

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**IN RE:        ROBISON TIRE COMPANY, INC.  
               DEBTOR-IN-POSSESSION**

**CASE NO. 16-51183-KMS  
CHAPTER 11**

**MOTION FOR AUTHORITY TO LEASE  
AND SELL REAL PROPERTY**

Robison Tire Company, Inc., Debtor-in-Possession (“Debtor” or “Robison”) files this Motion for Authority to Lease and Sell Real Property pursuant to §363(b) of the *United States Bankruptcy Code*, Rules 2002(a)(2), 2002(c)(1) and 9014 of the *Federal Rules of Bankruptcy Procedure*, and Miss. Bankr. L.R. 9014-1 as follows:

1.        This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1334. This Court has the statutory authority to enter a final order in connection with this matter pursuant to 28 U.S.C. §157(b)(2) (A), (N) and (O). This Court has the constitutional authority to enter a final order in connection with this matter.

2.        The Debtor filed a petition for relief pursuant to Chapter 11 of the *United States Bankruptcy Code* on July 14, 2016. No trustee has been appointed in this case. The Debtor is in possession of its assets pursuant to §1108 of the *United States Bankruptcy Code*. No committee has been appointed in this case.

**BACKGROUND**

3.        Since the early 1970's, Robison was a replacement tire wholesaler and retailer in the Southeastern United States. Robison entered into various dealer agreements with manufacturers of passenger, commercial, off road, implement and specialty tires pursuant to which it purchased products directly from manufacturers and sold products on a wholesale and retail basis.

4. Robison operated a retail stores from which it sold tires directly to consumers. Most of the retail stores were leased from third parties. Robison owned two retail stores, one located in Laurel, Mississippi and another in Forest, Mississippi (“Forest Store”). Prior to the filing of the Chapter 11 case, Robison had closed the Forest Store.

5. Effective as of December 1, 2015, Robison entered into a Lease Agreement and Option to Purchase (“2015 Lease/Option”) with Sistrunk Sales & Services, Inc. (“Sistrunk”) where it agreed to lease the Forest Store for a term of 12 months with an option to purchase by the expiration of the term. The purchase price agreed upon was \$335,000.00, with the single annual rental payment of \$54,000.00 being paid in advance. The 2015 Lease/Option provided that the annual rental payment would not be credited to the purchase price, but the purchase price in the 2015 Lease/Option was reduced to \$281,000.00, effectively giving credit for the annual rental payment to the purchase price. Additionally, the Sistrunk was required to pay for ad valorem taxes, insurance and utilities. A true and correct copy of the 2015 Lease/Option is attached hereto as Exhibit “A”.

6. Prior to the expiration of the term, Sistrunk contacted the Debtor and advised that it did not desire to exercise the option, but desired to renew the 2015 Lease/Option for an additional year. The Debtor responded with an offer to enter into a new agreement, but requested a renewal fee on account of the loss of the time value of the sales proceeds had the option been exercised. Sistrunk did not agree to the Debtor’s proposal. Thereafter, the Debtor refused to negotiate any further until Sistrunk reimbursed the Debtor for Sistrunk’s pro rata portion of the 2015 taxes, insurance and utilities and provide evidence of payment of the 2016 ad valorem taxes. In late December, 2016, Sistrunk made the reimbursement payment and provided evidence of payment of the 2016 ad valorem taxes. After further negotiation, the Debtor and Sistrunk agreed enter into a Lease

Agreement and Option to Purchase (“2016 Lease/Option”) effective December 1, 2016 for a term of seven months.

7. On January 20, 2017, counsel for the Debtor received the agreed upon form of the 2016 Lease/Option along with the sums due thereunder, a copy of which is attached as Exhibit “B.” The legal description of the real property is attached to the 2016 Lease/Option. Generally, the 2016 Lease /Option provides for an advance rental payment for the seven month term of \$33,500.00. The option price is reduced to \$250,000.00, effectively giving Sistrunk credit for \$31,000.00 of the rental payment and compensating the Debtor for \$2,500.00 to partially defray the Debtor’s fees and expenses in negotiating and obtaining Court approval of the 2016 Lease/Option. Sistrunk is also required to pay to the Debtor in advance for one-half of the 2017 ad valorem taxes to eliminate the risk of these taxes not being paid in the event the option is not exercised.

### **RELIEF REQUESTED**

8. Generally, the Debtor requests the Court to approve this Motion and to authorize the Debtor to enter into the 2016 Lease/Option pursuant to §363 of the *Bankruptcy Code*.

#### **Section 363 Standards**

9. Section 363(b)(1) of the *Bankruptcy Code* provides that a (after notice and a hearing)

“the Trustee may use, sell or lease, other than in the ordinary course of business, property of the estate.” As a general matter, “A judge determining a §363(b) application [should] find from the evidence presented before [her] at the hearing a good business reason to grant such application.” *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2<sup>nd</sup> Cir. 1983). Certain factors pertinent to this analysis have been articulated. Specifically, the Court should consider whether:

- (1) A sound business purpose justifies the sale;
- (2) Accurate and reasonable notice of the sale was provided;
- (3) The price to be paid is adequate, ie, fair and reasonable; and
- (4) The sale is in good faith, ie, there is an absence of any lucrative deals with insiders.

*In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc.*, 77 B.R. 15, 21 (Bkcty. E.Dist. Penn. 1987); *In re Wilde Horse Enterprises, Inc.*, 137 B.R. 830, 841-2 (Bkcty. Cent. Dist. Cal. 1991); *In re The Landing*, 156 B.R. 246, 249 (Bkcty. E. Dist. Missouri, 1993); *In re George Walsh Chevrolet, Inc.*, 118 B.R. 99, 102 (Bkcty. E. Dist. Missouri, 1990).

10. Consideration of the factors weighs in favor of authorizing the lease and the sale. The Debtor previously entered into the 2015 Lease/Option, with an effective purchase price of \$335,000.00. The Forest Store consists of 3.66 acres located west of the intersection of Hwy 35 and Hwy 80. The property is approximately 430 feet deep and 420 feet wide, but there are three out parcels on the Hwy 80 frontage, leaving the Forest Store with approximately 160 feet of frontage. A 140 foot by 113 foot building is located upon the property with six service bays along the front of the building. Attached as Exhibit “C” is a barely readable map of the property reflecting the location of the out parcels.

11. The sales price was negotiated at arms length and there is no insider or other relationship between the Debtor and Sistrunk other than the lessor/lessee relationship. The Scott County Tax Assesor has an assessed value of the property of \$294,770.00.<sup>1</sup> A purchase price of \$335,000.00 is fair and reasonable under the circumstances, with Sistrunk being given credit for making advance annual rent payments. Such credits are typical in lease option agreements.

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<sup>1</sup>

The Debtor removed all personal property having any value from the premises prior to the 2015 Lease/Option. No personal property is being conveyed to Sistrunk under the 2016 Lease Option or otherwise.

12. The Debtor has no use for the Forest Store. The Forest Store is unencumbered and all rental and sales proceeds will be available to the Debtor to make distributions to holders of claims against the bankruptcy estate in the priority provided for under the *Bankruptcy Code*. The Debtor did not agree to allow Sistrunk another one year term, but agreed to give Sistrunk only until June 30, 2017 to exercise the option. This assures that in the event the option is exercised that the sale can be reflected in the Debtor's 2017 tax return. It also provides certainty as to whether the property will be sold to Sistrunk or needs to be placed on the market for sale.

### **Good Faith Purchaser Status**

13. If a purchaser is in good faith, §363(m) of the *Bankruptcy Code* protects the parties in the event of a reversal or modification on appeal of the authorization of a sale under §363(b). In determining whether a purchaser has acted in good faith, courts look to the integrity of the purchasers in the course of the legal proceedings. *See, eg. In re Abbotts Dairies of PA, Inc.*, 788 F.2d 143, 147-48 (3<sup>rd</sup> Cir. 1986). In the instant case, the Debtor does not anticipate any lack of good faith on the part of any purchaser. The Debtor will request the Court to adjudicate that Sistrunk is a good faith purchaser.

14. In the event Sistrunk exercises the option and consummates the sale, the Debtor will file a report of sale with the Court, unless otherwise provided for in a confirmed Chapter 11 Plan.

15. The Debtor requests that this Court find that good cause exists to authorize the execution of the 2016 Lease/Option without subjecting the order to a stay of execution, as permitted under Rules 7062 and 6004(h) of the *Federal Rules of Bankruptcy Procedure*.

WHEREFORE, Robison Tire Company, Inc., Debtor-in-Possession, hereby moves this Honorable Court, after notice and an opportunity for a hearing, to enter an order granting the relief

requested above, authorizing the 2016 Lease/Option to be executed by the Debtor and authorizing the Debtor to consummate the sale on the terms provided in the 2016 Lease/Option and further grant the Debtor all other relief to which it is entitled, given the premises.

THIS the 24th day of January, 2017.

Respectfully Submitted,

**ROBISON TIRE COMPANY, INC.**

By: /s/ William J. Little, Jr.  
William J. Little, Jr., It's Attorney

OF COUNSEL:

William J. Little, Jr., MSB No. 1287  
W. Jarrett Little, MSB No. 104812  
Lentz & Little, PA  
2505 14<sup>th</sup> Street, Suite 100  
Gulfport, Mississippi 39501  
Telephone (228) 867-6050  
[bill@lentzlittle.com](mailto:bill@lentzlittle.com)  
[jarrett@lentzlittle.com](mailto:jarrett@lentzlittle.com)

**CERTIFICATE OF SERVICE**

I, William J. Little, Jr., do hereby certify that the following have been served electronically via ECF with a copy of the foregoing document:

United States Trustee: [USTPRegion05.JA.ECF@usdoj.gov](mailto:USTPRegion05.JA.ECF@usdoj.gov)  
Jim F. Spencer: [jspencer@watkinseager.com](mailto:jspencer@watkinseager.com)  
Stephanie Rippee: [srippee@watkinseager.com](mailto:srippee@watkinseager.com)  
Christopher J. Steiskal, Sr.: [Christopher.j.steiskal@usdoj.gov](mailto:Christopher.j.steiskal@usdoj.gov)  
James W. O'Mara: [omaraj@phelps.com](mailto:omaraj@phelps.com)  
Richard A. Montague, Jr.: [richard.montague@phelps.com](mailto:richard.montague@phelps.com)  
Christopher R. Maddux: [chrismaddux@butlersnow.com](mailto:chrismaddux@butlersnow.com)

I further certify that a copy of the foregoing document have been mailed by U.S. Mail, postage pre-paid to the following:

Robison Tire Company, Inc.  
2505 14<sup>th</sup> Street, Suite 100  
Gulfport, MS 39441

Kathy R. Franklin  
3630 Southwood Ave.  
Memphis, TN 38111

This the 24<sup>th</sup> day of January, 2017.

/s/William J. Little, Jr.  
William J. Little, Jr.

**LEASE AGREEMENT AND  
OPTION TO PURCHASE**

THIS LEASE AGREEMENT AND OPTION TO PURCHASE (the "Agreement") is entered into as of the 7th day of December 2015 (the "Effective Date"), by and between Robison Tire Company, Inc., a Mississippi corporation, as both lessor and grantor of the option to purchase, hereinafter referred to as "Lessor," and Sistrunk Sales & Services, Inc., a Mississippi corporation, as both lessee and purchaser of the option, hereinafter referred to as "Lessee."

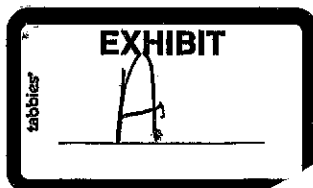
The Parties agree as follows:

1. **LEASED PREMISES.** In consideration of the mutual obligations of Lessor and Lessee set forth herein, Lessor leases to Lessee, and Lessee hereby takes from Lessor that certain tract or parcel of land, more particularly described on Exhibit A attached hereto and incorporated herein by reference, with all rights, privileges, easements, appurtenances, and amenities belonging to, or in any way pertaining to, the buildings and improvements located thereon (the "Premises"), to have and to hold, subject to the terms, covenants, and conditions in this Agreement. Lessee acknowledges that (i) it has inspected and accepts the Premises "AS IS," "WHERE IS," and "WITH ALL FAULTS;" (ii) the Premises is suitable for the purposes for which the Premises is leased and thereafter purchased; (iii) the Premises is in good and satisfactory condition; and (iv) the Premises shall be leased, and thereafter purchased, on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, and no representations as to the repair of the Premises, nor promises to alter, remodel, or improve the Premises have been made by Lessor.

2. **LEASE TERM.** The term of the lease set forth in this Agreement shall commence on the Effective Date and shall end (i) twelve (12) months thereafter (the "Lease Term"), unless sooner terminated in accordance with the terms of this Agreement, or (ii) upon purchase of the Premises pursuant to the terms of this Agreement, whichever is sooner.

3. **LEASE FEE.** Lessee hereby promises to pay a one-time lease fee of \$54,000.00 (the "Lease Fee"), which shall be due and payable to Lessor on or before the Effective Date. The Lease Fee shall not be refundable under any circumstances, including upon exercise of the option granted herein.

4. **GRANT OF OPTION.** Lessor hereby agrees Lessee has the option to purchase the Premises at or before the end of the Lease Term (the "Option"), and Lessor agrees to sell the Premises to Lessee upon receipt of written notice from Lessee, not less than thirty days in advance of Closing, of its exercise of the Option at a mutually agreeable Closing Date, which shall be not later than the end of the term. The total purchase price for the Premises shall be \$281,000.00 (the "Purchase Price"), which shall be in addition to and not inclusive of the Lease Fee. On the Closing Date, Lessee shall pay the Purchase Price to Lessor in immediately available funds. Lessee shall also be responsible for paying all closing costs associated with the purchase, including the costs of title insurance, certificates





of title, survey costs, appraisals, or the like. Consistent with the provisions of this Agreement requiring Lessee to pay all real property taxes, property taxes will not be prorated but will, instead, be paid by Lessee for the entire year during which closing occurs.

5. **TAXES AND UTILITIES.** Lessee agrees to pay all real estate or other real or personal property taxes for the Premises beginning with the 2016 tax year. Lessee shall also pay all costs and charges incurred in the operation of the Premises, including, but not limited to, all utility services to the Premises.

6. **UTILITIES.** Lessor agrees to provide normal water, electricity, and telephone service connections (but not telephone systems or equipment, which Lessee shall provide at its own cost) to the Premises, which shall hereafter be maintained by Lessee. Lessee shall connect in its own name and pay for all water, gas, heat, light, power, telephone, sewer, sprinkler charges and other utilities and services used on or at the Premises, and shall furnish all electric light bulbs, ballasts, and tubes. All telephone service for Lessee shall be connected at Lessee's cost and in a manner such that Lessee shall be separately and directly billed therefor. Lessor shall not be liable for any interruption or failure of any such utility service on or serving the Premises.

7. **REPAIRS.** Lessor agrees to repair any areas of the roof of the Premises resulting in leaks existing as of the Effective Date, and further agrees to replace any water-damaged ceiling tiles existing on the Premises as of the Effective Date (the "Initial Repairs"). Lessee shall be responsible for obtaining an initial inspection of the Premises and notifying Lessor of any further water or electrical issues needing repair. Said inspection shall be completed, and Lessor shall be notified of any such further repairs needed, within two (2) weeks after the Effective Date. Lessee shall maintain and repair all parts of the Premises and keep the Premises in the condition that exists on the Effective Date (with the exception of the items addressed in the Initial Repairs, which shall be maintained as repaired), normal wear and tear excepted. Lessee shall also provide for regular removal of Lessee's trash and debris and proper disposal thereof. Should Lessee fail to fulfill its maintenance and repair obligations described herein within a reasonable time, Lessor may perform Lessee's maintenance or repair obligations upon providing Lessee with advance written notice of its intention to do so. Lessee agrees that it will be responsible for timely reimbursing Lessor for the cost of performing such maintenance or repair obligations, any such reimbursement to be due and payable within five (5) days of receipt of an invoice from Lessor.

8. **ALTERATIONS.** Lessee shall not make any alterations, additions, or improvements to the Premises in excess of \$10,000.00 without the prior written consent of Lessor. Lessee, without any further approval from Lessor, may erect such shelves, bins, machinery, and trade fixtures as it desires, provided that (a) such items do not overload or damage the Premises; (b) such items may be removed without injury to the same; and (c) the construction, erection, or installation thereof complies with all applicable governmental laws, ordinances, and regulations. All shelves, bins, machinery, and trade fixtures installed by Lessee shall be removed on or before the earlier to occur of the date of

termination of this Agreement or vacating of the Premises, at which time Lessee shall restore the Premises to its condition existing on the Effective Date, normal wear and tear excepted. All improvements shall be performed by a reputable construction company carrying adequate insurance and approved of in writing by Lessor, which approval shall not be unreasonably withheld, delayed, or conditioned. All alterations, installations, removals, and restoration shall be performed so as not to damage or alter the primary structure or structural qualities of the Premises and other improvements situated on the Premises.

9. **SIGNS.** Lessee is entitled to erect and use any signage related to its business for the Premises, and such usage shall not be subject to Lessor's prior written approval; provided, however, such signage shall be in compliance with all orders, ordinances, regulations, and laws of any municipality and other governmental authorities that are applicable to the Premises.

10. **HAZARDOUS MATERIALS AND ENVIRONMENTAL CONDITION.** Neither Lessee, nor any of Lessee's agents, contractors, employees, licensees, or invitees shall at any time handle, use, manufacture, store, or dispose of in or about the Premises any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products, or derivatives of any substance (collectively "Hazardous Materials") subject to regulation by or under any federal, state, and local laws and ordinances relating to the protection of the environment or the keeping, use, or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "Environmental Laws"), unless the Hazardous Material is oil or gas as required in the operation of Lessee's business ("Allowed Materials"), in which case Lessee shall comply with all applicable Environmental Laws in Lessee's handling, use, manufacturing, storage, and disposal of said Allowed Materials. Lessee shall protect, defend, indemnify, and hold Lessor harmless from and against any and all loss, claims, liability, or costs incurred by reason of any actual or asserted failure of Lessee to fully comply with all applicable Environmental Laws, or the presence, handling, use, or disposition in or from the Premises of any Hazardous Materials, or by reason of any actual or asserted failure of Lessee to keep, observe, or perform any provision of this paragraph.

11. **INDEMNITY.** Lessor shall not be liable and Lessee hereby waives all claims against Lessor for any damage to any property or any injury to any person in or about the Premises by or from any cause whatsoever, except to the extent caused by or arising from the gross negligence or willful misconduct of Lessor or its agents, employees, or contractors. Lessee shall protect, indemnify, and hold Lessor harmless from and against any and all loss, claims, liability, or costs (including court costs and attorneys' fees) incurred by reason of (a) any damage to any property or any injury to any person occurring in, on, or about the Premises to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault, or omission by or of Lessee, its agents, servants, employees, invitees, or visitors to meet any standards imposed by any duty with respect to

the injury or damage; (b) the conduct or management of any work or thing whatsoever done by the Lessee in or about the Premises or from transactions of the Lessee concerning the Premises; (c) Lessee's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Premises or its occupancy; or (d) any breach or default on the part of Lessee in the performance of any covenant or agreement on the part of the Lessee to be performed pursuant to this Agreement. The provisions of this Article shall survive the termination.

12. **INSURANCE.** During the Lease Term, Lessee shall maintain fire / casualty / property insurance covering the buildings and improvements at the Premises in an amount equal to one hundred percent (100%) of the "replacement cost" thereof (with replacement cost endorsement) on a special form (i.e., so-called "all risk") policy of property loss insurance, which shall designate Lessor as loss payee. At Lessor's election, Lessor may purchase the required property insurance for the Premises in its own name, in which case Lessee will promptly reimburse Lessor for the costs and expenses associated therewith. Lessee shall also maintain during the Lease Term a policy or policies of worker's compensation and commercial general liability insurance, including bodily injury, property damage, standard personal injury coverage, and contractual liability coverage, with limits of not less than \$500,000.00 combined single limit, per occurrence and per annum, for injury or death to persons or damage to property, plus an umbrella (excess) liability policy providing additional combined aggregate limits for bodily injury and property damage of \$1,000,000.00 per occurrence and no lesser per annum limits. Lessee's policy shall name Lessor and its successors and assigns as additional insureds. Lessee will not permit the Premises to be used for any purpose or in any manner that would void the insurance thereon.

13. **ASSIGNMENT OR SUBLEASE.** Lessee shall not assign this Agreement in whole or in part, nor sublease all or any part of the Premises without the prior written consent of the Lessor. No assignment of this Agreement or sublease of all or a part of the Premises shall operate to release Lessee of its obligations under this Agreement unless such release is agreed to by Lessor in writing.

14. **CONDEMNATION.** If at any time during the Lease Term, condemnation proceedings are commenced against all or any material portion of the Premises, the Lessor or Lessee shall have the right to terminate this Agreement upon ten (10) days written notice to the other party. Lessor shall be entitled to all of the condemnation proceeds.

15. **INSPECTION.** Lessor shall have the right to enter the Premises at reasonable times during normal working hours throughout the Lease Term for the following purposes: (i) inspecting the general condition and state of repair of the Premises; (ii) performing such maintenance or repair as Lessor may deem to be necessary, required, or desirable; (iii) taking any emergency action that Lessor deems necessary or desirable to protect the Premises; or (iv) for any other reasonable purposes.

16. **NONWAIVER OF TERMS.** The failure by Lessor or Lessee, whether once or more, to act upon a specific breach of any term, covenant, or condition herein contained

shall not be deemed to be a waiver of such term, covenant, or condition, nor of any subsequent breach of the same or any other term, covenant, or condition herein contained. No covenant, term, or condition of this Agreement shall be deemed to have been waived by Lessor unless such waiver be specifically expressed in writing by Lessor in writing by Lessor.

17. **AUTHORITY AND TITLE.** Lessor and Lessee represent and warrant to each other that each respective party has the right and authority to enter into this Agreement.

18. **GENERAL WARRANTIES AND REPRESENTATIONS.** Lessor represents and warrants to Lessee that (i) Lessor has received no written notices of, and to Lessor's knowledge there are not, any violations or noncompliance of applicable laws adversely affecting the use, operation, or occupancy of the Premises that have not previously been corrected or will not be corrected prior to the Effective Date; (ii) to Lessor's knowledge, there are no claims, causes of action, lawsuits, or other legal proceedings (pending or threatened) against Lessor, the Premises, or the structures on the Premises, which, if adjudicated against Lessor, may have a material adverse effect on Lessee's use of the Premises; and (iii) no person or entity (other than Lessee) shall have the right to use or occupy any portion of the Premises after the Effective Date.

19. **DISCLAIMER.** Lessor and Lessee expressly agree that there are and shall be no implied warranties of merchantability, habitability, fitness for a particular purpose, or any other kind arising out of this Agreement, and that all express or implied warranties in connection therewith are expressly disclaimed.

20. **SEVERABILITY.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the Lease Term, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added, as a part of this Agreement, a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

21. **ENTIRE AGREEMENT.** Except for any exhibits, attachments, plats, or other documents as may be affixed hereto, made a part hereof, and properly identified herein, this Agreement constitutes the entire contract between the parties with respect the lease of the Premises, and shall not be otherwise affected by any other purported undertaking, whether written or oral.

22. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

23. **GOVERNING LAW.** This Agreement is made in the State of Mississippi, and Mississippi law shall govern the construction, interpretation, and operation of all terms, provisions, and covenants contained herein.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Agreement on the dates set forth below, to be effective as of the Effective Date of this Agreement.

LESSOR:

ROBISON TIRE COMPANY, INC.

By: 

Print: Michael Windham

Its: \_\_\_\_\_

Date: 12-7-2015

LESSEE:

SISTRUNK SALES & SERVICES, INC.

By: 

Print: James Sistrunk

Its: President

Date: 12/7/15

EXHIBIT A

## Legal Description of the Premises

Commence at the Northeast corner of the NW 1/4, Section 16, Township 6 North, Range 8 East, thence run due West, 1334.36 feet; thence run due South, 1352.01 feet to a found iron pin on the South right-of-way of Highway 80 and the West line of the SE 1/4 of NW 1/4 of said Section 16; thence run North 88 degrees 40 minutes East, 500.00 feet along said right-of-way to chain-link fence corner; thence run North 89 degrees 47 minutes East, 60.00 feet to the Northeast corner of J & K Grocery Lot for the point of beginning; thence run South 00 degrees 36 minutes 30 seconds East, 100.00 feet; thence run South 89 degrees 47 minutes West, 60.00 feet to iron pin on fence; thence run South 00 degrees 36 minutes 30 seconds East, 342.45 feet along said fence to steel pin; thence run South 83 degrees 58 minutes East, 402.19 feet to chain-link fence corner; thence run North 00 degrees 38 minutes East, 378.60 feet along said fence to steel pin at fence corner; thence run South 87 degrees 56 minutes West 99.79 feet; thence run South 00 degrees 38 minutes West, 55.53 feet; thence run North 88 degrees 00 minutes West, 72.26 feet; thence run North 00 degrees 38 minutes East, 163.61 feet to the South right-of-way of Highway 80; thence run South 89 degrees 47 minutes West, 178.12 feet along said right-of-way to the point of beginning, said tract containing 3.66 acres and located in the SE 1/4 of NW 1/4, Section 16, Township 6 North, Range 8 East, Scott County, Mississippi.

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LAW OFFICES  
Thompson & Hollingsworth, P.A.  
116 East Second Street  
P. O. Drawer 119  
FOREST, MISSISSIPPI 39074  
601-469-3411  
Fax 601-469-3020

William C. Thompson  
1921 - 2009

Evan L. Thompson evan@t-h-law.com

Hez L. Hollingsworth hez@t-h-law.com

January 17, 2017

William J. Little, Jr., Esq.  
Lentz & Little, PA  
The Hewes Building  
2505 14<sup>th</sup> Street  
Suite 100  
Gulfport, MS 39501

RE: Robison Tire Company/Sistrunk Sales & Services, Inc.

Dear Bill:

Enclosed please find the original Lease which has been executed by James Sistrunk on behalf of Sistrunk Sales & Services, Inc.

Also, enclosed is a check in the amount of \$36,467.00 which represents payment of the lease fee and the first six months of the 2017 ad valorem taxes.

If you should have any questions or comments, please do not hesitate to contact me.

Sincerely,

THOMPSON & HOLLINGSWORTH, P. A.

*Evan L. Thompson*  
Evan L. Thompson

ELT/ksm

Enclosures



THOMPSON & HOLLINGSWORTH, P.A.

Robison Tire Company and

100

Check Number: 100

Check Date: Jan 17, 2017

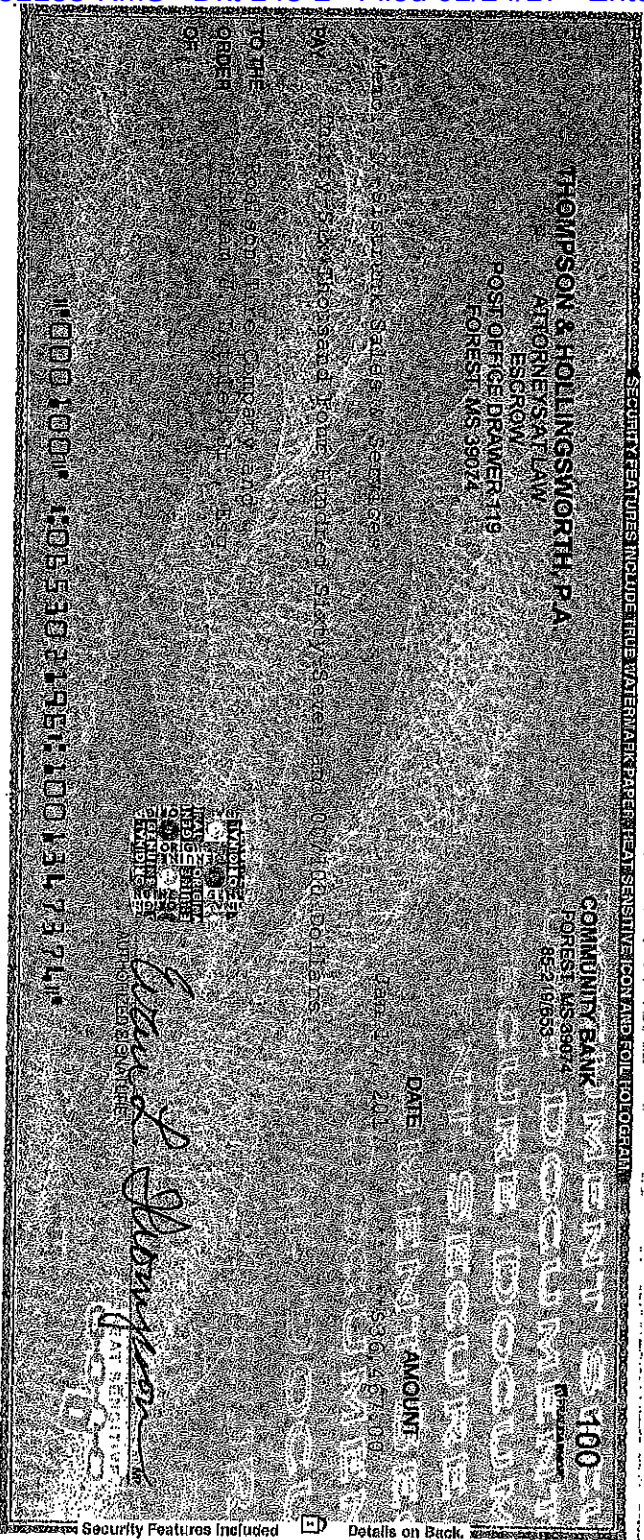
Check Amount: \$36,467.00

[illegible]

	Discount Taken	Amount Paid
1906		
Jan 1		
Feb 1		
Mar 1		
Apr 1		
May 1		
Jun 1		
Jul 1		
Aug 1		
Sep 1		
Oct 1		
Nov 1		
Dec 1		
Total		

Lease and tax payment - Sistrunk Sales &

35,467.00





## LEASE AGREEMENT AND OPTION TO PURCHASE

THIS LEASE AGREEMENT AND OPTION TO PURCHASE (the "Agreement") is effective as of the 1st day of December 2016 (the "Effective Date"), by and between Robison Tire Company, Inc., a Mississippi corporation, as both lessor and grantor of the option to purchase, hereinafter referred to as "Lessor," and Sistrunk Sales & Services, Inc., a Mississippi corporation, as both lessee and purchaser of the option, hereinafter referred to as "Lessee."

The Parties agree as follows:

1. **LEASED PREMISES.** In consideration of the mutual obligations of Lessor and Lessee set forth herein, Lessor leases to Lessee, and Lessee hereby takes from Lessor that certain tract or parcel of land, more particularly described on Exhibit A attached hereto and incorporated herein by reference, with all rights, privileges, easements, appurtenances, and amenities belonging to, or in any way pertaining to, the buildings and improvements located thereon (the "Premises"), to have and to hold, subject to the terms, covenants, and conditions in this Agreement. Lessee acknowledges that (i) it has inspected and accepts the Premises "AS IS," "WHERE IS," and "WITH ALL FAULTS;" (ii) the Premises is suitable for the purposes for which the Premises is leased and thereafter purchased; (iii) the Premises is in good and satisfactory condition; and (iv) the Premises shall be leased, and thereafter purchased, on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, and no representations as to the repair of the Premises, nor promises to alter, remodel, or improve the Premises have been made by Lessor.

2. **LEASE TERM.** The term of the lease set forth in this Agreement shall commence on the Effective Date and shall end (i) seven (7) months thereafter (the "Lease Term"), unless sooner terminated in accordance with the terms of this Agreement, or (ii) upon purchase of the Premises pursuant to the terms of this Agreement, whichever is sooner.

3. **LEASE FEE.** Lessee hereby promises to pay a one-time lease fee of \$33,500.00 (the "Lease Fee"), which shall be due and payable to Lessor on or before the Effective Date. The Lease Fee shall not be refundable under any circumstances, including upon exercise of the option granted herein. In addition to the Lease Fee, Lessee shall pay an additional 2,967.00 representing the first six months of the 2017 ad valorem taxes on the Premises.

4. **GRANT OF OPTION.** Lessor hereby agrees Lessee the option to purchase the Premises at or before the end of the Lease Term, and Lessor agrees to sell the Premises to Lessee upon receipt of written notice from Lessee, not less than thirty days in advance of Closing, of its exercise of the Option at a mutually agreeable Closing Date, which shall be not later than the end of the term. The total purchase price for the Premises shall be \$250,000.00 (the "Purchase Price"), which shall be in addition to and not inclusive of the Lease Fee. On the Closing Date, Lessee shall pay the Purchase Price to Lessor in immediately available funds. Lessee shall also be responsible for paying all closing costs associated with the

purchase, including the costs of title insurance, certificates of title, survey costs, appraisals, or the like. Consistent with the provisions of this Agreement requiring Lessee to pay all real property taxes, property taxes will not be pro-rated through the expiration of the term, provided, however, in the event closing occurs after the expiration of the term, such portion shall be pro-rated.

5. **UTILITIES AND REPAIRS.** Lessee shall connect in its own name and pay for all water, gas, heat, light, power, telephone, sewer, sprinkler charges and other utilities and services used on or at the Premises, and shall furnish all electric light bulbs, ballasts, and tubes. All telephone service for Lessee shall be connected at Lessee's cost and in a manner such that Lessee shall be separately and directly billed therefor. Lessor shall not be liable for any interruption or failure of any such utility service on or serving the Premises. Lessee shall maintain and repair all parts of the Premises and keep the Premises in the condition that exists on the Effective Date, normal wear and tear excepted, and provide for regular removal of Lessee's trash and debris and proper disposal thereof. Should Lessee fail to fulfill its maintenance and repair obligations described herein within a reasonable time, Lessor may perform Lessee's maintenance or repair obligations upon providing Lessee with advance written notice of its intention to do so. Lessee agrees that it will be responsible for timely reimbursing Lessor for the cost of performing such maintenance or repair obligations, any such reimbursement to be due and payable within five (5) days of receipt of an invoice from Lessor.

6. **ALTERATIONS.** Lessee shall not make any alterations, additions, or improvements to the Premises more than \$10,000.00 without the prior written consent of Lessor. Lessee, without any further approval from Lessor, may erect such shelves, bins, machinery, and trade fixtures as it desires, if (a) such items do not overload or damage the Premises; (b) such items may be removed without injury to the same; and (c) the construction, erection, or installation thereof complies with all applicable governmental laws, ordinances, and regulations. All shelves, bins, machinery, and trade fixtures installed by Lessee shall be removed on or before the earlier to occur of the date of termination of this Agreement or vacating of the Premises, at which time Lessee shall restore the Premises to its condition existing on the Effective Date, normal wear and tear excepted. All improvements shall be performed by a reputable construction company carrying adequate insurance and approved of in writing by Lessor, which approval shall not be unreasonably withheld, delayed, or conditioned. All alterations, installations, removals, and restoration shall be performed so as not to damage or alter the primary structure or structural qualities of the Premises and other improvements situated on the Premises.

7. **SIGNS.** Lessee is entitled to erect and use any signage related to its business for the Premises, and such usage shall not be subject to Lessor's prior written approval;

provided, however, such signage shall follow all orders, ordinances, regulations, and laws of any municipality and other governmental authorities that are applicable to the Premises.

**8. HAZARDOUS MATERIALS AND ENVIRONMENTAL CONDITION.**

Neither Lessee, nor any of Lessee's agents, contractors, employees, licensees or invitees shall at any time handle, use, manufacture, store or dispose of in or about the Premises any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance (collectively "Hazardous Materials") subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "Environmental Laws"). Lessee shall protect, defend, indemnify and hold Lessor harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of any actual or asserted failure of Lessee to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials, or by reason of any actual or asserted failure of Lessee to keep, observe, or perform any provision of this paragraph.

**9. INDEMNITY.** Lessor shall not be liable and Lessee hereby waives all claims against Lessor for any damage to any property or any injury to any person in or about the Premises by or from any cause whatsoever, except to the extent caused by or arising from the gross negligence or willful misconduct of Lessor or its agents, employees or contractors. Lessee shall protect, indemnify and hold Lessor harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of (a) any damage to any property or any injury to any person occurring in, on or about the Premises to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault, or omission by or of Lessee, its agents, servants, employees, invitees, or visitors to meet any standards imposed by any duty with respect to the injury or damage; (b) the conduct or management of any work or thing whatsoever done by the Lessee in or about the Premises or from transactions of the Lessee concerning the Premises; (c) Lessee's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Premises or its occupancy; or (d) any breach or default on the part of Lessee in the performance of any covenant or agreement on the part of the Lessee to be performed pursuant to this Lease. The provisions of this Article shall survive the termination.

**10. INSURANCE.** During the Lease Term, Lessee shall maintain fire / casualty / property insurance covering the buildings and improvements at the Premises in an amount

equal to one hundred percent (100%) of the "replacement cost" thereof (with replacement cost endorsement) on a special form (i.e., so-called "all risk") policy of property loss insurance, which shall designate Lessor as loss payee. At Lessor's election, Lessor may purchase the required property insurance for the Premises in its own name, in which case Lessee will promptly reimburse Lessor for the costs and expenses associated therewith. Lessee shall also maintain during the Lease Term a policy or policies of worker's compensation and commercial general liability insurance, including bodily injury, property damage, standard personal injury coverage, and contractual liability coverage, with limits of not less than \$500,000.00 combined single limit, per occurrence and per annum, for injury or death to persons or damage to property, plus an umbrella (excess) liability policy providing additional combined aggregate limits for bodily injury and property damage of \$1,000,000.00 per occurrence and no lesser per annum limits. Lessee's policy shall name Lessor and its successors and assigns as additional insureds. Lessee will not permit the Premises to be used for any purpose or in any manner that would void the insurance thereon.

11. **ASSIGNMENT OR SUBLEASE.** Lessee shall not assign this Agreement in whole or in part, nor sublease all or any part of the Premises without the prior written consent of the Lessor. No assignment of this Agreement or sublease of all or a part of the Premises shall operate to release Lessee of its obligations under this Agreement unless such release is agreed to by Lessor in writing.

12. **CONDEMNATION.** If at any time during the Lease Term, condemnation proceedings are commenced against all or any material portion of the Premises, the Lessor or Lessee shall have the right to terminate this Agreement upon ten (10) days written notice to the other party. Lessor shall be entitled to all of the condemnation proceeds.

13. **INSPECTION.** Lessor shall have the right to enter the Premises at reasonable times during normal working hours throughout the Lease Term for the following purposes: (i) inspecting the general condition and state of repair of the Premises; (ii) performing such maintenance or repair as Lessor may deem to be necessary, required, or desirable; (iii) taking any emergency action that Lessor deems necessary or desirable to protect the Premises; or (iv) for any other reasonable purposes.

14. **NONWAIVER OF TERMS.** The failure by Lessor or Lessee, whether once or more, to act upon a specific breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, nor of any subsequent breach of the same or any other term, covenant, or condition herein contained. No covenant, term, or condition of this Agreement shall be deemed to have been waived by Lessor unless such waiver be specifically expressed in writing by Lessor in writing by Lessor.



15. **AUTHORITY AND TITLE.** Lessor and Lessee represent and warrant to each other that each respective party has the right and authority to enter into this Agreement.

16. **GENERAL WARRANTIES AND REPRESENTATIONS.** Lessor represents and warrants to Lessee that (i) Lessor has received no written notices of, and to Lessor's knowledge there are not, any violations or noncompliance of applicable laws adversely affecting the use, operation, or occupancy of the Premises that have not previously been corrected or will not be corrected prior to the Effective Date; (ii) to Lessor's knowledge, there are no claims, causes of action, lawsuits, or other legal proceedings (pending or threatened) against Lessor, the Premises, or the structures on the Premises, which, if adjudicated against Lessor, may have a material adverse effect on Lessee's use of the Premises; and (iii) no person or entity (other than Lessee) shall have the right to use or occupy any portion of the Premises after the Effective Date.

17. **DISCLAIMER.** Lessor and Lessee expressly agree that there are and shall be no implied warranties of merchantability, habitability, fitness for a particular purpose, or any other kind arising out of this Agreement, and that all express or implied warranties in connection therewith are expressly disclaimed.

18. **COSTS OF ENFORCEMENT.** Lessee will pay, in addition to other sums agreed to be paid hereunder, all collection and court costs incurred by Lessor, and Lessor's reasonable attorneys' fees incurred for the collection of unpaid amounts under this Agreement or the enforcement, defense, or interpretation of Lessor's rights under this Agreement, whether such fees and costs be incurred out of court, at trial, on appeal, or in bankruptcy proceedings.

19. **SEVERABILITY.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the Lease Term, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added, as a part of this Agreement, a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

20. **ENTIRE AGREEMENT.** Except for any exhibits, attachments, plats, or other documents as may be affixed hereto, made a part hereof, and properly identified herein, this Agreement constitutes the entire contract between the parties with respect the lease of the Premises, and shall not be otherwise affected by any other purported undertaking, whether written or oral.

21. **COUNTERPARTS.** This Lease may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

22. **GOVERNING LAW.** This Lease is made in the State of Mississippi, and Mississippi law shall govern the construction, interpretation, and operation of all terms, provisions, and covenants contained herein.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Agreement on the dates set forth below, to be effective as of the Effective Date of this Agreement.

LESSOR:

ROBISON TIRE COMPANY, INC.

By: \_\_\_\_\_  
 Print: \_\_\_\_\_  
 Its: \_\_\_\_\_  
 Date: \_\_\_\_\_

LESSEE:

SISTRUNK SALES & SERVICES, INC.

By: James I. Sistrunk  
 Print: JAMES I. SISTRUNK  
 Its: President  
 Date: 1-10-17

EXHIBIT A

## Legal Description of the Premises

Commence at the Northeast corner of the NW 1/4, Section 16, Township 6 North, Range 8 East, thence run due West, 1334.36 feet; thence run due South, 1352.01 feet to a found iron pin on the South right-of-way of Highway 80 and the West line of the SE 1/4 of NW 1/4 of said Section 16; thence run North 88 degrees 40 minutes East, 500.00 feet along said right-of-way to chain-link fence corner; thence run North 89 degrees 47 minutes East, 60.00 feet to the Northeast corner of J & K Grocery Lot for the point of beginning; thence run South 00 degrees 35 minutes 30 seconds East, 100.00 feet; thence run South 89 degrees 47 minutes West, 60.00 feet to iron pin on fence; thence run South 00 degrees 36 minutes 30 seconds East, 342.45 feet along said fence to steel pin; thence run South 83 degrees 58 minutes East, 402.19 feet to chain-link fence corner; thence run North 00 degrees 38 minutes East, 378.60 feet along said fence to steel pin at fence corner; thence run South 87 degrees 56 minutes West 99.79 feet; thence run South 00 degrees 38 minutes West, 55.53 feet; thence run North 88 degrees 00 minutes West, 72.26 feet; thence run North 00 degrees 38 minutes East, 163.61 feet to the South right-of-way of Highway 80; thence run South 89 degrees 47 minutes West, 178.12 feet along said right-of-way to the point of beginning, said tract containing 3.66 acres and located in the SE 1/4 of NW 1/4, Section 16, Township 6 North, Range 8 East, Scott County, Mississippi.



