in addition to and not in limitation of Bank's rights relating to filing of financing statements under other documents executed by Borrower in favor of Bank and under Article 9 of the Uniform Commercial Code of the State of Alabama (the "Uniform Commercial Code"). Borrower shall not file any amendments, correction statements or termination statements concerning the Mortgaged Property without the prior written consent of Bank.

9.3. Uniform Commercial Code Remedies. Bank shall have all the rights, remedies and recourses with respect to the Personality, Fixtures, Leases and Rents afforded to it by the Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies and recourse afforded by the Security Documents.

9.4. No Obligation of Bank. The assignment and security interest herein granted shall not be deemed or construed to constitute Bank as a trustee in possession of the Mortgaged Property, to obligate Bank to lease the Mortgaged Property or attempt to do same, or to take any action, incur any

expenses or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

9.5. Fixture Filing. This Mortgage is also filed and shall constitute a "fixture filing" as defined in the Alabama Uniform Commercial Code Section 9-102(a)(40); it covers good that are or are to become fixtures. All or part of the Mortgaged Property is, or is to become, fixtures; information concerning the security interests herein granted may be obtained at the addresses set forth on the first page hereof.

9.6. Foreclosure of Security Interest: If an Event of Default shall occur and is continuing, Bank may elect, in addition to exercising any and all other rights, remedies and recourses set forth in ARTICLE 7 hereof or referred to in Paragraph 9.3 hereinabove, to proceed in the manner set forth in the Uniform Commercial Code relating to the procedure to be followed when a Security Agreement covers both real and personal property. Except as otherwise set forth in this Paragraph 9.6, at any foreclosure and sale, as described in Paragraph 7.1(d) hereinabove, it shall be deemed that the Bank proceeded under the Uniform Commercial Code as to types of property covered thereby and that such sale passed title to all of the Mortgaged Property and other property described herein to the purchaser thereat, including, without limitation, the Personalty, Leases and Rents. Bank may elect, either prior to or at such sale, not to proceed under the Uniform Commercial Code by notifying Borrower of the manner in which Bank intends to proceed with regard to the Personalty, Leases and Rents.

ARTICLE 10.

MISCELLANEOUS

10.1. Performance at Borrower's Expense. The cost and expense of performing or complying with any and all of the Obligations shall be borne solely by Borrower, and no portion of such cost and expense shall be, in any way and to any extent, credited against any installment on or portion of the Indebtedness.

10.2. Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Security Documents, and the consummation of the Loan called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

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

10.4. Recording and Filing. Borrower will cause the Security Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and refiled, in such manner and in such places as Bank shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

10.5. Notices. All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the intended addressee or by prepaid telegram. Notice so mailed shall be effective upon its deposit. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Borrower: Big 10 Tire Stores, Inc.
 3938 Government Boulevard
 Mobile, Alabama 36693
 Attention: J. Michael Burgess

If to Bank: REGIONS BANK
 Post Office Box 2527
 Mobile, Alabama 36622
 Attention: Douglas E. Rehm
 Vice President - Corporate Banking

provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

10.6. No Waiver. Any failure by Bank to insist, or any election by Bank not to insist, upon strict performance by Borrower of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and Bank shall have the right at any time or times thereafter to insist upon strict performance by Borrower of any and all such terms, provisions and conditions.

10.7. Bank's Right to Perform the Obligations. If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Security Documents, then at any time thereafter and without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Bank may have because of same, Bank may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower and shall have the right to enter upon the Land and into the Buildings for such purpose and to take all such action thereon and with respect to the Mortgaged Property as it may deem necessary or appropriate. If Bank shall elect to pay any Imposition or other sums due with reference to the Mortgaged Property, Bank may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Security Documents, Bank shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Borrower shall indemnify Bank for all losses, expenses, damages, claims and causes of action, including reasonable attorney's fees, incurred or accruing by reason of any acts performed by Bank pursuant to the provisions of this Paragraph 10.7 or by reason of any other provision in the Security Documents. All sums paid by Bank pursuant to

this Paragraph 10.7, and all other sums expended by Bank to which it shall be entitled to be indemnified, together with interest thereon at the maximum rate allowed by law from the date of such payment or expenditure, shall constitute additions to the Indebtedness, shall be secured by the liens, security interests and rights created by the Security Documents and shall be paid by Borrower to Bank upon demand.

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

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

10.10. Severability. The Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but rather, shall be enforced to the greatest extent permitted by law. Reference is hereby made to the provisions of the Note concerning compliance with usury laws, for the purpose of incorporating herein such terms and provisions of the Note.

10.11. Entire Agreement and Modification. The Security Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof, and all prior agreements relative thereto which are not contained herein or therein are terminated. The Security Documents may not be amended, revised, waived, discharged, released or terminated orally, but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

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

10.13. Applicable Law. This Mortgage shall be governed by and construed according to the laws of the State of Alabama from time to time in effect except to the extent United States federal law permits the Bank to contract for, charge or receive a greater amount of interest. It is expressly stipulated and agreed to be the intent of Borrower, Bank and their respective affiliates, to at all times comply strictly with applicable usury law now or hereafter governing the consideration payable under the Note, the loan evidenced thereby, and any other agreements between the parties or their affiliates with respect to the Mortgaged Property. If the applicable law is ever revised, repealed or judicially interpreted so as to render usurious any consideration called for, contracted for, charged, taken, reserved or received with respect to the Note, the Security Documents, the loan evidenced by the Note, or any other agreement between the parties or their affiliates, or if Bank's exercise of the

option to accelerate the maturity of the Note or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by law, then notwithstanding anything to the contrary in this or any other agreement, it is Borrower's and Bank's express intent and agreement that all excess amounts theretofore collected by Bank be credited on the principal balance of the Note (or, if the Note and all other Indebtedness have been paid in full, refunded to Borrower), and the provisions of the Note and the Security Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the then applicable law, but so as to permit the recovery of the greatest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid by Borrower to Bank for the use, forbearance or detention of the indebtedness evidenced by the Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to the loan for so long as debt is outstanding under the Loan.

10.14. Loan Agreement. Reference is hereby made for all purposes to that certain Loan Agreement of even date herewith between Bank and Borrower pertaining to the development and construction of the Improvements on the Land and the funding of the principal amount of the Note. In the event of a conflict between the terms and provisions hereof and the Loan Agreement, the Loan Agreement shall govern.

10.15. Headings and Construction. The Article, Paragraph and Subparagraph entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define or be used in construing the text of such Articles, Paragraph or Subparagraphs. Words of any gender used in this Mortgage shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa unless the context requires otherwise. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Mortgage shall refer to the entire Mortgage and not to any particular provision or section.

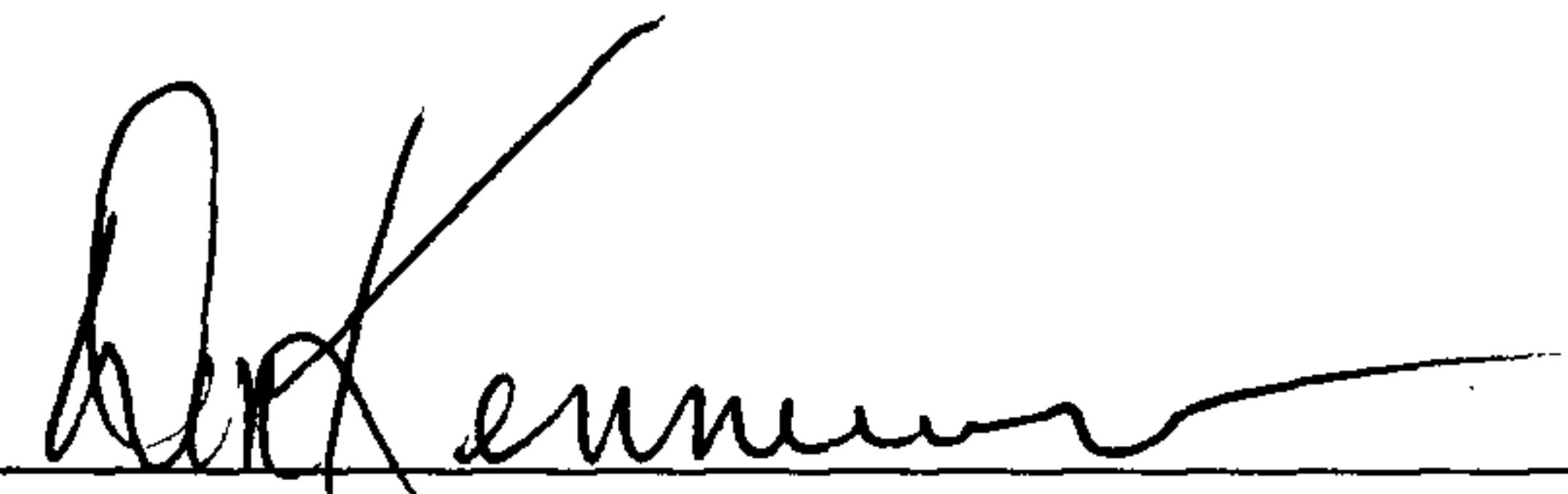
10.16. Disposition of Mortgaged Property, Leases, or Beneficial Interest in Borrower. Upon the sale, lease, exchange, assignment, conveyance, transfer or other disposition (herein collectively called "Disposition") of all or any portion of the Mortgaged Property or the Leases (or any interest therein) or all or any part of the beneficial ownership interest in Borrower, then Bank may, at Bank's option, enforce any and all of Bank's rights, remedies and recourses set forth in Paragraph 7.1 of this Mortgage as if an Event of Default had occurred; provided, however, Bank shall not enforce such rights, remedies and recourses if Bank consents in writing to the Disposition in question. It is expressly agreed that in connection with determining whether to grant or withhold such consent, Bank may, inter alia, (i) consider the creditworthiness of the party to whom such Disposition will be made and its management ability with respect to the Mortgaged Property, (ii) consider whether or not the security for repayment of the Indebtedness and the performance of the Obligations, or Bank's ability to enforce its rights, remedies and recourses with respect to such security, will be impaired in any way by the proposed Disposition, (iii) require as a condition to granting such consent, an increase in the rate of interest payable under the Note, (iv) require that Bank be reimbursed for all costs and expenses incurred by Bank in investigating the creditworthiness and management ability of

the party to whom such Disposition will be made and in determining whether Bank's security will be impaired by the proposed Disposition, (v) require the payment to Bank of a transfer fee to cover the cost of documenting the Disposition in its records, (vi) require the payment of its reasonable attorney's fees in connection with such Disposition, (vii) require the express assumption of payment of the Indebtedness and performance of the Obligations by the party to whom such Disposition will be made (with or without the release of Borrower from liability for such Indebtedness and Obligations), (viii) require the execution of Assumption Agreements, Modification Agreements, Supplemental Security Documents and Financing Statements satisfactory in form and substance to Bank, (ix) require endorsements (to the extent available under applicable law) to any existing mortgage title insurance policies insuring Bank's liens and security interests covering the Mortgaged Property, and (x) require additional security for the payment of the Indebtedness and performance of the Obligations.

EXECUTED AND DELIVERED, as of the day and year first above written.

BORROWER:

BIG 10 TIRE STORES, INC., an Alabama
corporation

By: 
DON KENNEMER
Its President

STATE OF ALABAMA
COUNTY OF MOBILE

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that DON KENNEMER whose name as President of **Big 10 Tire Stores, Inc.**, an Alabama corporation, is signed to the foregoing Mortgage and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal this the 29th day of November, 2004.



NOTARY PUBLIC

My Commission Expires: 01-02-08

ADDRESS OF MORTGAGEE:

Post Office 2527
Mobile, Alabama 36622

THIS INSTRUMENT WAS PREPARED BY:

Charles R. Mixon, Jr., Esq.
Jackson Myrick, LLP
Post Office Drawer 1287
Mobile, Alabama 36633
(251) 432-1811

Attachments:

Exhibit A - Real Property Description(s)
Exhibit B - Permitted Encumbrances

EXHIBIT A
Legal Description

That real property situated in the County of Shelby, State of Alabama, described as follows, to-wit:

PARCEL 1: 3318 Pelham Parkway, Pelham, Alabama 35124

LOT 3, ACCORDING TO THE SURVEY OF LOTS 3 & 4, PELHAM PARKWAY COMMERCIAL SUBDIVISION, AS RECORDED IN MAP BOOK 27, PAGE 86, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

TOGETHER WITH: A NON-EXCLUSIVE, PERPETUAL EASEMENT, RUNNING WITH THE LAND, FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS THE 24 FOOT INGRESS/EGRESS EASEMENT AS SHOWN ON THE MAP AND SURVEY OF LOT 2, PELHAM PARKWAY COMMERCIAL SUBDIVISION, AS RECORDED IN MAP BOOK 27, PAGE 44, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

PARCEL 2: 5489 Highway 280, Hoover, Alabama 35242

LOT 1, ACCORDING TO THE MAP OF REGIONS BANK AT 280 SURVEY, AS RECORDED IN MAP BOOK 23, PAGE 40, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA. SITUATED IN SHELBY COUNTY, ALABAMA.

EXHIBIT B
Permitted Encumbrances

PARCEL 1: 3318 Pelham Parkway, Pelham, Alabama 35124

1. Thirty foot (30') Sanitary Sewer Easement(s) along the rear and distribution to Alabama Power Company recorded in Volume 2001-42166.
2. Rights of others for 24' ingress and egress along U.S. Highway 31, located on said property.
3. Subject to matters shown on recorded Map Book 27 at Page 86 and Map Book 27 at Page 44.

PARCEL 2: 5489 Highway 280, Hoover, Alabama 35242

1. Subject to matters shown on recorded Map Book 23 at Page 40 including a 50 foot setback line on the South and West; a 15 foot utility easement and a 10 foot signage easement along Bowling Drive located on said property.
2. Easement(s) to Alabama Power Co. recorded in Volume 20040629000357730.
3. Easement(s) and Right of Way to Shelby County recorded in Volume 20040716000396200.