

# The Goodyear Tire & Rubber Company

Akron, Ohio 44316-0001

LAW DEPARTMENT

November 18, 1994

Scott O. Seery, CHMM  
Senior Hazardous Materials Specialist  
Alameda County Department of Environmental Health  
Division of Environmental Protection  
1131 Harbor Bay Parkway, #250  
Alameda, CA 94502-6577

Re: **(Former) Merritt Tire Sales**  
**3430 Castro Valley Boulevard**  
**Castro Valley, Alameda County, California**  
**(hereinafter called the "Site" or "Leased Premises")**

Dear Mr. Seery:

This is in response to your October 25, 1994 letter regarding the Reset Pre-Enforcement Review Panel ("PERP") meeting that was held on October 25, 1994 concerning the above-referenced Site. In your October 25, 1994 letter, you stated that the PERP had agreed to allow the record to remain open until November 28, 1994 to allow the parties the opportunity to supplement the record.

In the October 25, 1994 PERP meeting, Mr. Jim O'Neil from Goodyear, requested that your agency add Merritt Tire & Brake Service, Inc. ("Merritt") to the list of potentially responsible parties ("PRP") at this Site because Merritt was the independent Goodyear franchisee/sublessee who operated this store location at the time it is alleged that the UST was removed. Your agency requested that Goodyear furnish documentation that Merritt was the sublessee/operator of the store at this Site location.

Attached hereto as Enclosure 1 is a copy of the Sublease, dated July 28, 1977, between Goodyear and Merritt for the store located at 3430 Castro Valley Boulevard, Castro Valley, California (the "Sublease"). Included in Enclosure 1 are the March 10, 1989 and June 29, 1984 amendments to said Sublease which extended its term until July 15, 1994. As your agency is aware, Merritt filed for bankruptcy in 1992.

ALSO  
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Scott O. Seery, CHMN  
November 18, 1994  
Page 2

Attached hereto as Enclosure 2 is a copy of an April 24, 1992 Declaration of Richard Gorkosky, President of Merritt, filed in the bankruptcy case in support of the Debtor's (Merritt) Motion to Assume the Sublease. In this Declaration, Mr. Gorkosky admits that Merritt was, at that time, operating the store at 3430 Castro Valley Boulevard, in Castro Valley, California pursuant to the Sublease. On or about July 16, 1992, the Bankruptcy Court approved the Debtor's (Merritt) Motion to Assume the Sublease. On October 1, 1992, the Bankruptcy Court issued a subsequent Order terminating the assumption of the Sublease by the Debtor (Merritt) and returning the leased premises to Goodyear on October 2, 1992 (See Enclosure 3).

Attached hereto as Enclosure 4 is a copy of the Franchise Agreement, dated August 18, 1977, and the superseding Franchise Agreement, dated July 24, 1989, between Goodyear and Merritt for the tire center located at 3430 Castro Valley Boulevard, Castro Valley, California. Under this Franchise Agreement, Merritt, as an independent company, was granted a non-exclusive license by Goodyear to use the service marks and trade names, GOODYEAR, GOODYEAR (with winged foot design), and GOODYEAR (with winged foot design) TIRE CENTER in connection with wholesale and retail merchandising services and automobile maintenance and repair services at the 3430 Castro Valley Boulevard, Castro Valley, California location. This Franchise Agreement also appointed Merritt a non-exclusive dealer in Goodyear products and merchandise as described in said Agreement. Under Paragraph 7 of Enclosure 2, Richard Gorkosky admits that Merritt had this Franchise Agreement with Goodyear. The Franchise Agreement and the Sublease have been terminated as a result of the applicable bankruptcy court orders.

The above discussion clearly establishes that: (1) Merritt, as an independent company, was the franchisee/sublessee of the store located at 3430 Castro Valley Boulevard, Castro Valley, California from July 28, 1977 until October 1, 1992, and on October 2, 1992, pursuant to the bankruptcy's court order, these leased premises were returned to Goodyear; and (2) as the sublessee/operator of these leased premises, Merritt should be included as a PRP at this Site by your agency.

In the October 25, 1994 PERP meeting, your agency informed Mr. O'Neil that you considered the January 18, 1990 letter written by Howard Balsat of Goodyear to the Lessor (Aimee L. West Trust et al) of these Leased Premises, as evidence that Goodyear is a PRP at this Site. Attached hereto as Enclosure 5 is a copy of Mr. Balsat's January 18, 1990 letter.

This letter in relevant sections states the following:

"A review of our records concerning the location referenced above shows that you (Aimee L. West, Robin C. West, Keith L. West, Melissa West Phillips and Scott L. West) are the owner of the underground waste oil storage tank(s) at the site. Business

Scott O. Seery, CHMN  
November 18, 1994  
Page 3

considerations may lead Goodyear to consider removing the tank at some time in the future.

We hereby request your permission to remove and dispose of said tank(s) at any time during the current or extended term of our lease. Should we elect to proceed with such removal, it would be conducted through competent contractors and done at Goodyear's expense, and in a good workmanlike manner in compliance with all applicable laws and ordinances."

Goodyear sent this letter to numerous lessors of its store facilities because Goodyear was having difficulty getting the lessors to own up to their responsibility as owners of the UST's to comply with applicable UST regulations. This letter does not state that Goodyear will remove the UST, but was merely a precautionary step taken by Goodyear to get prior permission from the UST owner to allow Goodyear to remove the UST in the event that it had to be done and the owner or applicable store operator refused to perform the removal task. This letter, by itself, does not constitute evidence that Goodyear owns the applicable UST at the lessor's facility or that Goodyear would be a PRP in regards to the UST. This precautionary step should not be utilized by your agency to penalize Goodyear for acting in an environmentally responsible manner.

For the reasons set forth herein, Goodyear hereby respectfully requests that your agency add this letter and the attached documentation to the record in this matter and that you add Merritt as a PRP for this Site. As it has stated in previous correspondence regarding this issue, Goodyear did not remove or arrange for the removal of the UST at this Site, and, therefore, Goodyear believes that the record in this case should contain the relevant facts concerning Merritt's sublease of these leased premises. If you have any questions regarding this matter, please feel free to contact me at (216) 796-1818.

Thank you for your consideration of this matter.

Very truly yours,



Bertram Bell  
Attorney

BB:mhf  
Enclosures

cc: S C Makara, Jr  
J P O'Neil  
W J Inghofer

# The Goodyear Tire & Rubber Company

Akron, Ohio 44316-0001

January 18, 1990

Aimee L. West, Robin C. West, Keith  
L. West, Melissa West Phillips and  
Scott L. West,  
c/o Aimee L. West  
935 "A" Street  
Hayward, CA 94541

Re: Underground Storage Tank(s)  
Goodyear Leased Facility  
3430 Castro Valley Boulevard  
Castro Valley, CA

Dear Madam:

A review of our records concerning the location referenced above shows that you are the owner of the underground waste oil storage tank(s) at the site. Business considerations may lead Goodyear to consider removing the tank at some time in the future.

We hereby request your permission to remove and dispose of said tank(s) at any time during the current or extended term of our lease. Should we elect to proceed with such removal, it would be conducted through competent contractors and done at Goodyear's expense, and in a good workmanlike manner in compliance with all applicable laws and ordinances.

Will you please acknowledge your granting of permission therefor by signing and dating in the space provided, and returning to the undersigned, one of the enclosed copies of this letter.

Thank you for your cooperation.

Very truly yours,

THE GOODYEAR TIRE & RUBBER COMPANY

PERMISSION GRANTED:

By Aimee L. West  
Title Owner  
Date Jan. 28, 1990

By H W Balsat  
H W Balsat

# Goodyear Tire Centers

A DIVISION OF THE GOODYEAR TIRE & RUBBER COMPANY

Akron, Ohio 44316-0001

August 10, 1989

Mr R Gorkosky  
Merritt Tire & Brake, Inc.  
3530 Castro Valley Blvd  
Castro Valley, Calif 94546

Dear Mr Gorkosky:

Attached for your file is a fully executed copy of our Goodyear Tire Center Service Mark License and Franchise Agreement.

Very truly yours,



Section Manager  
Franchise Tire Centers

R O Spencer  
ca

Att.

4/88

G O O D Y E A R  
GOODYEAR TIRE CENTER SERVICE MARK LICENSE  
AND FRANCHISE AGREEMENT

Between THE GOODYEAR TIRE & RUBBER COMPANY, an Ohio corporation with its principal place of business at 1144 East Market Street, Akron, Ohio 44316-0001, hereinafter called "GOODYEAR" and MERRITT TIRE & BRAKE SERVICE, INC. a corporation organized and existing under the laws of the State of CALIFORNIA, with its principal place of business at 3430 Castro Valley Blvd - Castro Valley, Calif hereinafter called "DEALER."

W I T N E S S E T H :

WHEREAS, GOODYEAR is engaged in manufacture and distribution of various automotive products including but not limited to tires, tubes, batteries and automotive accessories for sale to its independent tire dealers; and

WHEREAS, DEALER is desirous of establishing itself as an independent tire dealer authorized to offer GOODYEAR products for sale at retail and wholesale; and

WHEREAS, GOODYEAR has adopted and used the trademarks GOODYEAR and GOODYEAR (with winged foot design) on a variety of products closely associated with the automotive industry, including automotive accessories, and has become well known to the general public through its many diversified products and as a result of extensive local, national and international advertising; and

WHEREAS, GOODYEAR has adopted and used the service marks GOODYEAR, GOODYEAR (with winged foot design), and GOODYEAR (with winged foot design) TIRE CENTER in connection with wholesale and retail merchandising of its products as well as the products of others, and in connection with automotive maintenance and repair services; and

WHEREAS, GOODYEAR has obtained a number of registrations of its above identified marks in the United States Patent Office, and has established for its above identified trademarks and service marks a recognition with the general public and a reputation of offering for sale only products and services of the highest quality through distribution outlets observing a high standard of cleanliness, neatness, and customer convenience, thereby building and maintaining valuable good will for its trademarks and service marks; and

WHEREAS, DEALER, realizing the unique commercial value of GOODYEAR's above identified marks is desirous of acquiring the right to use said marks.

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings hereinafter set forth, the parties mutually agree as follows;

1. GOODYEAR hereby grants to DEALER in accordance with the terms and conditions hereinafter set forth, a nontransferable, nonexclusive license to use the service marks and trade names GOODYEAR, GOODYEAR (with winged foot design), and GOODYEAR (with winged foot design) TIRE CENTER at 3430 Castro Valley Blvd - Castro Valley, Calif 94546

in connection with wholesale and retail merchandising services and automotive maintenance and repair services. GOODYEAR also hereby appoints DEALER a nonexclusive dealer in such GOODYEAR products and merchandise, hereinafter collectively referred to as "Products," as shall be made available by GOODYEAR from time to time to its authorized tire dealer and tire franchisees generally. GOODYEAR agrees to sell Products to DEALER for resale except that GOODYEAR shall not be required to sell to DEALER a Product or Products, the sale of which to authorized dealer and franchisees generally has been discontinued by GOODYEAR. GOODYEAR retains the right to sell to other customers in DEALER's trade area and elsewhere.

2. DEALER acknowledges GOODYEAR's exclusive ownership of the marks GOODYEAR, GOODYEAR (with winged foot design) and GOODYEAR (with winged foot design) TIRE CENTER and admits the property rights of GOODYEAR to such marks by reason of common law and any and all registrations in the United States and countries foreign thereto now or hereafter issued with respect to said trademarks and service marks owned by GOODYEAR. DEALER further agrees that it will not during the term of this Agreement or thereafter, perform or knowingly assist in the performance of any acts which are in any way detrimental to GOODYEAR's ownership rights and interests in the marks GOODYEAR, GOODYEAR (with winged foot design) and GOODYEAR (with winged foot design) TIRE CENTER.

DEALER agrees that it will not use said trademarks or service marks in any manner, or assist or acquiesce in such use by others except in conformity with the license granted herein and will not use, assist or acquiesce in the use of any trademarks or service marks which are confusingly similar to the licensed marks. It is specifically acknowledged that the DEALER does not, by reason of this Agreement, acquire any rights whatsoever in any trademarks or service marks now or hereafter owned by GOODYEAR or any related company of GOODYEAR's other than the right to use the licensed marks in accordance with the strict requirements of this instrument. DEALER further agrees that any possible trademark or service mark rights that DEALER might acquire in the licensed marks or any other marks of GOODYEAR's shall inure to the benefit of GOODYEAR and upon GOODYEAR's request shall be assigned to GOODYEAR.

3. DEALER agrees that it will use the service mark GOODYEAR (with winged foot design) TIRE CENTER on the outside of its place of business in the manner specified by GOODYEAR, and in no other manner. DEALER further agrees that it will not place its own name or any other name, service mark, trademark or identification on the outside of its place of business without the prior written consent of GOODYEAR, which consent shall not be unreasonably withheld. DEALER agrees to place and thereafter maintain a decal supplied by GOODYEAR on the front door through which its customers pass, in a conspicuous position no lower than five (5) feet nor higher than six (6) feet from the bottom of the door and horizontal to the bottom and top of the door, such decal reading as follows:

GOODYEAR (with winged foot design) TIRE CENTER

Licensed by

THE GOODYEAR TIRE & RUBBER COMPANY

In addition to the licensed marks, DEALER will be required to use its own corporate name on all letterheads and certain business documents to be used in the operation of the "GOODYEAR (with winged foot design) TIRE CENTER."

4. DEALER agrees to engage actively in the distribution and sale of such replacement line of GOODYEAR Products as the public would reasonably expect to be available at a GOODYEAR TIRE CENTER or a GOODYEAR SERVICE STORE. DEALER agrees to use its best efforts to promote and increase the sale of GOODYEAR Products in its trade area and to achieve a reasonable share of market for GOODYEAR Products in its trade area as may be determined from time to time by GOODYEAR sales management. DEALER agrees not to engage in the practice of baiting and switching whereby it substitutes or attempts to substitute products of another brand or make for



GOODYEAR Products whenever a purchaser requests GOODYEAR Products which are reasonably available to DEALER. DEALER agrees to offer for sale products and services that are comparable with those normally sold and offered in GOODYEAR (with winged foot design) TIRE CENTER locations and in GOODYEAR SERVICE STORES. DEALER will maintain hours of business at least comparable to those businesses in his trading area but in any event will be open for business a minimum of 60 hours per week. DEALER agrees to maintain in stock sufficient quantities of GOODYEAR Products to enable DEALER to render prompt and effective service to meet the reasonably anticipated needs of consumers for GOODYEAR Products. DEALER agrees to maintain a minimum 60 day supply in tire inventory.

5. DEALER assumes all responsibility for compliance with laws and regulations and payments of fees and taxes, applicable to conduct of the DEALER's business and for all applicable operation and maintenance costs and expenses.

6. GOODYEAR will provide DEALER such assistance in advertising and other promotional aids as GOODYEAR may from time to time provide its authorized dealers and franchisees generally in support of its distribution of GOODYEAR Products. DEALER shall be entitled to purchase GOODYEAR Products hereunder at prices specified in the applicable GOODYEAR price lists, less such discounts and allowances and subject to such terms and conditions as may be in effect from time to time. DEALER acknowledges and consents that such prices, discounts, allowances, terms and conditions will be subject to change by GOODYEAR from time to time without prior notice to DEALER. All shipments will be billed at prices (plus amount of any Federal Excise Tax) in effect on date of shipment.

7. DEALER will be afforded the same price protection as may be made available generally to other authorized dealers and franchisees by GOODYEAR from time to time.

8. Delivery of Products sold hereunder shall be FOB point of shipment. Other terms of shipment shall be in accordance with GOODYEAR's policy in effect at time of shipment. GOODYEAR shall not be liable for any delay in delivery or failures to deliver occasioned by act of God, fire, flood, riot, insurrection, war, strike, labor trouble, interruption of transportation facilities, inability to obtain or produce materials or products, restrictions by any governmental authority, or other cause, similar or otherwise beyond GOODYEAR's control. During any such contingency GOODYEAR shall in good faith, endeavor to allocate deliveries fairly among its customers, but the final determination of deliveries to be made is expressly reserved to GOODYEAR, to be exercised in its sole discretion and without liability to DEALER or anyone else.

9. Terms of settlement shall be as stated on GOODYEAR invoices.

10. Should DEALER fail to make any payment to GOODYEAR when due, or should there be reasonable cause to question DEALER's financial condition or responsibility, GOODYEAR may demand immediate payment or adequate assurance of financial ability, and pending satisfaction of demand, GOODYEAR may suspend further shipments of merchandise, or decline to delivery except for cash in advance of shipment, and doing so shall not constitute a waiver of any other right. Should DEALER recurringly fail to make payments when due, or for an unreasonable time, failure to pay a significant amount overdue, the parties hereto agree that shall constitute credit unworthiness and credit risk and GOODYEAR shall have the right to terminate this Agreement by serving written notice of its election to do so.

11. All GOODYEAR Product warranty claims and adjustments processed by DEALER in behalf of GOODYEAR shall be processed in accordance with GOODYEAR's applicable warranty and adjustment policy and procedure. Except as authorized in GOODYEAR's standard adjustment policy, DEALER is not, and shall in no way hold himself out to be, the legal representative, agent, or employee of GOODYEAR and is without authority to assume, create or incur any obligation or liability in behalf of GOODYEAR. DEALER shall make no guarantee, warranty, or representation in behalf of GOODYEAR to DEALER's customers or prospective customers with respect to Products purchased hereunder or in connection herewith or otherwise, but shall refer customers and prospective customers to GOODYEAR's printed literature for warranties, if any, provided by GOODYEAR.

12. DEALER agrees to maintain a clean and respectable place of business and to operate it in a business-like manner conducive to the furtherance of retail sales in accordance with the Standards Section of the GOODYEAR (with winged foot design) TIRE CENTER Management Manual, copy of which has been delivered herewith and which may be reasonably revised by GOODYEAR from time to time, and in accordance with such further reasonable standards as may from time to time be required by GOODYEAR's supervisory personnel. DEALER acknowledges that any deviation from the high quality service and maintenance standards set forth in the said Management Manual will result in substantial injury to the good will that has been established in the licensed marks and, therefore, fully appreciates the necessity for the

maintenance of high quality standards in connection with all phases of the GOODYEAR (with winged foot design) TIRE CENTER. DEALER also agrees that it will follow GOODYEAR's advertising procedures as set forth in the GOODYEAR (with winged foot design) TIRE CENTER Management Manual in connection with all advertisements pertinent to the dealer operation, and will not initiate any other advertising of GOODYEAR Products in any media without obtaining prior written approval from GOODYEAR, which approval shall not be unreasonably withheld. DEALER, therefore, agrees that any willful or negligent variance from the standards set forth in the said Management Manual will constitute justification for the immediate termination of this Agreement.

13. DEALER may terminate this Agreement effective as of the end of the first twelve (12) calendar months or any subsequent anniversary thereof, with or without cause, by sending GOODYEAR written notice of its intention to terminate at least ninety (90) days prior to said effective date. GOODYEAR reserves the right to terminate this Agreement upon thirty (30) days' notice in writing to the DEALER in the event: (a) of any breach of this Agreement; (b) of Dealer's failure to pay any amount when due; (c) DEALER does not, in GOODYEAR's sole judgment, maintain and operate his FRANCHISE in accordance with the standards set forth in the GOODYEAR (with winged foot design) TIRE CENTER Management Manual; (d) DEALER performs or permits any act that in any way constitutes disparagement or abuse of GOODYEAR's trademarks or service marks, unless such variances from the established standards or such acts of disparagement or abuse as may be brought to the DEALER's attention by GOODYEAR are corrected to GOODYEAR's complete satisfaction within said thirty (30) day period; or (e) should DEALER's unit sales of GOODYEAR brand tires fail to meet the minimum market share established for the DEALER's market within two (2) years from the date of this Agreement or to sustain such market share thereafter, such market share being subject to adjustment by GOODYEAR after the first two (2) years and annually thereafter, upon written notice to the DEALER.

14. The right of termination as provided herein is absolute and the parties have considered the possibility of expenditures necessary in preparing for performance of the terms of this Agreement and the possible losses and damages incident to them in the event of expiration or termination. It is definitely understood that neither shall be liable to the other for damages in any form, by reason of the expiration or termination of this Agreement at any time and for any reason.

15. This Agreement has been entered into in reliance upon and in consideration of the personal qualifications of and representations with respect thereto of the following named persons, who actively and substantially participate in the ownership, or in the operations, or both, of the GOODYEAR TIRE CENTER at the above named location:

<u>NAME</u>	<u>OWNERSHIP (Percentage)</u>	<u>ACTIVE (Percentage)</u>
<u>R Gorkoski</u>	<u>33.3%</u>	<u>100%</u>
<u>F Pyeatt</u>	<u>33.3%</u>	<u>-0-</u>
<u>B Tsurumoto</u>	<u>33.3%</u>	<u>-0-</u>

Neither DEALER nor the persons named above shall permit any change in ownership or active management of the GOODYEAR TIRE CENTER without the prior written approval of GOODYEAR. The active on-site Manager is required to fully own at least fifty percent (50%) of the capital stock of the DEALERSHIP, except as state law imposes community property rights.

16. Unless sooner terminated in accordance with the provisions of Paragraph 13 hereof, this Agreement shall continue in full force and effect for a period

commencing on the commencement date of the rental and least term of the Real Estate Sublease for the above-mentioned location and ending on July 15, 1994.

In the event that GOODYEAR exercises any option available to it to extend the Basic Lease, this Agreement will be extended for a term to coincide with said Basic Lease extension.

17. Upon termination of this Agreement for any reason whatsoever, all rights of the DEALER to use the licensed marks and trade names shall cease, and DEALER shall take immediate action to assure that all use of said licensed marks and trade names by or on behalf of DEALER shall be promptly terminated.

18. In consideration for the service mark license, DEALER agrees to pay to GOODYEAR, in monthly installments, an annual fee in accordance with the attached schedule.

19. This Agreement may not be assigned in whole or in part by DEALER, whether by force of law or otherwise, without first obtaining the prior written consent of GOODYEAR.

20. DEALER agrees, where permitted by State Law, that upon the termination of this Agreement for any cause whatsoever, DEALER will not enter the business of wholesaling and/or retailing tires and associated products and services without the written consent of GOODYEAR within a 10-mile radius of the location referred to in Paragraph One hereof for a period of two (2) years after the effective date of termination of the Agreement.

21. Failure of GOODYEAR to enforce or exercise any of its rights with respect to any provisions hereof shall in no way be or be construed to be a waiver thereof nor shall it in any way affect the validity of this Agreement or act as a bar to GOODYEAR's subsequent enforcement or exercise of any right created hereby. The exercise or enforcement by GOODYEAR of any of its rights hereunder shall not preclude or prejudice GOODYEAR from thereafter exercising the same or any other right which it may have under the Agreement.

22. The DEALER agrees to save and hold harmless GOODYEAR from and against any liability exposure resulting from DEALER's business operations. The DEALER will be obligated to obtain and continue in effect the following insurance and limits:

<u>COVERAGE</u>	<u>MINIMUM LIMITS</u>
1. Workers Compensation & Employers Liability	Statutory
2. Comprehensive General Liability (including Products, Completed operations, contractual liability and garage liability).	\$2,000,000 Combined Single Limit
3. Automotible Liability (including coverage for all owned or non-owned vehicles).	\$2,000,000 Combined Single Limit
4. All Risk Property Insurance (covering inventory and equipment)	Replacement Value

Insurance coverage shall be with insurers approved by GOODYEAR. The policies shall provide for GOODYEAR as an additional insured. The policy shall be maintained for one (1) additional year after termination of this agreement.

23. In the event of termination of this Agreement for any reason whatsoever, DEALER will grant to GOODYEAR the right of first refusal to purchase DEALER's then existing, unencumbered inventory and accounts receivable.

24. This Agreement shall become effective when signed by DEALER and by an officer of GOODYEAR. This Agreement expresses the complete and final understanding of the parties with respect thereto, and may not be changed in any way except by an instrument in writing signed by both parties. DEALER acknowledges that GOODYEAR has made no representation concerning anticipated profits from the DEALER's business operations. DEALER, likewise, recognizes that the success of its business operations is primarily dependent upon DEALER's conduct of the business and any profits or losses therefrom are for DEALER's own account.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate this 24<sup>th</sup> day of July, 19 89.

MERRITT TIRE & BRAKE  
SERVICE, INC.  
DEALER

THE GOODYEAR TIRE & RUBBER COMPANY

By: [Signature] By: [Signature]  
Exec Vice President

Title Pres Attest: [Signature]  
Assistant Secretary

GOODYEAR TIRE CENTER SERVICE MARK  
AND TRADE NAME LICENSE

FEE SCHEDULE

<u># Locations</u>	<u>Monthly</u>	<u>Annually</u>
1	\$100.00	\$1,200
2	150.00	1,800
3	175.00	2,100
4	187.50	2,250
5	192.50	2,310
6	197.50	2,370
7	202.50	2,430
8	207.50	2,490
9	212.50	2,550
10	217.50	2,610

Add \$5.00 per month per additional locations.

Payable in advance by the fifteenth of each month.

June 6, 1989

Mr R Gorkosky  
Merritt Tire & Brake, Inc.  
3530 Castro Valley Blvd  
Castro Valley, California 94546

Subject: Auto Tire Unit Potential  
Minimum Market Share  
Goodyear Tire Center #1748  
Castro Valley, California

The investment Goodyear has made in this facility is predicated on attaining potential sales of 3,600 Goodyear-brand auto tire units per year.

Although the potential auto units sales may not be obtained at the inception of this business, it will remain the primary objective for Goodyear's measurement of this facility's return on their investment.

As specified within Paragraph 13 of the Goodyear Tire Center Service Mark License and Franchise Agreement, the minimum market share at the above location for unit sales rate of Goodyear-brand tires is 1,483 units per year.



Manager  
Franchise Tire Centers

H M Harding  
ma

cc: P R Grimm - Region Manager - Los Angeles #1900  
P D Peterson - Reg Mgr/Cons Out - Los Angeles #1900  
L J Lagrave - Reg Dlr Dev Mgr - Los Angeles #1900  
R A Nelson - District Manager - San Francisco #8700

ACKNOWLEDGEMENT

DEALER - MERRITT TIRE & BRAKE SERVICE, INC. DISTRICT MANAGER \_\_\_\_\_

SIGNATURE  DATE \_\_\_\_\_

TITLE Pres



1 GRAHAM & JAMES  
2 ROBERT F. KIDD (77000)  
3 DOUGLAS D. MANCILL (115065)  
4 GRECC S. KLEINER (141311)  
5 One Maritime Plaza, Suite 300  
6 San Francisco, California 94111  
7 Telephone: (415) 954-0200

ORIGINAL FILED

OCT 1- 1992

8 Attorneys for Creditor  
9 The Goodyear Tire & Rubber Company

BANKRUPTCY COURT  
OAKLAND, CALIFORNIA

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 In Re	)	Bankruptcy Case No.
13 MERRITT TIRE & BRAKE, INC.,	)	92-41313 J
14 Debtor.	)	Chapter 11
	)	
	)	

16 ORDER FOR RELIEF FROM STAY

17 On October 1, 1992, this Court heard The Goodyear Tire &  
18 Rubber Company's ("Goodyear") motion seeking an order from this  
19 Court modifying the automatic stay, terminating the Debtor's Real  
20 Property Sublease and providing Goodyear with a writ of possession  
21 for the Real Property. Gregg S. Kleiner of Graham & James  
22 appeared on behalf of Goodyear. All other appearances were noted  
23 in the record. Based on Goodyear's motion, points and authorities  
24 in support thereof, declaration of Gregg S. Kleiner, arguments of  
25 counsel, notice being adequate and proper and other good cause  
26 appearing,  
27  
28

ORDER FOR  
RELIEF FROM STAY

GSKOTC.P50

Graham & James  
One Maritime Plaza  
Third Floor  
San Francisco  
954-0200

1 IT IS HEREBY ORDERED that the stay is immediately  
2 terminated with regard to the Real Property located at 3440 Castro  
3 Boulevard, Castro Valley, California;

4 IT IS FURTHER ORDERED that the Real Property Sublease,  
5 assumed by the Debtor on July 16, 1992, is immediately terminated;

6 IT IS FURTHER ORDERED that the Debtor shall surrender  
7 the Real Property to a representative of Goodyear no later than  
8 12:00 p.m. on October 2, 1992;

9 ~~IT IS FURTHER ORDERED that the Clerk of the Court shall~~  
10 ~~execute a writ of possession for the Real Property, a copy of~~  
11 ~~which is attached hereto as Exhibit "A" and incorporated by~~  
12 ~~reference herein.~~ *EL*

13 Dated: October L, 1992

14  
15 EDWARD D. JELLEN  
16 THE HONORABLE EDWARD D. JELLEN  
17 UNITED STATES BANKRUPTCY JUDGE  
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ORDER FOR  
RELIEF FROM STAY

GSKOTC.P50

Graham & James  
One Maritime Plaza  
Third Floor  
San Francisco  
854-0200

COPY

COPY  
OF ORIGINAL FILED

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CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CA  
OAKLAND DIVISION

1 lexclart-cdc  
2 Srinoi G. Rousseau Bar No. 112017  
3 LAW OFFICES OF KING & ROUSSEAU  
4 6665 Amador Plaza Rd., Suite 202  
5 Dublin, CA 94568  
6 (510) 829-6363

7 Attorneys for Debtor in Possession

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 In Re: )  
11 MERRITT TIRE & BRAKE, INC. ) Case No. 92-41313 J  
12 ) Chapter 11  
13 Debtor. ) Date: May 28, 1992  
Time: 9:30 a.m.  
Place: Room 215

14 DECLARATION OF RICHARD A. GORKOSKY IN SUPPORT OF  
15 MOTION FOR ORDER APPROVING ASSUMPTION OF LEASE, OR IN THE  
16 ALTERNATIVE, EXTENDING TIME FOR DEBTOR TO ASSUME LEASE

17 I, Richard A. Gorkosky, declare:

18 1. I am the President of Merritt Tire & Brake, Inc, a  
19 California corporation, the debtor and debtor in possession  
20 (hereinafter "Debtor") in the above titled Chapter 11 bankruptcy.

21 2. The matters stated herein are within my personal knowl-  
22 edge, and I am competent to testify to such matters if called  
upon to do so.

23 3. Debtor operates an automotive repair business and retail  
24 automotive tire business. Debtor is currently operating from one  
25 location, commercial space at 3430 Castro Valley Blvd., in Castro  
26 Valley, California. Since 1976 Debtor had operated in eight  
27 different location. Debtor is currently only operating from

1 Castro Valley.

2 4. The Castro Valley premises is sub-leased from The Good-  
3 Year Tire & Rubber Company. Attached hereto as Exhibit "A" and  
4 "B" is a true and correct copy of the original sublease and  
5 extension, respectively. There is an additional extension of the  
6 lease which extended the time to July, 1994. However, I have not  
7 been able to locate a copy of this most recent extension at this  
8 time. The lease and subsequent extensions shall be referred to  
9 collectively hereinafter as the "Lease".

10 5. In brief: the Lease was originally entered into July 28,  
11 1977; the commercial space is approximately 6,000 square feet;  
12 the term of the lease expires in July, 1994, monthly rent is  
13 approximately \$3,015.89; the Lease is triple net, meaning that  
14 Debtor pays for all maintenance except for the roof; and, there  
15 is no option.

16 6. I do not believe that Debtor owes GoodYear any arrears  
17 on the Lease. It is not clear, however, what is owed to GoodYear  
18 because of the following factors:

19 a. Since June of 1991, GoodYear has stopped providing  
20 statements to Debtor.

21 b. Debtor has been on a cash basis with GoodYear since  
22 June, 1991, but GoodYear has not given Debtor any cash discounts  
23 for Debtor's purchases of tires. GoodYear apparently is provid-  
24 ing such discounts for other stores. Such treatment is discrimi-  
25 natory toward Debtor and Debtor should be entitled to a credit  
26 equal to the discounts which Debtor should have obtained on all  
27 of its cash purchases.

1 c. Debtor owed GoodYear a \$20,000 note due in Septem-  
2 ber and October, 1990. Said amount was taken from Debtor's  
3 account in increments of \$10,000 in the respective months.  
4 Subsequently, in February, 1991, a payment made to GoodYear was  
5 applied by GoodYear to this same \$20,000 note. This error by  
6 GoodYear entitles Debtor to a \$20,000 credit.

7 d. Debtor received a \$2,000 adjustment credit for  
8 defective products sold to Debtor from GoodYear which were under  
9 warranty by GoodYear. Debtor does not know where or if the  
10 credit was applied to Debtor's account.

11 e. Debtor is entitled to a credit from GoodYear in an  
12 amount of at least \$14,198, on account of its national credit  
13 account. These are credits Debtor is entitled to receive when a  
14 customer is sent to the shop on account of an agreement between  
15 GoodYear and certain companies. Debtor performs the work and the  
16 customer pays GoodYear, of which 9% goes to GoodYear, and the  
17 balance is credited to Debtor.

18 7. Debtor has essentially three relationships with Good-  
19 Year. A franchise agreement with Debtor as the franchisee, a  
20 sublease with Debtor as the subleasee, and a vendor relationship  
21 in which Debtor purchases tires from GoodYear.

22 8. Debtor intends to assume the Lease. The assumption of  
23 the Lease would be subject to all of the provisions of the Lease.  
24 The source of the payment for rent will be from the operations of  
25 the business.

26 9. I am familiar with the surrounding area of the current  
27 premises and believe that the Lease rate is reasonable, and that

1 it would be in the best interest of creditors that Debtor retains  
2 this Lease for the business. The Lease is essential to the  
3 business operations.

4 10. I respectfully request that the Court either approve  
5 the assumption of the Lease with GoodYear for the premises in  
6 Castro Valley, or in the alternative, extend the time for the  
7 Debtor to assume the lease until such time as it can be deter-  
8 mined what amount, if any, is owed to GoodYear.

9 I declare under penalty of perjury that the foregoing is  
10 true and correct and that this declaration was executed on  
11 April 24, 1992, in Dublin, California.

12  
13   
14 Richard A. Gorkosky  
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8. Sublessee will make no alterations or additions in or to the premises without the prior written consent of Sublessor, except as provided in Paragraph 3 above. All permanent improvements and additions, changes or alterations made on the premises during the term hereof shall belong to and inure to the benefit of Sublessor, and Sublessor shall have the right, at its sole election, to require Sublessee, upon termination hereof, at its expense, to remove any such improvements, additions, changes or alterations, and restore the premises to as good condition as repair as when received.

9. Sublessee will permit Sublessor, or its agents, to enter upon said premises at all reasonable times to examine the condition thereof.
10. Sublessee will keep the entire premises, including the parking areas and the sidewalk adjoining, free from dirt, rubbish, snow and ice.
11. Sublessee hereby covenants and agrees to indemnify, save and hold Sublessor and the premises free, clear and harmless from any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys' fees, litigation, judgments, damages, claims and demands of any kind whatsoever in connection with, arising out of or by reason of any violation of law, ordinance or regulation by Sublessee, its agents, employees, servants, contractors, subcontractors, licensees, concessionaires, customers or business invitees, or by reason of any injury or damage however occurring to any person or persons whatsoever (including Sublessee, its agents, employees, servants, contractors, subcontractors, licensees, concessionaires, customers or business invitees), or by reason of any repairs or improvements which may be made by Sublessee on said premises, or to property of any kind whatsoever and to whomsoever belonging (including Sublessee, its agents, employees, servants, contractors, subcontractors, licensees, concessionaires, customers or business invitees), from any cause or cause whatsoever, while in, upon, about, or in any way connected with the premises or any part thereof during the term and any extension or renewal of the term of this Sublease.
12. Except to the extent the Basic Lessor assumes such obligations, Sublessee will keep the entire premises, including all fixtures, equipment and leasehold improvements, in good condition and repair and will replace any window glass which becomes broken or damaged during Sublessee's occupancy, and at the termination of this Sublease, for any cause, it will surrender the premises to Sublessor in as good condition and repair as when received, reasonable wear and tear and damage by the elements, fire and other unavoidable casualty excepted.
13. Sublessee will permit Sublessor to place and maintain on the premises the usual "For Rent" or "For Sale" signs during the last sixty (60) days of the term hereof.
14. Sublessee takes the premises knowing the condition thereof.
15. No termination of this Sublease or recovery of the premises as hereinafter provided shall deprive Sublessor of any other remedy for possession, for rent or for damages, nor shall any distress, remedy or suit for rent or for damages prevent Sublessor from proceeding to recover possession upon any breach of the conditions hereof.
16. Sublessor shall have a lien for the payment of the rent aforesaid upon all property of Sublessee at any time brought upon the premises.
17. If Sublessee shall be in default because of nonpayment of rent or in any other respect hereunder, or if Sublessee shall be adjudged a bankrupt, shall make an assignment for creditors, or if the interest of Sublessee herein shall be sold under execution or other legal process, it shall be lawful for Sublessor to enter into said premises and again have, repossess and enjoy the same as if this Sublease had not been made, and thereupon this Sublease, and everything herein contained on the part of the Sublessee to be done and performed shall cease, determine and be utterly void, without prejudice, however, to the right of Sublessor to recover all rent due to the time of such entry. In case of any such default and entry, Sublessor may relet such premises for the remainder of said term for the highest rent obtainable and may recover from Sublessee any deficiency between the amount obtained and the rent herein reserved.
18. If Sublessee shall perform all and singular the covenants herein imposed upon it, Sublessor will warrant and defend the Sublessee in the quiet enjoyment and peaceful possession of the premises during the term hereof.
19. Any mechanic's lien filed against the premises for work claimed to have been done or for materials claimed to have been furnished to Sublessee shall be discharged within twenty (20) days after filing, by bonding or as provided or required by law or in any other lawful manner.
20. If the premises shall be damaged by fire, the elements or unavoidable casualty, so that a part thereof shall remain tenable, and such damage can be repaired within ninety (90) days from the date of damage, Sublessor shall proceed to make such repairs, and during the time of such partial occupancy, Sublessee shall pay rental in such proportion to the entire rental herein reserved that the space actually occupied bears to the entire space herein leased, provided that if such repairs shall not be completed within ninety (90) days from the date of damage, either party shall have the right to terminate this Sublease by notice in writing to the other. If the premises shall be entirely destroyed by fire, the elements or unavoidable casualty, either party may terminate this Sublease by notice in writing to the other. Sublessor shall return to Sublessee on demand any rental paid by Sublessee in advance for a period following any such damage to the extent that such premises were untenable.
21. In the event that any part of the rental payable under the Basic Lease of the premises, is based upon sales made on or from the premises, a written report of such sales shall be delivered by Sublessee to Sublessor, together with a check for additional rental computed as provided therein, on or before thirty (30) days after the end of each twelve-month period hereof, or at such other times as may be required to comply with the terms and conditions of the Basic Lease.
22. In the event any part of the rental payable under the Basic Lease, is based upon sales made on or from the premises, Sublessor shall be entitled at any time to cause an audit of Sublessee's business on and/or from the premises to be made by its authorized representative, and if such audit discloses that Sublessee's gross sales as previously reported for the period audited were understated by an amount in excess of one per cent (1%) of Sublessee's actual gross sales as disclosed by such audit, Sublessee shall immediately pay to Sublessor the cost of such audit together with any additional percentage rental due thereon.
23. Sublessee recognizes that Sublessor is not the owner of the premises but has possession by virtue of its Basic Lease, dated August 2, 1972, a copy of which Basic Lease will be delivered to Sublessee upon request. The applicable terms and conditions of such Basic Lease shall be binding on Sublessee in the same manner and with like effect as if fully set forth herein, it being the intention of the parties hereto that Sublessor shall be reimbursed by Sublessee (including but not limited to Real Estate Taxes, assessments and insurance costs), for all costs and expenses incurred by Sublessor with respect to such Basic Lease, including any excise, transaction, sales, business, occupation, or similar tax now or hereafter imposed by any governmental agency upon Sublessor and attributed to or measured by rentals payable by Sublessee to Sublessor or sales made by Sublessee from the premises demise hereunder. If said Basic Lease shall be terminated prior to the expiration hereof, then this Sublease shall likewise terminate forthwith without any liability on the part of Sublessor by reason thereof.
24. The waiver by Sublessor of any default or breach of any term, covenant or condition contained herein shall not be construed to be a waiver of any preceding or subsequent breach of the same or any other term, covenant or condition contained herein. The subsequent acceptance of rent or other sum hereunder by Sublessor shall not be construed to be a waiver of any preceding breach by Sublessee of any term, covenant or condition of this Sublease other than the failure of Sublessee to pay the particular rental or other sum or portion thereof so accepted, regardless of Sublessor's knowledge of such preceding breach at the time of acceptance of such rent or other sum.
25. It is understood and agreed that any notice given by either party hereto to the other under any of the provisions hereof shall be deemed to have been properly delivered when registered or certified and deposited in the United States mails with adequate postage affixed, addressed to the Sublessor at 1144 East Market Street, Akron, Ohio 44316, attention of Real Estate Department, or to Sublessee at the premises, or to such other person and place as the parties may from time to time direct in writing.
26. This Sublease and all the terms, covenants and conditions hereof, shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of both parties hereto in like manner as if each had been enumerated in every instance in which said parties are mentioned herein.



27. Sublessee shall obtain and, during the original and any extended term of this Sublease, maintain a policy of comprehensive general liability insurance including products and completed operations and blanket contractual coverages protecting Sublessee against claims for personal injury with limits of \$300,000 as to any one person, \$1,000,000 as to any one occurrence and \$500,000 property damage and will furnish Sublessor with a certificate showing the issuance of such coverage. Said certificate shall contain a provision that said policy may not be cancelled except after ten (10) days' prior written notice to Sublessor.

~~28. The parties hereto understand that Sublessor is arranging for new improvements to be constructed on the premises demised hereunder at an estimated cost of \$\_\_\_\_\_. If such cost shall be more or less than the amount set forth above, then the monthly rental shall be increased or decreased accordingly, retroactive to the beginning of the term hereof, by 1/12th of \_\_\_\_\_.~~

29. (a) Sublessee understands that the Sublessor is subleasing the premises to Sublessee as a Licensed Franchisee of a Goodyear Tire Center for the purpose of aggressively promoting the sale of merchandise commonly manufactured and/or distributed by Sublessor. This Sublease shall be subject to cancellation by Sublessor at any time upon thirty (30) days' written notice upon the happening of any of the following:

- i. If Sublessee shall be in default in any of its obligations under this Sublease.
- ii. If Sublessee shall be in default in the payment of any indebtedness to The Goodyear Tire & Rubber Company, however arising or evidenced.

(b) It is further understood by the parties hereto that this Sublease is subject to cancellation by Sublessee without cause on any anniversary of the lease year hereof by notice in writing to Sublessor at least ninety (90) days prior to such anniversary date.

(c) The total monthly payment due Sublessor hereunder shall be the sum of:

- i. The monthly rental payable under the terms of the Basic Lease, as it may be amended from time to time, referred to in Paragraph 23 above, plus
- ii. \$ 148.67 per month to cover Sublessor's ~~estimated~~ charge on an amortization basis <sup>has installed</sup> for service department hoists, steel storage racks, and other equipment, and/or leasehold improvements which Sublessor ~~intends to install~~ as a part of the improvements ~~to be constructed~~ on the aforesaid premises, all in accordance with plans and specifications prepared by Sublessor.

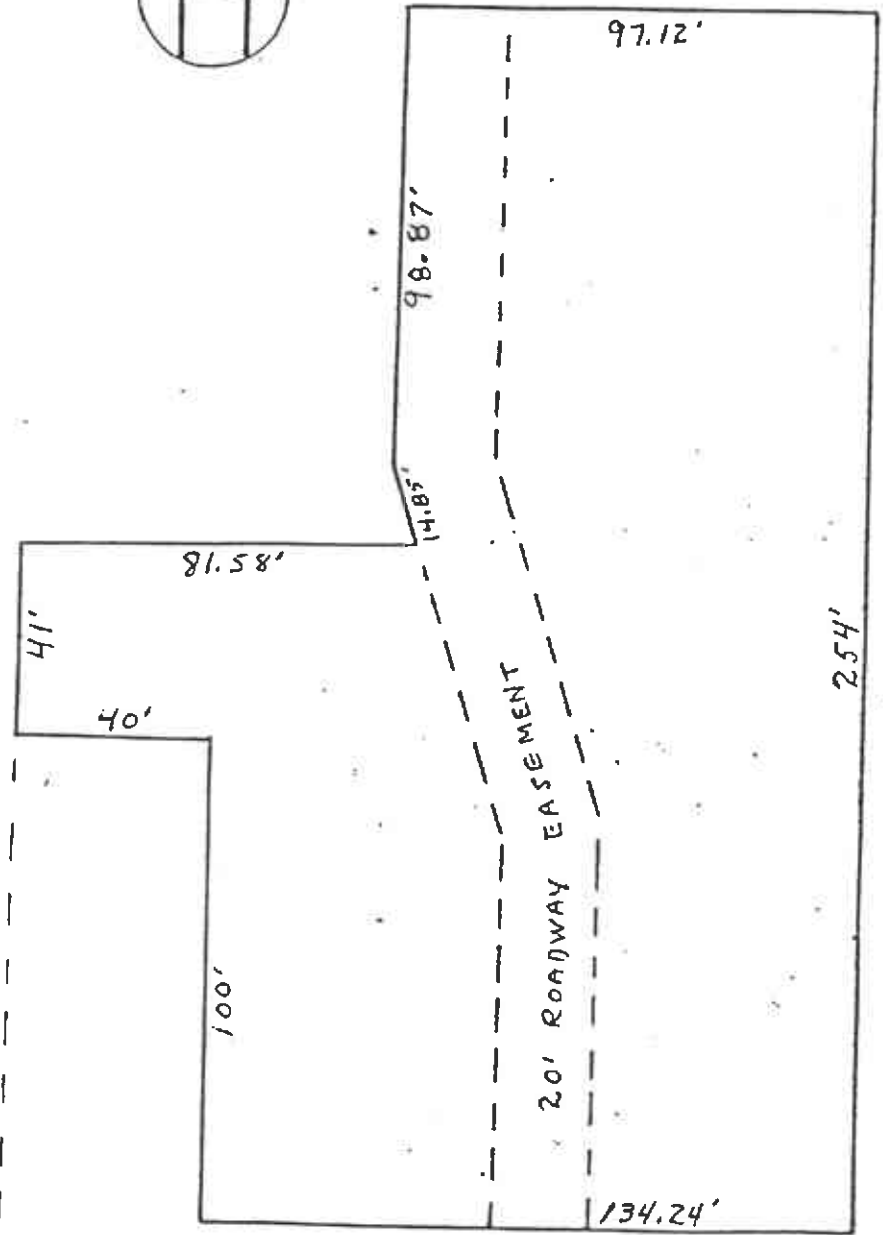
~~In the event Sublessor's estimate of the monthly charge for said equipment and leasehold improvements shall be more or less than the amount set forth in (c) (ii) above, Sublessee shall increase or decrease said monthly charge retroactive to the beginning date hereof by the amount of such difference. Sublessee shall upon billing therefor reimburse Sublessor for all personal property taxes if any on equipment above referred to.~~

- iii. \$ 900.58 per month representing one-twelfth (1/12th) of estimated annual Real Estate Taxes and cost of Fire and Extended Coverage Insurance on said premises.

(d) Sublessee understands that, in the event this Sublease shall continue in effect for a period ~~of more than ten (10) years~~ <sup>beyond July 15, 1984</sup>, the monthly payment for such period ~~in excess of ten (10) years~~ shall not include any charge for the above referred to equipment and leasehold improvements, but ~~title~~ <sup>title</sup> to all such equipment shall nevertheless remain in Sublessor.

**beyond July 15, 1984**

EXHIBIT "A"  
3430 CASTRO VALLEY BOULEVARD  
CASTRO VALLEY, CALIF.  
SCALE 1" = 40'



Two acre tract referred  
to in legal description

CASTRO VALLEY BOULEVARD 100'

*[A large diagonal line is drawn across the top half of the page, likely indicating a cancellation or a placeholder for a signature.]*

This sublease contains the entire agreement between the parties hereto, and no representations, inducements, promises, or agreements, oral or otherwise, shall be binding upon Sublessor or Sublessee unless reduced to writing and signed by both parties.

This Sublease is subject to approval by Sublessor at its home office in Akron, Ohio and shall not become binding on Sublessor until signed by its officers or duly authorized representative and a fully executed copy delivered to Sublessee.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly signed by their duly authorized officers and/or duly authorized representatives on the day and year first above written.

Approvals

WITNESSES as to Sublessor:

Violet D. Rock  
Joseph R. Cavalier

WITNESSES as to Sublessee:

[Signature]  
[Signature]

~~THE GOODYEAR TIRE & RUBBER COMPANY~~  
Sublessor

By [Signature]  
Title Vice President  
Attest: [Signature]  
Assistant Secretary

~~MERRITT TIRE & BRAKE SERVICE, INC~~  
Sublessee

By [Signature]  
President  
By [Signature]  
Secretary

STATE OF OHIO,  
COUNTY OF SUMMIT

1. Maxine Marie Sturm, a Notary Public duly sworn, commissioned and authorized for the above County and State, and residing therein, do hereby certify that A H Shafer

R E Burnett whose names as Vice President and Assistant Secretary THE GOODYEAR TIRE & RUBBER COMPANY, a corporation, are signed to the hereto annexed sublease, and who are well known to me to be the identical persons who subscribed the name of Sublessor thereto, personally appeared before me in said County, and acknowledged before me on this day that they are the officers above designated and that they are acquainted with the seal of said corporation and that the seal affixed to said sublease is the seal of said corporation and that as such officers they signed said sublease in their own handwriting and sealed and delivered said sublease for and as their own free act and deed and as the free act and deed of said corporation for the uses, purposes and considerations mentioned and expressed therein on the date thereof and that the act of sealing, executing and delivering said sublease was duly authorized by resolution of the Directors of said corporation.

Given under my hand and seal of office this 1st day of September, 1977

MAXINE MARIE STURM, Notary Public  
Summit County, Ohio  
My Commission Expires Oct. 18, 1978

Maxine Marie Sturm  
Notary Public  
My Commission Expires 10-18-78

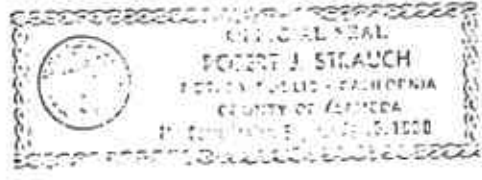
ACKNOWLEDGMENT BY CORPORATION (SUBLESSEE)

STATE OF California  
COUNTY OF Alameda

1. ROBERT J STRAUCH, a Notary Public duly sworn, commissioned and authorized for the above County and State, and residing therein, do hereby certify that Ben Tsurumoto as FRANKIE E Pyatt whose names as the President and

Secretary of MERRITT TIRE & BRAKE SERVICE, INC a corporation, are signed to the hereto annexed Sublease, and who are well known to me to be the identical person(s) who subscribed the name of the Sublessee to said Sublease, personally appeared before me in said County and acknowledged before me on this day that (he is) (they are) the officer(s) above designated and that (he is) (they are) acquainted with the seal of said corporation and that the seal affixed to said Sublease is the seal of said corporation and that as such officer(s) (he) (they) signed said Sublease in (his) (their) own handwriting and sealed and delivered said Sublease for and as (his) (their) own free act and deed and as the free act and deed of said corporation for the uses, purposes and considerations mentioned and expressed therein on the date thereof and that the act of sealing, executing and delivering said Sublease was duly authorized by resolution of the Directors of said corporation.

Given under my hand and seal of office this 12th day of August, 1977



Robert J. Strauch  
Notary Public  
My Commission Expires 4-5-80

ACKNOWLEDGMENT BY INDIVIDUALS (SUBLESSEE)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public duly authorized and qualified in and for the above County and State, and residing therein, do hereby certify that \_\_\_\_\_

whose name(s) is (are) signed to the foregoing Sublease hereto annexed and bearing date of \_\_\_\_\_ and who is (are) well known to me personally appeared before me in said County and acknowledged before me on this day that, being informed by me of the contents of said Sublease produced to me, (and being personally known to me to be the identical person(s) whose name(s) is (are) affixed thereto) (he) (she) (they) executed, signed, sealed and delivered the same voluntarily and of (his) (her) (their) own free will and accord for the uses and purposes named and expressed therein on the day the same bears date.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

June 29, 1984

The Goodyear Tire & Rubber Company  
1144 East Market Street  
Akron, Ohio 44316-0001

Attention: Real Estate Department

Gentlemen:

Please refer to that certain sublease dated July 28, 1977, between you, as Sublessor, and the undersigned, as Sublessee, relative to the occupancy by Sublessee of premises controlled by Sublessor at 3430 Castro Valley Boulevard, City of Castro Valley, State of California, which said sublease, as heretofore amended, will expire on July 15, 1984.

It is hereby proposed that the term of said sublease, as so amended, shall be extended for a further period of five (5) years beginning July 16, 1984, and ending July 15, 1989, at a rental of \$3,165.62 minimum per month including \$436.50 for real estate taxes and insurance, and subject to all the other terms, conditions, and provisions contained therein.

If the foregoing proposal is acceptable to you, will you please so indicate by signing and returning the attached carbon copy hereof to the undersigned at 3430 Castro Valley Boulevard, Castro Valley, California 94546.

Very truly yours,

MERRITT TIRE & BRAKE SERVICE, INC

By [Signature]  
President

A C C E P T E D :

THE GOODYEAR TIRE & RUBBER  
COMPANY

By [Signature]  
Director - Real Estate

Attest [Signature]  
Assistant Secretary

WJH/ds

EXHIBIT " B "

PL90

March 10, 1989

THE GOODYEAR TIRE & RUBBER COMPANY  
1144 EAST MARKET STREET  
AKRON, OHIO 44316-0001

ATTENTION: REAL ESTATE DEPARTMENT

Gentlemen:

Please refer to that certain sublease dated July 28, 1977, between you, as Sublessor, and the undersigned, as Sublessee, relative to the occupancy by Sublessee of premises controlled by Sublessor at 3430 Castro Valley Boulevard, Castro Valley, California, which said sublease, as heretofore amended and extended from time to time, will expire on July 15, 1989.

It is hereby proposed that the term of said sublease, as amended and extended, shall be further extended for a period of 5 years, beginning July 16, 1989 and ending July 15, 1994, at a minimum rental of \$3,015.89 per month, including a 1% Sublease Administration Fee of \$27.29, estimated real estate taxes and insurance in the amount of \$259.48 and subject to all other terms, provisions and conditions contained therein.

If the foregoing is acceptable to you, please so indicate by signing and returning the attached copy hereof to the undersigned at 3430 Castro Valley Boulevard, Castro Valley, California.

Very truly yours,

MERRITT TIRE & BRAKE  
SERVICE, INC.

By *[Signature]*

A C C E P T E D

THE GOODYEAR TIRE & RUBBER COMPANY

By *[Signature]*  
Director - Real Estate

A J Delguyd

*[Handwritten initials]*

June 29, 1984

The Goodyear Tire & Rubber Company  
1144 East Market Street  
Akron, Ohio 44316-0001

Attention: Real Estate Department

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Please refer to that certain sublease dated July 28, 1977, between you, as Sublessor, and the undersigned, as Sublessee, relative to the occupancy by Sublessee of premises controlled by Sublessor at 3430 Castro Valley Boulevard, City of Castro Valley, State of California, which said sublease, as heretofore amended, will expire on July 15, 1984.

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If the foregoing proposal is acceptable to you, will you please so indicate by signing and returning the attached carbon copy hereof to the undersigned at 3430 Castro Valley Boulevard, Castro Valley, California 94546.

Very truly yours,

MERRITT TIRE & BRAKE SERVICE, INC

By *Richard A. White*  
President

A C C E P T E D :

THE GOODYEAR TIRE & RUBBER  
COMPANY

By *G. J. Smith*  
Director - Real Estate

Attest *H. J. [Signature]*  
Assistant Secretary

WJH/ds

By *Nancy J. [Signature]*  
Secretary

G O O D Y E A R  
GOODYEAR TIRE CENTER SERVICE MARK LICENSE  
AND FRANCHISE AGREEMENT

Between THE GOODYEAR TIRE & RUBBER COMPANY, an Ohio corporation with its principal place of business at 1144 East Market Street, Akron, Ohio 44316, hereinafter called "GOODYEAR" and **MERRITT TIRE & BRAKE SERVICE, INC** a corporation organized and existing under the laws of the State of **CALIFORNIA**, with its principal place of business at **3430 Castro Valley Blvd in Castro Valley, Ca 94546** hereinafter called "FRANCHISEE."

W I T N E S S E T H :

WHEREAS, GOODYEAR is engaged in manufacture and distribution of various automotive products including but not limited to tires, tubes, batteries and automotive accessories for sale to its independent tire dealers; and

WHEREAS, FRANCHISEE is desirous of establishing itself as an independent tire dealer authorized to offer GOODYEAR products for sale at retail and wholesale; and

WHEREAS, GOODYEAR has adopted and used the trademarks GOODYEAR and GOODYEAR (with winged foot design) on a variety of products closely associated with the automotive industry, including automotive accessories, and has become well known to the general public through its many diversified products and as a result of extensive local, national and international advertising; and

WHEREAS, GOODYEAR has adopted and used the service marks GOODYEAR, GOODYEAR (with winged foot design), and GOODYEAR (with winged foot design) TIRE CENTER in connection with wholesale and retail merchandising of its products as well as the products of others, and in connection with automotive maintenance and repair services; and

WHEREAS, GOODYEAR has obtained a number of registrations of its above identified marks in the United States Patent Office, and has established for its above identified trademarks and service marks a recognition with the general public, and a reputation of offering for sale only products and services of the highest quality through distribution outlets observing a high standard of cleanliness, neatness, and customer convenience, thereby building and maintaining valuable good will for its trademarks and service marks; and

WHEREAS, FRANCHISEE, realizing the unique commercial value of GOODYEAR's above identified marks is desirous of acquiring the right to use said marks.

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings hereinafter set forth, the parties mutually agree as follows:



1. GOODYEAR hereby grants to FRANCHISEE in accordance with the terms and conditions hereinafter set forth, a non-transferable, nonexclusive license to use the service marks and trade names GOODYEAR, GOODYEAR (with winged foot design), and GOODYEAR (with winged foot design) TIRE CENTER at

**3430 Castro Valley Blvd in Castro Valley, Ca 94546**

in connection with wholesale and retail merchandising services and automotive maintenance and repair services. GOODYEAR also hereby appoints FRANCHISEE a nonexclusive dealer in such GOODYEAR products and merchandise, hereinafter collectively referred to as "Products," as shall be made available by GOODYEAR from time to time to its authorized tire dealers and tire franchisees generally. GOODYEAR agrees to sell Products to FRANCHISEE for resale except that GOODYEAR shall not be required to sell to FRANCHISEE a Product or Products, the sale of which to authorized dealers and franchisees generally has been discontinued by GOODYEAR. GOODYEAR retains the right to sell to other customers in FRANCHISEE's trade area and elsewhere.

2. FRANCHISEE acknowledges GOODYEAR's exclusive ownership of the marks GOODYEAR, GOODYEAR (with winged foot design) and GOODYEAR (with winged foot design) TIRE CENTER and admits the property rights of GOODYEAR to such marks by reason of common law and any and all registrations in the United States and countries foreign thereto now or hereafter issued with respect to said trademarks and service marks owned by GOODYEAR. FRANCHISEE further agrees that it will not during the term of this Agreement or thereafter, perform or knowingly assist in the performance of any acts which are in any way detrimental to GOODYEAR's ownership rights and interests in the marks GOODYEAR, GOODYEAR (with winged foot design), and GOODYEAR (with winged foot design) TIRE CENTER. FRANCHISEE agrees that it will not use said trademarks or service marks in any manner, or assist or acquiesce in such use by others except in conformity with the license granted herein and will not use, assist or acquiesce in the use of any trademarks or service marks which are confusingly similar to the licensed marks. It is specifically acknowledged that the FRANCHISEE does not, by reason of this Agreement, acquire any rights whatsoever in any trademarks or service marks now or hereafter owned by GOODYEAR or any related company of GOODYEAR's other than the right to use the licensed marks in accordance with the strict requirements of this instrument. FRANCHISEE further agrees that any possible trademark or service mark rights that FRANCHISEE might acquire in the licensed marks or any other marks of GOODYEAR's shall inure to the benefit of GOODYEAR and upon GOODYEAR's request shall be assigned to GOODYEAR.

3. FRANCHISEE agrees that it will use the service mark GOODYEAR (with winged foot design) TIRE CENTER on the outside of its place of business in the manner specified by GOODYEAR, and in no other manner. FRANCHISEE further agrees that it will not place its own name or any other name, service mark, trademark or identification on the outside of its place of business without the prior written consent of GOODYEAR, which consent shall not be unreasonably withheld. FRANCHISEE agrees to place and thereafter maintain a decal supplied by GOODYEAR on the front door through which its customers pass, in a conspicuous position no lower than five (5) feet nor higher than six (6) feet from the bottom of the door and horizontal to the bottom and top of the door, such decal reading as follows:

GOODYEAR (with winged foot design) TIRE CENTER

Licensed by

THE GOODYEAR TIRE & RUBBER COMPANY

In addition to the licensed marks, FRANCHISEE will be required to use its own corporate name on all letterheads and certain business documents to be used in the operation of the "GOODYEAR (with winged foot design) TIRE CENTER."

4. FRANCHISEE agrees to engage actively in the distribution and sale of such replacement line of GOODYEAR Products as the public would reasonably expect to be available at a GOODYEAR TIRE CENTER or a GOODYEAR SERVICE STOP. FRANCHISEE agrees to use its best efforts to promote and increase the sale of GOODYEAR Products in its trade area and to achieve a reasonable share of market for GOODYEAR Products in its trade area as may be determined from time to time by GOODYEAR sales management. FRANCHISEE agrees not to engage in the practice of baiting and switching whereby it substitutes or attempts to substitute products of another brand or make for GOODYEAR Products whenever a purchaser requests GOODYEAR Products which are reasonably available to FRANCHISEE. FRANCHISEE agrees to offer for sale products and services that are comparable with those normally sold and offered in GOODYEAR (with winged foot design) TIRE CENTER locations and in GOODYEAR SERVICE STORES. FRANCHISEE will maintain hours of business at least comparable to those businesses in his trading area but in any event will be open for business a minimum of 48 hours per week. FRANCHISEE agrees to maintain in stock sufficient quantities of GOODYEAR Products to enable FRANCHISEE to render prompt and effective service to meet the reasonably anticipated needs of consumers for GOODYEAR Products.

5. FRANCHISEE assumes all responsibility for compliance with laws and regulations and payments of fees and taxes, applicable to conduct of the FRANCHISEE's business and for all applicable operation and maintenance costs and expenses.

6. GOODYEAR will provide FRANCHISEE such assistance in advertising and other promotional aids as GOODYEAR may from time to time provide its authorized dealers and franchisees generally in support of its distribution of GOODYEAR Products. FRANCHISEE shall be entitled to purchase GOODYEAR Products hereunder at prices specified in the applicable GOODYEAR price lists, less such discounts and allowances and subject to such terms and conditions as may be in effect from time to time. FRANCHISEE acknowledges and consents that such prices, discounts, allowances, terms and conditions will be subject to change by GOODYEAR from time to time without prior notice to FRANCHISEE. All shipments will be billed at prices (plus amount of any Federal Excise Tax) in effect on date of shipment.

7. FRANCHISEE will be afforded the same price protection as may be made available generally to other authorized dealers and franchisees by GOODYEAR from time to time.

8. Delivery of Products sold hereunder shall be FOB point of shipment. Other terms of shipment shall be in accordance with GOODYEAR's policy in effect at time of shipment. GOODYEAR shall not be liable for any delay in delivery or failure to deliver occasioned by act of God, fire, flood, riot, insurrection, war, strike, labor trouble, interruption of transportation facilities, inability to obtain or produce materials or products, restrictions by any governmental authority, or other

cause, similar or otherwise beyond GOODYEAR's control. During any such contingency GOODYEAR shall in good faith endeavor to allocate deliveries fairly among its customers, but the final determination of deliveries to be made is expressly reserved to GOODYEAR, to be exercised in its sole discretion and without liability to FRANCHISEE or anyone else.

9. Terms of settlement shall be as stated on GOODYEAR invoices.

10. If FRANCHISEE fails to make any payment or payments when due, GOODYEAR may, at its option, terminate this Agreement or defer additional shipments until such overdue amounts have been paid. GOODYEAR may decline to make deliveries except for cash whenever GOODYEAR is not satisfied with FRANCHISEE's financial condition or responsibility.

11. All GOODYEAR Product warranty claims and adjustments processed by FRANCHISEE in behalf of GOODYEAR shall be processed in accordance with GOODYEAR's applicable warranty and adjustment policy and procedure. Except as authorized in GOODYEAR's standard adjustment policy, FRANCHISEE is not, and shall in no way hold himself out to be, the legal representative, agent, or employee of GOODYEAR and is without authority to assume, create or incur any obligation or liability in behalf of GOODYEAR. FRANCHISEE shall make no guarantee, warranty, or representation in behalf of GOODYEAR to FRANCHISEE's customers or prospective customers with respect to Products purchased hereunder or in connection herewith or otherwise, but shall refer customers and prospective customers to GOODYEAR's printed literature for warranties, if any, provided by GOODYEAR.

12. FRANCHISEE agrees to maintain a clean and respectable place of business and to operate it in a business-like manner conducive to the furtherance of retail sales in accordance with the Standards Section of the GOODYEAR (with winged foot design) TIRE CENTER Management Manual, copy of which has been delivered herewith and which may be reasonably revised by GOODYEAR from time to time, and in accordance with such further reasonable standards as may from time to time be required by GOODYEAR's supervisory personnel. FRANCHISEE acknowledges that any deviation from the high quality service and maintenance standards set forth in the said Management Manual will result in substantial injury to the good will that has been established in the licensed marks and, therefore, fully appreciates the necessity for the maintenance of high quality standards in connection with all phases of the GOODYEAR (with winged foot design) TIRE CENTER franchise. FRANCHISEE also agrees that it will follow GOODYEAR's advertising procedures as set forth in the GOODYEAR (with winged foot design) TIRE CENTER Management Manual in connection with all advertisements pertinent to the franchised operation, and will not initiate any other advertising of GOODYEAR Products in any media without obtaining prior written approval from GOODYEAR, which approval shall not be unreasonably withheld. FRANCHISEE, therefore, agrees that any willful or negligent variance from the standards set forth in the said Management Manual will constitute justification for the immediate termination of this Agreement.

13. FRANCHISEE may terminate this Agreement effective as of the end of the first twelve (12) calendar months or any subsequent anniversary thereof, with or without cause, by sending GOODYEAR written notice of its intention to terminate at least ninety (90) days prior to said effective date.

GOODYEAR reserves the right to terminate this Agreement upon thirty (30) days' notice in writing to the FRANCHISEE in the event: (a) of any breach of this Agreement; (b) of FRANCHISEE's failure to pay any amount when due; (c) FRANCHISEE does not, in GOODYEAR's sole judgment, maintain and operate his franchise in accordance with the standards set forth in the GOODYEAR (with winged foot design) TIRE center Management Manual; or (d) FRANCHISEE performs or permits any act that in any way constitutes disparagement or abuse of GOODYEAR's trademarks or service marks, unless such variances from the established standards or such acts of disparagement or abuse as may be brought to the FRANCHISEE's attention by GOODYEAR are corrected to GOODYEAR's complete satisfaction within said thirty (30) day period.

14. The right of termination as provided herein is absolute and the parties have considered the possibility of expenditures necessary in preparing for performance of the terms of this Agreement and the possible losses and damages incident to them in the event of expiration or termination. It is definitely understood that neither shall be liable to the other for damages in any form, by reason of the expiration or termination of this Agreement at any time and for any reason.

15. This Agreement has been entered into in reliance upon and in consideration of the personal qualifications of and representations with respect thereto of the following named persons, who actively and substantially participate in the ownership or in the operations, or both, of the GOODYEAR TIRE CENTER at the above named location:

NAME	OWNERSHIP (Percentage)	ACTIVE (Percentage)
R G <sup>2</sup> rokoski	33.3%	100%
F Pyeatt	33.3	0
B Tsurumoto	33.3	0

Neither FRANCHISEE nor the persons named above shall permit any change in ownership or active management of the GOODYEAR TIRE CENTER without the prior written approval of GOODYEAR.

16. Unless sooner terminated in accordance with the provisions of Paragraph 13 hereof, this Agreement shall continue in full force and effect for a period commencing on the commencement date of the rental and lease term of the Real Estate Sublease for the abovementioned location and ending on 7-15-84.

In the event that GOODYEAR exercises any option available to it to extend the Basic Lease, this Agreement will be extended for a term to coincide with said Basic Lease extension.

17. Upon termination of this Agreement for any reason whatsoever, all rights of the FRANCHISEE to use the licensed marks and trade names shall cease, and FRANCHISEE shall take immediate action to assure that all use of said licensed marks and tradenames by or on behalf of FRANCHISEE shall be promptly terminated.

18. In consideration for this service mark license and data processing and supervisory services, which GOODYEAR agrees to provide FRANCHISEE, FRANCHISEE agrees to pay to GOODYEAR a sum equal to one and one-half per cent (1.50%) of FRANCHISEE's net sales (as shown on FRANCHISEE's Monthly Operating Statement as prepared by GOODYEAR) during each calendar month throughout the life of this Agreement. Such sum shall be payable to GOODYEAR by the fifteenth of the next succeeding month and shall be accompanied by a statement setting forth FRANCHISEE's net sales during the immediately preceding calendar month for which the payment is tendered. FRANCHISEE agrees to make its records available to any authorized representative of GOODYEAR during normal business hours in order to verify FRANCHISEE's performance of its obligations under this Agreement.

Within ninety (90) days after the end of FRANCHISEE's fiscal year, FRANCHISEE shall submit to GOODYEAR a copy of an annual audit report including a Balance Sheet and Statement of Profit or Loss, certified by a Certified Public Accountant, certification to be in a form acceptable to GOODYEAR, which acceptance shall not be unreasonably withheld.

19. This Agreement may not be assigned in whole or in part by FRANCHISEE, whether by force of law or otherwise, without first obtaining the prior written consent of GOODYEAR.

20. FRANCHISEE agrees, where permitted by State law, that upon the termination of this Agreement for any cause whatsoever, FRANCHISEE will not enter the business of wholesaling and/or retailing tires and associated products and services without the written consent of GOODYEAR within a 10-mile radius of the location referred to in Paragraph One hereof for a period of two (2) years after the effective date of termination of the Agreement.

21. Failure of GOODYEAR to enforce or exercise any of its rights with respect to any provisions hereof shall in no way be or be construed to be a waiver thereof nor shall it in any way affect the validity of this Agreement or act as a bar to GOODYEAR's subsequent enforcement or exercise of any right created hereby. The exercise or enforcement by GOODYEAR of any of its rights hereunder shall not preclude or prejudice GOODYEAR from thereafter exercising the same or any other right which it may have under the Agreement.

22. The FRANCHISEE agrees to save and hold harmless GOODYEAR from and against any contractual liability exposure resulting from FRANCHISEE's business operations. The FRANCHISEE will be obligated to obtain and continue in effect (1) a policy of Comprehensive General Liability Insurance including products and completed operations coverage and blanket contractual coverage in limits of not less than \$300,000 per person and \$1,000,000 per occurrence and, (2) \$500,000 property damage insurance and \$500,000 aggregate operations, aggregate protective and aggregate products and (3) Comprehensive Automobile Liability Insurance including hired car and non-ownership with limits as follows:

Bodily Injury Liability . . . \$ 300,000 each person  
 . . . \$1,000,000 each occurrence

Property Damage Liability . . . \$ 500,000 each occurrence

Medical Payments . . . . . \$ 5,000 each person

issued by an insurance company approved by GOODYEAR and covering GOODYEAR as an additional insured. FRANCHISEE will be obligated to obtain and continue in effect a policy of fire and extended coverage insurance on inventory. The proceeds of such policy shall be payable to FRANCHISEE and GOODYEAR as their interests may appear. A certificate of insurance will be provided to GOODYEAR by FRANCHISEE.

23. In the event of termination of this Agreement for any reason whatsoever, FRANCHISEE will grant to GOODYEAR the right of first refusal to purchase FRANCHISEE's then existing, unencumbered inventory and accounts receivable.

24. This Agreement shall become effective when signed by FRANCHISEE and by an officer of GOODYEAR. This Agreement expresses the complete and final understanding of the parties with respect thereto, and may not be changed in any way except by an instrument in writing signed by both parties. FRANCHISEE acknowledges that GOODYEAR has made no representation concerning anticipated profits from the FRANCHISEE's business operations. FRANCHISEE, likewise, recognizes that the success of its business operations is primarily dependent upon FRANCHISEE's conduct of the business and any profits or losses therefrom are for FRANCHISEE's own account.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate this 18th day of August, 1977.

**MERRITT TIRE & BRAKE  
 SERVICE, INC**

**THE GOODYEAR TIRE & RUBBER COMPANY**

FRANCHISEE

x By Richard Schuch

By [Signature]  
 Vice President

x Title Chairman of the Board

Attest: [Signature]  
 Assistant Secretary

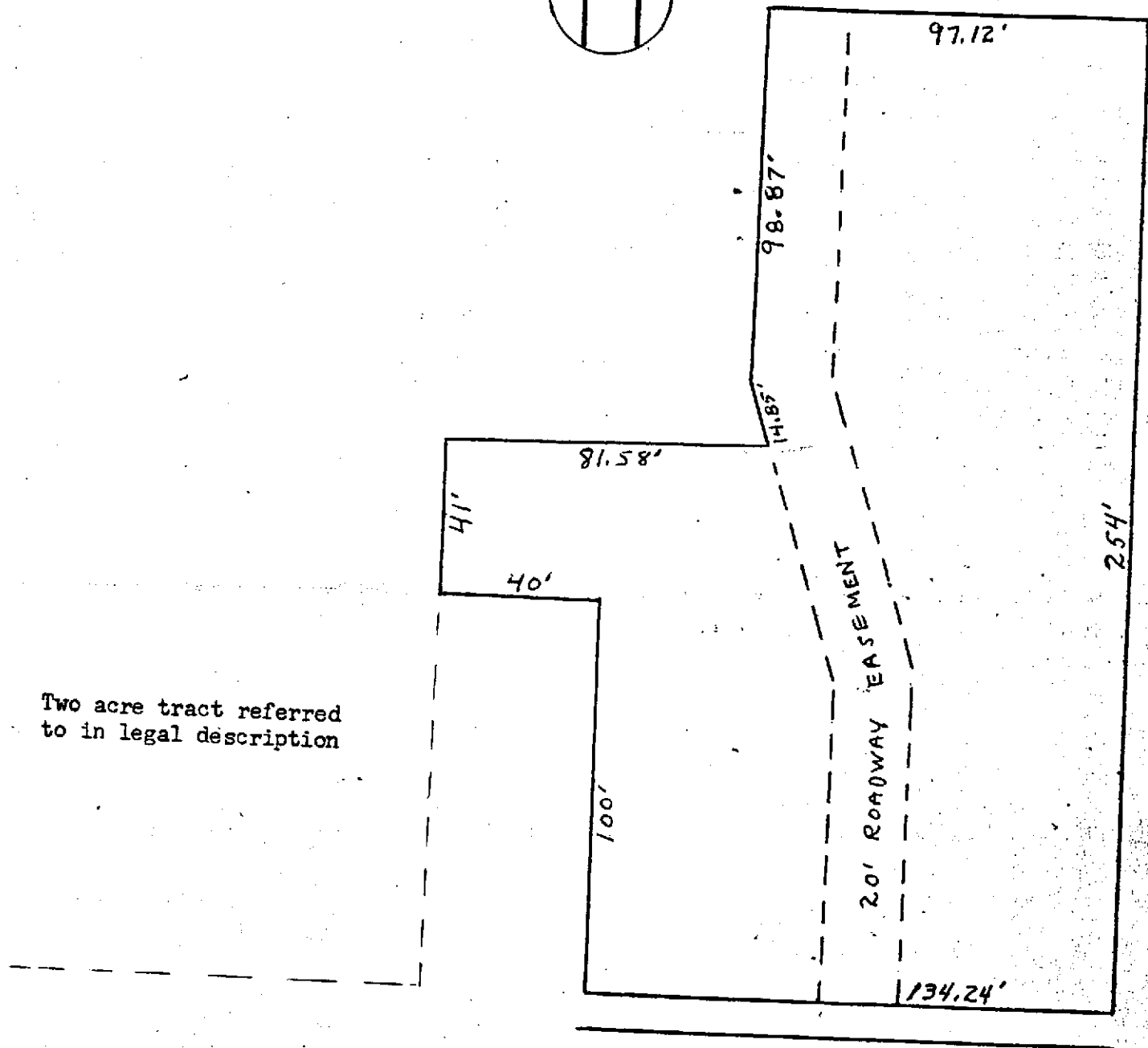
x By [Signature]

x Title Pres

x By [Signature]

x Title Sec Treas

EXHIBIT "A"  
3430 CASTRO VALLEY BOULEVARD  
CASTRO VALLEY, CALIF.  
SCALE 1" = 40'



Two acre tract referred  
to in legal description

CASTRO VALLEY BOULEVARD 100'

27. Sublessee shall obtain and, during the original and any extended term of this Sublease, maintain a policy of comprehensive general liability insurance including products and completed operations and blanket contractual coverages protecting Sublessor against claims for personal injury with limits of \$300,000 as to any one person, \$1,000,000 as to any one occurrence and \$500,000 property damage, and will furnish Sublessor with a certificate showing the issuance of such coverage. Said certificate shall contain a provision that said policy may not be cancelled except after ten (10) days' prior written notice to Sublessor.

~~28. The parties hereto understand that Sublessor is arranging for new improvements to be constructed on the premises demised hereunder at an estimated cost of \$\_\_\_\_\_. If such cost shall be more or less than the estimated cost set forth above, then the monthly rental above provided shall be increased or decreased accordingly, retroactive to the beginning of the term hereof, by 1/12th of \_\_\_\_\_% of the difference.~~

29. (a) Sublessee understands that the Sublessor is subleasing the premises to Sublessee as a Licensed Franchisee of a Goodyear Tire Center for the purpose of aggressively promoting the sale of merchandise commonly manufactured and/or distributed by Sublessor. This Sublease shall be subject to cancellation by Sublessor at any time upon thirty (30) days' written notice upon the happening of any of the following:

- i. If Sublessee shall be in default in any of its obligations under this Sublease.
- ii. If Sublessee shall be in default in the payment of any indebtedness to The Goodyear Tire & Rubber Company, however arising or evidenced.

(b) It is further understood by the parties hereto that this Sublease is subject to cancellation by Sublessee without cause on any anniversary of the lease year hereof by notice in writing to Sublessor at least ninety (90) days prior to such anniversary date.

(c) The total monthly payment due Sublessor hereunder shall be the sum of:

i. The monthly rental payable under the terms of the Basic Lease, as it may be amended from time to time, referred to in Paragraph 23 above, plus

ii. \$ 148.67 per month to cover Sublessor's ~~estimated~~ **has installed** charge on an amortization basis for service department hoists, steel storage racks, and other equipment, and/or leasehold improvements which Sublessor ~~proposes to install~~ as a part of the improvements ~~to be constructed on the aforesaid premises, all in accordance with plans and specifications prepared by Sublessor.~~

~~In the event Sublessor's estimate of the monthly charge for said equipment and leasehold improvements shall be more or less than the amount set forth in (c) (ii) above, Sublessor shall increase or decrease said monthly charge retroactive to the beginning date hereof by the amount of such difference. Sublessee shall upon billing therefor reimburse Sublessor for all personal property taxes if any on equipment above referred to.~~

iii. \$ 900.58 per month representing one-twelfth (1/12th) of estimated annual Real Estate Taxes and cost of Fire and Extended Coverage Insurance on said premises. **beyond July 15, 1984**

(d) Sublessee understands that, in the event this Sublease shall continue in effect for a period ~~of more than ten (10) years~~, the monthly payment for such period, ~~in excess of ten (10) years~~ shall not include any charge for the above referred to equipment and leasehold improvements, but title to all such equipment shall nevertheless remain in Sublessor. **beyond July 15, 1984**



## Sublease

THIS SUBLEASE entered into at Akron, Ohio, this 28th day of July, 19 77, between THE GOODYEAR TIRE & RUBBER COMPANY, an Ohio Corporation with principal office at Akron, Ohio, as Sublessor, and MERRITT TIRE & BRAKE SERVICE, INC, a (Corporation) (~~Partnership~~) (~~Sole Proprietorship~~) with the principal place of business at 2025 Telegraph Avenue Street, in the City of Oakland, and State of California, as Sublessee.

WITNESSETH, that:

Sublessor does hereby demise, let and lease unto Sublessee and Sublessee does hereby hire and take from Sublessor those certain premises commonly known as 3430 Castro Valley Boulevard Street, in the City of Castro Valley, County of Alameda and State of California, and more particularly described as follows:

All that certain real property situated in the Township of Eden, an unincorporated area, County of Alameda, State of California, described as follows: Beginning at a point on the northern line of the State Highway leading from Dublin to Oakland, known as Road 1V, Alameda County, Route 5, Section "B", distant thereon north  $89^{\circ} 58'$  east, 40 ft from the western line of a 2 acre tract; and running thence along said northern line north  $89^{\circ} 58'$  east, 134.24 ft (the bearing of the northern line of said State Highway being taken as north  $89^{\circ} 58'$  east for the purpose of making this description); thence leaving said State Highway and going north a distance of 254 ft, then west at a  $90^{\circ}$  angle 97.12 ft, then south at a  $90^{\circ}$  angle 98.87 ft, thence southeasterly a distance of 14.85 ft, then west a distance of 81.58 ft, then south a distance of 41 ft, then east a distance of 40 ft, then south a distance of 100 ft to the point of beginning, along with a 20 ft easement for roadway purposes running through the center of subject parcel from south to north as shown on the Exhibit "A" attached hereto and made a part of hereof,

together with all structures now existing and to be erected thereon and all appurtenances thereto, herein called the "premises."

TO HAVE AND TO HOLD the same for a term beginning on the 28th day of July, 19 77, and ending on the 15th day of July, 19 84, and Sublessee hereby agrees to pay therefor a monthly rental of \$3,778.37, in advance on the first business day of each month during said term to THE GOODYEAR TIRE & RUBBER COMPANY, at Post Office Box 44405, San Francisco, California 94144

or elsewhere as Sublessor may, in writing, direct. If the term hereof shall begin or end on a date other than the first or last day of a calendar month respectively, the rental for such partial month or months shall be prorated at the monthly rate then effective.

PROVIDED ALWAYS, that this Sublease is entered into upon the following terms and conditions, all of which the parties hereto covenant to keep and perform:

1. Sublessee will occupy said premises in a careful, safe and proper manner for use primarily for the sale, servicing and storage of Goodyear tires, tubes and related products, and secondarily for the sale of such other products as may be authorized by the Basic Lease as hereinafter defined in Paragraph 23.
2. Sublessee will pay for all electricity, gas, water, sewer and heating charges used on said premises during the term of this Sublease.
3. Except with respect to equipment leased to Sublessee by Sublessor pursuant to a written lease agreement, Sublessee may install any shelving, light fixtures, show cases, counters and any other fixtures necessary for conducting its business and said items shall remain the property of Sublessee and, subject to the other provisions hereof, may be removed by Sublessee at any termination of this Sublease provided that in such removal Sublessee shall leave the premises in as good condition as when received.
4. No gasoline or other substance or materials which may increase the danger of fire or the premiums for insurance on said buildings, or which will emit or cause disagreeable or unpleasant odors, shall be kept or used on said premises.
5. All signs placed on said premises shall be subject to the written approval of Sublessor.
6. Sublessee will not commit any waste therein and will conform with all applicable laws and ordinances respecting the use and occupancy of the premises.
7. Sublessee shall not assign this Sublease or underlet any or all of said premises without the prior written consent of Sublessor.

8. Sublessee will make no alterations or additions in or to the premises without the prior written consent of Sublessor, except as provided in Paragraph 3 above. All permanent improvements and additions, changes or alterations made on the premises during the term hereof shall belong to and inure to the benefit of Sublessor; and Sublessor shall have the right, at its sole election, to require Sublessee, upon termination hereof, at its expense, to remove any such improvements, additions, changes or alterations, and restore the premises to as good condition and repair as when received.
9. Sublessee will permit Sublessor, or its agents, to enter upon said premises at all reasonable times to examine the condition thereof.
10. Sublessee will keep the entire premises, including the parking areas and the sidewalk adjoining, free from dirt, rubbish, snow and ice.
11. Sublessee hereby covenants and agrees to indemnify, save and hold Sublessor and the premises free, clear and harmless from any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys' fees, litigation, judgments, damages, claims and demands of any kind whatsoever in connection with, arising out of or by reason of any violation of law, ordinance or regulation by Sublessee, its agents, employees, servants, contractors, subtenants, licensees, concessionaires, customers or business invitees, or by reason of any injury or damage however occurring to any person or persons whomsoever (including Sublessee, its agents, employees, servants, contractors, subtenants, licensees, concessionaires, customers or business invitees), or by reason of any repairs or improvements which may be made by Sublessee on said premises, or to property of any kind whatsoever and to whomsoever belonging (including Sublessee, its agents, employees, servants, contractors, subtenants, licensees, concessionaires, customers or business invitees), from any cause or causes whatsoever, while in, upon, about, or in any way connected with the premises or any part thereof during the term and any extension or renewal of the term of this Sublease.
12. Except to the extent the Basic Lessor assumes such obligations, Sublessee will keep the entire premises, including all fixtures, equipment and leasehold improvements, in good condition and repair and will replace any window glass which becomes broken or damaged during Sublessee's occupancy, and at the termination of this Sublease, for any cause, it will surrender the premises to Sublessor in as good condition and repair as when received, reasonable wear and tear and damage by the elements, fire and other unavoidable casualty excepted.
13. Sublessee will permit Sublessor to place and maintain on the premises the usual "For Rent" or "For Sale" signs during the last sixty (60) days of the term hereof.
14. Sublessee takes the premises knowing the condition thereof.
15. No termination of this Sublease or recovery of the premises as hereinafter provided shall deprive Sublessor of any other remedy for possession, for rent or for damages, nor shall any distress, remedy or suit for rent or for damages prevent Sublessor from proceeding to recover possession upon any breach of the conditions hereof.
16. Sublessor shall have a lien for the payment of the rent aforesaid upon all property of Sublessee at any time brought upon the premises.
17. If Sublessee shall be in default because of nonpayment of rent or in any other respect hereunder, or if Sublessee shall be adjudged a bankrupt, shall make an assignment for creditors, or if the interest of Sublessee herein shall be sold under execution or other legal process, it shall be lawful for Sublessor to enter into said premises and again have, repossess and enjoy the same as if this Sublease had not been made, and thereupon this Sublease, and everything herein contained on the part of the Sublessor to be done and performed, shall cease, determine and be utterly void, without prejudice, however, to the right of Sublessor to recover all rent due to the time of such entry. In case of any such default and entry, Sublessor may relet such premises for the remainder of said term for the highest rent obtainable and may recover from Sublessee any deficiency between the amount obtained and the rent herein reserved.
18. If Sublessee shall perform all and singular the covenants herein imposed upon it, Sublessor will warrant and defend the Sublessee in the quiet enjoyment and peaceful possession of the premises during the term hereof.
19. Any mechanic's lien filed against the premises for work claimed to have been done or for materials claimed to have been furnished to Sublessee shall be discharged within twenty (20) days after filing, by bonding or as provided or required by law or in any other lawful manner.
20. If the premises shall be damaged by fire, the elements or unavoidable casualty, so that a part thereof shall remain tenantable, and such damage can be repaired within ninety (90) days from the date of damage, Sublessor shall proceed to make such repairs, and, during the time of such partial occupancy, Sublessee shall pay rental in such proportion to the entire rental herein reserved that the space actually occupied bears to the entire space herein leased, provided that if such repairs shall not be completed within ninety (90) days from the date of damage, either party shall have the right to terminate this Sublease by notice in writing to the other. If the premises shall be entirely destroyed by fire, the elements or unavoidable casualty, either party may terminate this Sublease by notice in writing to the other. Sublessor shall return to Sublessee on demand any rental paid by Sublessee in advance for a period following any such damage to the extent that such premises were untenable.
21. In the event that any part of the rental payable under the Basic Lease of the premises, is based upon sales made on or from the premises, a written report of such sales shall be delivered by Sublessee to Sublessor, together with a check for additional rental computed as provided therein, on or before thirty (30) days after the end of each twelve-month period hereof, or at such other times as may be required to comply with the terms and conditions of the Basic Lease.
22. In the event any part of the rental payable under the Basic Lease, is based upon sales made on or from the premises, Sublessor shall be entitled at any time to cause an audit of Sublessee's business on and/or from the premises to be made by its authorized representative, and if such audit discloses that Sublessee's gross sales as previously reported for the period audited were understated by an amount in excess of one per cent (1%) of Sublessee's actual gross sales as disclosed by such audit, Sublessee shall immediately pay to Sublessor the cost of such audit together with any additional percentage rental due thereon.
23. Sublessee recognizes that Sublessor is not the owner of the premises but has possession by virtue of its Basic Lease, dated August 2, 1972, a copy of which Basic Lease will be delivered to Sublessee upon request. The applicable terms and conditions of such Basic Lease shall be binding on Sublessee in the same manner and with like effect as if fully set forth herein, it being the intention of the parties hereto that Sublessor shall be reimbursed by Sublessee (including but not limited to Real Estate Taxes, assessments and insurance costs), for all costs and expenses incurred by Sublessor with respect to such Basic Lease, including any excise, transaction, sales, business, occupation, or similar tax now or hereafter imposed by any governmental agency upon Sublessor and attributed to or measured by rentals payable by Sublessee to Sublessor or sales made by Sublessee from the premises demised hereunder. If said Basic Lease shall be terminated prior to the expiration hereof, then this Sublease shall likewise terminate forthwith without any liability on the part of Sublessor by reason thereof.
24. The waiver by Sublessor of any default or breach of any term, covenant or condition contained herein shall not be construed to be a waiver of any preceding or subsequent breach of the same or any other term, covenant or condition contained herein. The subsequent acceptance of rent or other sum hereunder by Sublessor shall not be construed to be a waiver of any preceding breach by Sublessee of any term, covenant or condition of this Sublease other than the failure of Sublessee to pay the particular rental or other sum or portion thereof so accepted, regardless of Sublessor's knowledge of such preceding breach at the time of acceptance of such rent or other sum.
25. It is understood and agreed that any notice given by either party hereto to the other under any of the provisions hereof shall be deemed to have been properly delivered when registered or certified and deposited in the United States mails with adequate postage affixed, addressed to the Sublessor at 1144 East Market Street, Akron, Ohio 44316, attention of Real Estate Department, or to Sublessee at the premises, or to such other person and place as the parties may from time to time direct in writing.
26. This Sublease and all the terms, covenants and conditions hereof, shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of both parties hereto in like manner as if each had been enumerated in every instance in which said parties are mentioned herein.

This sublease contains the entire agreement between the parties hereto, and no representations, inducements, promises, or agreements, oral or otherwise, shall be binding upon Sublessor or Sublessee unless reduced to writing and signed by both parties.

This Sublease is subject to approval by Sublessor at its home office in Akron, Ohio and shall not become binding on Sublessor until signed by its officers or duly authorized representative and a fully executed copy delivered to Sublessee.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly signed by their duly authorized officers and/or duly authorized representatives on the day and year first above written.

Approvals:


WITNESSES as to Sublessor:

Violet D. Rock  
John R. Cavalik

WITNESSES as to Sublessee:

J. Hanch  
J. Hanch

~~THE GOODYEAR TIRE & RUBBER COMPANY~~  
~~Sublessor~~

By W. A. Shaffer  
Title Vice President  
Attest: R. Campbell  
Assistant Secretary

~~MERRITT TIRE & BRAKE SERVICE, INC~~  
~~Sublessee~~

By D. L. ...  
President  
By J. L. ...  
Secretary

ACKNOWLEDGMENT BY GOODYEAR

STATE OF OHIO,  
COUNTY OF SUMMIT

I, Maxine Marie Sturm, a Notary Public duly sworn, commissioned and authorized for the above County and State, and residing therein, do hereby certify that A H Shafer and

R C Barnett whose names as Vice President and Assistant Secretary of THE GOODYEAR TIRE & RUBBER COMPANY, a corporation, are signed to the hereto annexed sublease, and who are well known to me to be the identical persons who subscribed the name of Sublessor thereto, personally appeared before me in said County, and acknowledged before me on this day that they are the officers above designated and that they are acquainted with the seal of said corporation and that the seal affixed to said sublease is the seal of said corporation and that as such officers they signed said sublease in their own handwriting and sealed and delivered said sublease for and as their own free act and deed and as the free act and deed of said corporation for the uses, purposes and considerations mentioned and expressed therein on the date thereof and that the act of sealing, executing and delivering said sublease was duly authorized by resolution of the Directors of said corporation.

Given under my hand and seal of office this 1st day of September, 1977

Maxine Marie Sturm  
Notary Public

MAXINE MARIE STURM, Notary Public  
Summit County, Ohio  
My Commission Expires Oct 18, 1978

My Commission Expires

10-18-78

ACKNOWLEDGMENT BY CORPORATION (SUBLESSEE)

STATE OF California  
COUNTY OF Alameda

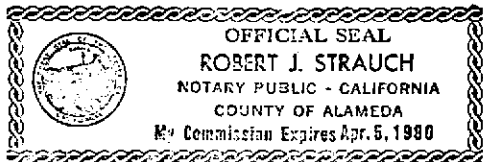
I, Robert J. Strauch, a Notary Public duly sworn, commissioned and authorized for the above County and State, and residing therein, do hereby certify that Ben Tsurumoto and

FRANKIE E. Pyeatt whose names as the President and Secretary of Merritt Tire & Brake Service, Inc.

a corporation, are signed to the hereto annexed Sublease, and who are well known to me to be the identical person(s) who subscribed the name of the Sublessee to said Sublease, personally appeared before me in said County and acknowledged before me on this day that (he is) (they are) the officer(s) above designated and that (he is) (they are) acquainted with the seal of said corporation and that the seal affixed to said Sublease is the seal of said corporation and that as such officer(s) (he) (they) signed said Sublease in (his) (their) own handwriting and sealed and delivered said Sublease for and as (his) (their) own free act and deed and as the free act and deed of said corporation for the uses, purposes and considerations mentioned and expressed therein on the date thereof and that the act of sealing, executing and delivering said Sublease was duly authorized by resolution of the Directors of said corporation.

Given under my hand and seal of office this 12th day of August, 1977

Robert J. Strauch  
Notary Public



My Commission Expires

4-5-80

ACKNOWLEDGMENT BY INDIVIDUALS (SUBLESSEE)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public duly authorized and qualified in and for the above County and State, and residing therein, do hereby certify that \_\_\_\_\_

whose name(s) is (are) signed to the foregoing Sublease hereto annexed and bearing date of \_\_\_\_\_ and who is (are) well known to me personally appeared before me in said County and acknowledged before me on this day that, being informed by me of the contents of said Sublease produced to me, (and being personally known to me to be the identical person(s) whose name(s) is (are) affixed thereto) (he) (she) (they) executed, signed, sealed and delivered the same voluntarily and of (his) (her) (their) own free will and accord for the uses and purposes named and expressed therein on the day the same bears date.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Notary Public

My Commission Expires