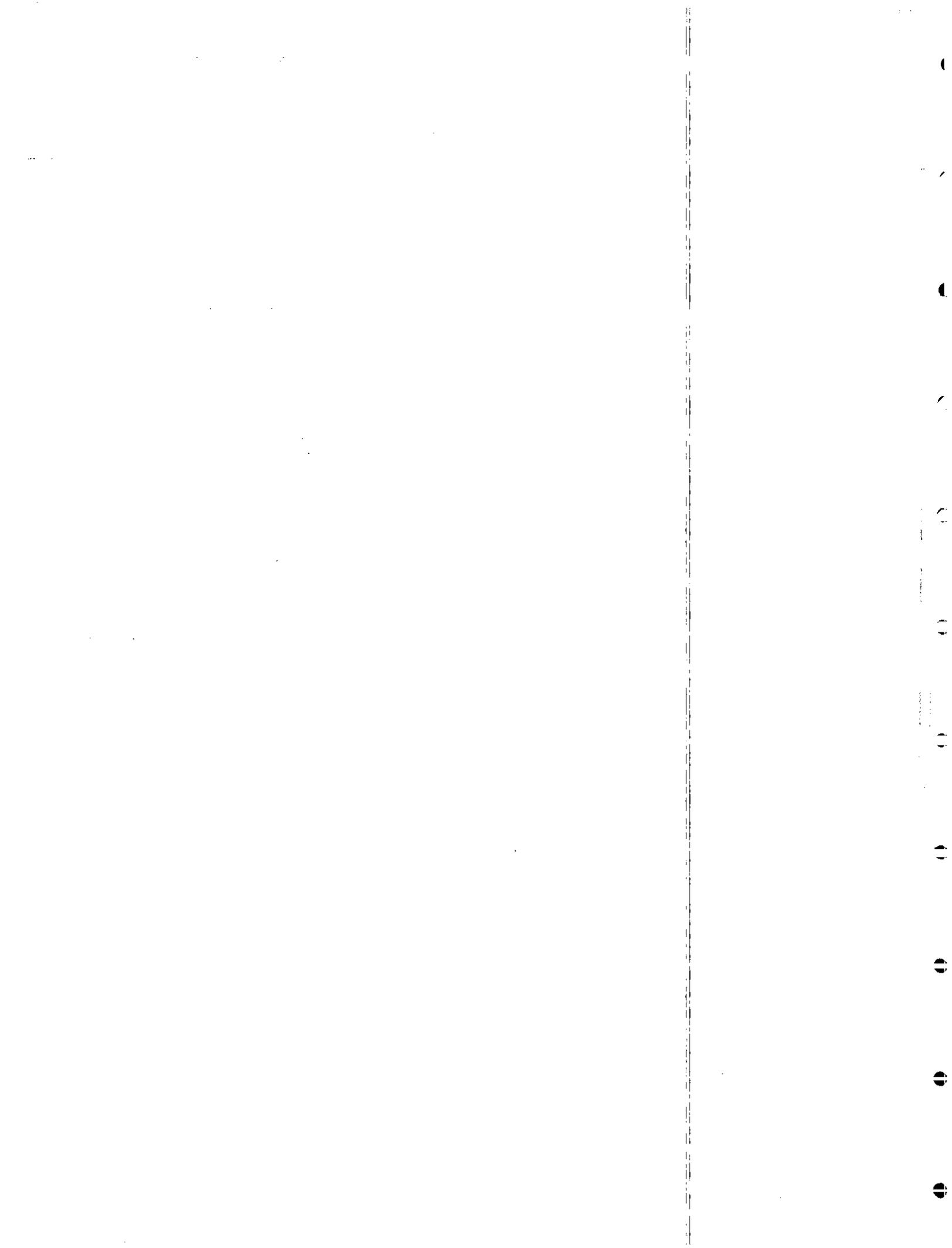


EXHIBIT "B"
BIG O TIRES, INC.
FRANCHISE AGREEMENT

(For Business Format Franchises)



**BIG O TIRES, INC.
FRANCHISE AGREEMENT**

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ANNEX A – Sumitomo Corporation of America Guaranty of Performance

- Schedule 1 - Premises and Trade Area
- Schedule 2 - Ownership Verification
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- Schedule 4 - Lease Rider and Modification
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- Schedule 8 - Farm Class Rider
- Schedule 9 – Royalty Matrix

BIG O TIRES, INC. FRANCHISE AGREEMENT

SUMMARY PAGES

These pages summarize the attached Franchise Agreement, the details of which shall control in the event of any conflict.

1. FRANCHISEE: _____
2. INITIAL FRANCHISE FEE: Amount Due: _____
-with Application: _____
-upon signing Agreement: _____
Total: _____
3. ROYALTY FEE _____% until December 31, 20___; after that, based on **Schedule 9** (subject to potential periodic reductions)
4. LOCAL ADVERTISING CONTRIBUTION: Minimum of four percent (4%) of Gross Sales, subject to (a) an annual per Store maximum of 4% of the greater of \$_____ or twice Big O's system-wide average Store gross sales for the prior calendar year, and (b) other potential periodic reductions
5. NATIONAL MARKETING CONTRIBUTION: See **Sections 15 and 25**
6. GRAND OPENING ADVERTISING REQUIREMENT: _____
7. STORE LOCATION:
Street and Number _____
City, State and Zip Code _____
Phone Number _____
8. Franchisee's Operator: _____
9. Franchisee's Manager: _____
10. Franchisee's Agent for Service of Process:
Name: _____
Address: _____

11. Big O's Agent for Service of Process:
Name: CT Corporation
Address: 1675 Broadway, Suite 1200
Denver, Colorado 80290
12. Effective Date: _____
13. Commencement Date: _____
14. Expiration Date: _____

15. Franchisee's Advisor: _____

16. Send Notices to Big O to:

Name: General Counsel
Address: Big O Tires, Inc.
12650 E. Briarwood Avenue, Suite 2-D
Centennial, Colorado 80112

17. Send Notices to Franchisee to the Store at:

Name: _____
Address: _____

With a copy to:

Name: _____
Address: _____

18. Business not subject to **Section 17.01**

Name: _____
Address: _____

19. Farm Class Franchise:

Yes: _____

No: _____

**BIG O TIRES, INC.
FRANCHISE AGREEMENT**

This Franchise Agreement ("Agreement") is made by and between Big O Tires, Inc. ("Big O"), a Nevada corporation, with its principal place of business at 12650 E. Briarwood Avenue, Suite 2-D, Centennial, Colorado 80112, and _____ ("Franchisee"), a(n) _____ with a place of business at _____, with reference to the following facts.

RECITALS

A. Big O has developed and provides franchisees with access to Products and Services and a System for marketing and servicing such Products and Services to retail customers through Big O Stores. Since its inception, Big O has added to the Product and Services and System to enhance the competitive posture of its franchisees. Big O has developed and owns certain Licensed Marks which are licensed to franchisees for use in the Big O Stores.

B. Franchisee desires, upon the terms and conditions set forth herein, to obtain a license to operate a Franchised Business and to offer and sell Big O Products and Services. Franchisee acknowledges that it is essential to the preservation of the integrity of the Licensed Marks, and the goodwill of Big O and the Big O System, that Franchisee maintain and adhere to certain standards, procedures and policies described hereinafter and in the Manual.

C. Big O is willing, upon the terms and conditions set forth herein, to license Franchisee to operate a Franchised Business which will utilize the Licensed Marks and the Big O System.

NOW THEREFORE, in consideration of the promises and the mutual provisions herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. CERTAIN DEFINITIONS

Some words will from time to time be defined in other Sections of this Agreement. However, the following capitalized words shall have the following meanings when used in this Agreement:

Acquisition Costs – Big O's wholesale invoice price to acquire Big O Program Products, less credits directly associated with Big O Program Products purchases, such as volume bonuses, quarterly sales allowances, freight allowances, partner and/or supplier bonuses, and advertising allowances, but excluding credits associated with or designated by the manufacturers as representing marketing and coop reimbursements. From time to time in its sole discretion, Big O may try to limit the percentage margin (gross profit divided by gross sales) realized by Big O Affiliates on sales of Big O Program Products to Big O for resale to Franchisee so that such percentage margin does not exceed a percentage margin established by Big O in its sole discretion after consultation with individual franchisees.

Advertising - All advertising, promotional materials and programs, public relations programs and marketing programs, publications, research, programs or activities to promote the Big O System and/or the Licensed Marks and other activities, which are approved or administered by Big O or by Franchisee, or which utilize the resources of the National Marketing Program or local franchisee cooperatives or franchisee associations or which pertain to the Big O Store, the Big O System or the Licensed Marks generally.

Affiliate – Includes each Entity, which directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Big O or Franchisee, as applicable. Without limiting the foregoing, the term "Affiliate" when used herein in connection with Franchisee includes any Entity more than fifty percent (50%) of whose Equity or voting control, is held by person(s) or Entities who, jointly, or severally, hold more than fifty percent (50%) of the Equity or voting control of Franchisee.

Agreement - This Agreement, the Summary Pages and all Riders and Schedules hereto.

Big O - Big O Tires, Inc.

Big O Brand Tires – Tires carrying the "Big O" label, as well as the Prestige, Pathmax and Fulda brands and any other brand(s) Big O subsequently includes in its Big O Brand Tires as part of its marketing programs.

Big O Business Format Units – Big O Stores subject to franchise agreements or amendments to franchise agreements providing for royalties based on the Royalty Matrix (or a substantially similar royalty matrix), regardless of whether such Royalty Matrix may not apply during certain time periods (particularly at the beginning of the term) and regardless of whether there may be exceptions to the applicability of the Royalty Matrix from time to time.

Big O Program Products – Big O Brand Tires, any wheels carrying the Big O label, and any other items designated by Big O from time to time in its discretion. Big O Program Products shall not include (i) any other products offered or sold by Big O or any of its Affiliates to Franchisee, (ii) equipment or other services offered or sold by Big O or any of its Affiliates to Franchisee for resale to the public, or (iii) wearables, advertising materials and other products of any kind sold by O Advertising, Inc. to Franchisee.

Big O Program Products Price – an amount not greater than the total (on a pro rata basis) of (i) the Acquisition Costs; (ii) the Mold Costs, if applicable; (iii) all actual and accrued Warranty Costs; (iv) all Distribution Costs on a Big O national basis and (v) the amount of any Rebill Cost Percentage applied to Rebill Tires.

Big O Program Products Warranty – The Big O warranty program relating to Big O Program Products set forth in the Manual, or such other warranty programs relating to Big O Program Products as established by Big O from time to time.

Big O Store or Store - A retail store operated under the Licensed Marks and pursuant to the Big O System.

Big O System or System - The plan and system developed by Big O relating to the complete operation of Stores which are authorized to sell Products and Services, which include some or all of the following: site selection as required, site approval, Store layout and design, product selection and display, purchasing and inventory control methods, accounting methods, merchandising, advertising, sales and promotional ideas, franchisee training, personnel training, and other matters relating to the efficient operation and supervision of Stores and the maintenance of uniform standards of retail merchandising.

Blue Book - See the definition of "Manual".

Change in Control - The Transfer of fifty percent (50%) or more of the (i) voting or Equity interests in Franchisee, (ii) the Franchised Business, or (iii) the assets used in the Franchised Business. Change of Control also includes Franchisee's loss of the exclusive right to occupy the Premises.

Commencement Date - The date upon which the Store opens for business or, in the event of transfer or Conversion, the date designated by Big O.

Conversion – The conversion by a Converter of an independent retail tire store to a Big O Store pursuant to this Agreement.

Converter - A person who converts an independent retail tire store to a Big O Store pursuant to this Agreement, regardless of whether such person previously operated such independent retail tire store or recently purchased the assets or business of each store.

Distribution Costs – any and all costs associated with the distribution (handling, warehousing, distribution) of Big O Program Products, including without limitation all costs from the time Big O Program Products are delivered to Big O's warehouse facilities until they are delivered to Franchisee, and specifically including without limitation all warehouse operating costs, all costs associated with employees involved in the distribution of Big O Program Products by Big O to Franchisee, together with any inventory losses and the costs of the audits to be conducted in accordance with Section 14.06 of the Franchise Agreement.

Due Date - The seventeenth (17th) day of each month; the date by which all royalty fees and advertising and marketing contributions must be received by Big O or, where applicable, Franchisee's Local Group, as designated by Big O.

Effective Date - The date upon which the Franchise Agreement has been executed in full by both the Franchisee and Big O.

Entity – Any limited liability company or partnership, general or limited, each of which shall be referred to as a "Partnership", and any trust, association, corporation or other entity, which is not an individual.

Equity – Stock; membership interests; partnership interests; or other equity ownership interests in a Franchisee which is an Entity.

Expiration Date - The date on which the initial term of the Agreement expires.

First Option - Franchisee's right to acquire a franchise for a new Store planned for development within a five (5) mile radius of Franchisee's Premises in the manner described in **Section 3** of this Agreement.

Franchise - The rights granted by this Agreement, subject to the terms and conditions set forth in the Agreement.

Franchise Advisory Council - The group of franchisee representatives elected from each Local Group which meets periodically with Big O's management to provide input to Big O's strategic plans as may be presented from time to time by Big O and to present viewpoints on issues involving the franchise relationship. The functions of the Franchise Advisory Council are described in **Section 25** of this Agreement.

Franchised Business - The business of operating a Big O Store pursuant to this license granted by Big O which utilizes the Licensed Marks and the Big O System.

Franchisee - The individual(s), or Entity to which the Franchise is granted. Depending on the context of this Agreement, the term Franchisee may include the Owners or guarantors of an Entity Franchisee.

Grand Opening Advertising - Advertising conducted within the first 120 days following the Commencement Date to promote the opening of the Store.

Gross Sales - The aggregate gross amount of all revenues from whatever source derived whether in form of cash, credit, agreements to pay or other consideration including the actual retail value of any goods or services traded, bartered, or otherwise received by Franchisee (whether or not payment is received at the time of sale or any such amount is proved uncollectible) from or derived by Franchisee or any other person from business conducted or which originated in, on, from or through the Premises, whether such business is conducted in compliance with or in violation of the terms of the Franchise Agreement. Gross Sales includes sums paid for claims made on business interruption insurance policies, Federal Excise Taxes collected, as well as payments received from employees of Franchisee for products purchased at a discounted price. However, Gross Sales does not include: (i) sales or use taxes collected by Franchisee and paid to the appropriate governmental taxing authority; (ii) the amount of any refunds or allowances made on Products and Services returned by customers; (iii) sums received on account of returns to shippers, vendors and manufacturers; (iv) proceeds derived from the sale of equipment or supplies used by Franchisee in the operation of the Store and not acquired for resale; (v) sums received on account of sales of Products and Services to other Big O Stores; (vi) tire disposal fees to the extent the fees charged do not exceed the highest fee recommended by any applicable governmental agency; and (vii) sums received in settlement of claims for loss or damage to fixtures, equipment or leasehold improvements, other than sums received from business interruption insurance.

Information - The contents of the Manual or any other manual, computer software, materials, goods, training module and any other proprietary information and information created or used by Big O designated for confidential use within the Big O System, the information contained therein and passwords or other means of access to any other of the foregoing.

Licensed Marks – The trademarks and trade names, service marks and associated logos and symbols which Big O may from time to time authorize or direct Franchisee to use and display in connection with the operation and promotion of the Franchised Business licensed hereunder, including, but not limited to, those enumerated on **Schedule 6**, attached hereto.

Local Fund - The fund, which may be an account at a bank or other financial institution or a trust fund, corporation or other Entity, derived from contributions by Big O franchisees which shall be maintained by Big O or a Local Group for Advertising or related expenditures pursuant to such guidelines as Big O may approve or prescribe.

Local Group - A cooperative, association or other entity of Big O franchisees formed and operating in their marketing area pursuant to a structure approved or prescribed by Big O for the purpose of promoting Big O Stores and their Products and Services, and providing Management Systems and related services to its members to the extent approved by Big O.

Management Systems - Computer hardware, software, cash registers, communication, bookkeeping and accounting services or systems, point-of-sale systems and inventory control systems, and other systems designed to provide

information for the management of Big O Stores, communication with Big O and others, training and for other purposes determined by Big O.

Manager - An individual who is responsible for the day-to-day operation of a Store. This individual could be the Operator or could be a different person.

Manual - The various written, electronic, audio and video instructions and manuals, including amendments thereto relating to the operation of the Franchised Business which are provided to Franchisee by Big O and identified as such, including but not limited to **A Blueprint For Success**, also known as the "Blue Book", Big O's Franchise Compliance and Procedures Manual (which is likely to be retired in 2006), Big O's Steps for Success, Big O's Franchise Policies & Standards Manual - Best Practices, any training tapes, guides and any training module or any other proprietary information and other materials stating Big O's standards, policies, procedures, technical bulletins or other information.

Mold Costs - all costs associated with depreciating molds acquired by Big O for the purpose of allowing manufacturers to manufacture private label tires.

Multi-Unit Development Agreement - An agreement between Big O and a person or Entity pursuant to which the person or Entity ("Multi-Unit Developer") agrees to open and to continue to operate an agreed number of Big O Stores pursuant to a development schedule and within a defined territory. Multi-Unit Developers must execute Franchise Agreements prior to commencing business at any Store developed pursuant to a Multi-Unit Development Agreement.

National Marketing Program - The Advertising program described in and conducted in accordance with **Section 15.02**.

Operator - The individual who shall be responsible for the operation of the Franchised Business. The Operator may be the Franchisee if the Franchisee is an individual.

Option - Big O's right to purchase the interest being offered by the Franchisee and/or any Owner in the event of certain proposed Transfers, pursuant to **Section 18.04(a)(iii)**.

Owner - Any partner, limited partner, member, shareholder, individual or sole proprietor, trustee, or any other person possessing a legal or beneficial interest or holding Equity of any kind or nature in a Franchisee which is an Entity or sole proprietorship.

Pioneer - A person or Entity who owned at least twenty-five percent (25%) Equity interest in a Big O franchisee on March 1, 1987, provided such Equity interest appeared on Big O's records as of July 1, 1987.

Premises - The site from which a Franchised Business will be operated at the Store Location described on the Summary Pages, or where applicable, on **Schedule 1** to the Franchise Agreement.

Products and Services - All tires (including but not limited to Big O Brand Tires), products and services produced, organized or distributed under a license granted by Big O, which are now or hereafter approved or designated by Big O for sale or lease in Stores. When used separately, "Products" means the products and "Services" means the services that, in each case, are included within the definition of Products and Services.

Rebill Tires - Those tires sold by Big O to Franchisee under Big O's rebill program, which allows Franchisee to purchase tires directly from the manufacturer or distributor, with the manufacturer or distributor invoicing Big O for such tires and Big O invoicing Franchisee, including the Rebill Cost Percentage.

Rebill Cost Percentage - Four percent (4%) of the Acquisition Cost of any Rebill Tires acquired by Franchisee or such other amount as Franchisee and Big O may agree to from time to time.

Retail Accounting Center - A cooperative, association, or other entity owned by Big O, Franchisees or third parties, or an operation that is part of Big O, which provides accounting, payroll and related services for the purpose of providing such services at a reasonable cost and providing the financial reporting Big O requires.

Royalty Matrix - The matrix attached as **Schedule 9** to this Agreement that is used as the basis for calculating the royalty rate under **Section 8.02** of this Agreement. The Royalty Matrix is subject to change by Big O from time to time in its sole discretion, provided that the royalty rate may not exceed the maximum royalty rate set forth in **Schedule 9**.

Royalty Reductions - Any reductions or modifications of the royalty rate set forth in **Section 8.02** of this Agreement from the royalty rate calculated pursuant to the Royalty Matrix. Such Royalty Reductions may be established by agreement between Big O and Franchisee or by policies as determined by Big O from time to time in its sole discretion.

Successor Franchise Agreement - A new franchise agreement executed by the parties hereto granting a Franchisee the right to operate the Franchised Business licensed hereunder following the expiration of the initial term of this Agreement.

Summary Pages - The pages of this Agreement, beginning on Page v and ending on Page vi, that summarize stipulated provisions of this Agreement.

Survivor - A surviving spouse, heir(s) or representative(s) of the estate of any Franchisee who is an individual, or any deceased person owning Equity in a Franchisee which is an Entity.

Termination Date - The date upon which this Agreement is canceled or ended by Big O or the Franchisee in accordance with the terms of this Agreement.

Trade Area - The area described on **Schedule 1** to this Agreement within which, subject to certain conditions, Big O agrees to limit the number of Stores to one (1) for every fifty thousand (50,000) persons residing therein. (See also **Section 2.02.**) Big O may, from time to time, redefine Franchisee's Trade Area.

Trade Dress - Any shop or architectural designs, fixtures, improvements, signs, color schemes or other elements of the appearance of the Store which in any manner suggest affiliation of the Store or Premises with Big O, or the System.

Transfer - To give away, sell, assign, pledge, lease, sublease, devise, license, sublicense, or otherwise transfer, either directly or by operation of law or in any other manner: this Agreement, any of Franchisee's rights or obligations hereunder, any interest or Equity in Franchisee, Franchisee's exclusive right to occupy the Premises or a substantial portion of Franchisee's assets used in the Franchised Business. In the case of a Franchisee which is an Entity, any merger, reorganization, recapitalization or consolidation involving Franchisee or the issuance of additional securities representing Equity in Franchisee, shall also be deemed to be a "Transfer" for purposes of this Agreement.

Warranty Costs - All costs incurred by Big O associated with Big O providing the Big O Program Products Warranty on the Big O Program Products, including, but not limited to, costs associated with providing warranty reserves in accordance with generally accepted accounting principles and Big O's accounting practices.

2. GRANT OF FRANCHISE

2.01. Grant of Franchise. Subject to all of the terms and conditions herein, including but not limited to, the condition that Franchisee or its Owners or some of them, personally guarantee the obligations of Franchisee to Big O under this Agreement as set forth in **Schedule 3** to this Agreement, Big O grants to Franchisee the non-exclusive and non-divisible license to use the Licensed Marks and the exclusive right to operate a Franchised Business solely at the Premises set forth in **Schedule 1** to this Agreement (the "Franchise"). If, at the time of execution of this Agreement, the Premises cannot be designated as a specific address because a location has not been selected by Franchisee and approved by Big O, then Franchisee shall promptly take steps to choose and acquire a location for its Big O Store within the following city, county or other geographical area: _____ ("Designated Area"). In such circumstances, Franchisee shall select and submit to Big O for approval a specific location for the Premises, which shall hereinafter be set forth in **Schedule 1**. Franchisee may not change the Store Location, except with Big O's prior written consent, which Big O may grant or withhold in its sole discretion. Regardless of whether the Franchisee changes its Store Location, it will remain obligated for all liabilities and obligations arising out of or in connection with any prior locations.

2.02 Trade Area. During the term of this Agreement, Big O agrees not to operate itself or grant to any other person the right to operate any more than one (1) Store for every fifty thousand (50,000) persons residing in the Trade Area described on **Schedule 1**. Generally, **Schedule 1** will define Trade Areas in metropolitan areas as the Metropolitan Statistical Area ("MSA"). For Franchised Businesses located in more rural areas, the Trade Area may be defined within the boundaries of a county line. Big O may, from time to time, redefine the Trade Area. Absent Franchisee's prior approval, Big O shall not permit the establishment or operation of another Store within a two (2) mile radius (as determined by Big O in its reasonable discretion) of Franchisee's Store. After the Franchisee gives approval to another Store within the two mile radius, such approval is irrevocable and remains in effect for such Store

location, regardless of any change of ownership, Transfer, closing and re-opening or other changes regarding such Store location.

2.03 Acceptance of Franchise. Franchisee hereby accepts the Franchise, subject to the terms and conditions herein. Franchisee represents and warrants that it has the authority to enter into this Agreement and to be bound hereby, and that entering into this Agreement will not trigger an event of default or result in a breach of any term or condition of any other agreement or contractual relationship of the Franchisee, including, but not limited to, any agreements Franchisee has with its third party lenders.

3. FIRST OPTION RIGHTS

3.01. First Option Rights. Subject to the conditions described below, if Big O or any prospective Big O franchisee should propose to open a Store within a five (5) mile radius of Franchisee's Store (determined by Big O in its reasonable discretion as a radius of five (5) miles from the geographic center of Franchisee's Store), Franchisee shall be notified of its First Option to acquire a Franchise for an additional Store within the five (5) mile radius of its Store. Franchisee may exercise the First Option only if:

- (a) at the time Big O notifies Franchisee of the proposal for the new Store, Franchisee is in compliance with all the terms of this Agreement, as determined solely by Big O;
- (b) Franchisee meets Big O's then current criteria for new franchisees;
- (c) There are not two (2) or more Big O franchisees with Stores within a five (5) mile radius of the site of a proposed new Store, except in accordance with Section 3.03 below; and
- (d) All Stores owned or operated by Franchisee or any Affiliate of Franchisee are Big O Business Format Units or have signed agreements to become Big O Business Format Units.

3.02. Notification by Big O. When notifying Franchisee of a proposal to establish a new Store in accordance with Franchisee's First Option, Big O may notify Franchisee of the proposal to establish the new Store within the general vicinity of Franchisee's Store without identifying a specific site or sites.

3.03. Multiple First Option Rights. If two (2) or more Big O franchisees have Stores within a five (5) mile radius of the site of a proposed new Store, the Franchisee and all such franchisees will be invited simultaneously by written notice from Big O to exercise their First Option rights; but if two (2) or more such franchisees apply for the same franchise, it shall be awarded to the qualified franchisee which has a Store that is closest to the site of the proposed new Store or, if two qualified franchisees have Stores that are equidistant from such site, it shall be awarded to the qualified franchisee which owns the franchised Big O Store which was first licensed as a Big O Store by the current or a previous owner.

3.04. Notification of Qualification. If Franchisee qualifies for the First Option pursuant to this Section 3, Big O will provide Franchisee with written notice that it has thirty (30) days within which to submit an application for the franchise in the manner prescribed by Big O in the notice. Franchisee must submit the application within the prescribed time along with the standard franchise deposit then required by Big O. Upon approval of the application by Big O, Franchisee must execute Big O's then current standard Franchise Agreement. Franchisee shall pay the remainder of any initial fee due upon the earlier of: (a) date it signs the new Franchise Agreement, and (b) one-hundred twenty (120) days from the deadline for submitting the application for the new franchise.

3.05. Exercise of Option by Franchisee. If Franchisee is an Entity, the First Option may be exercised only by the Entity itself, or by the individual designated as First Option holder on the Summary Pages.

3.06. Transfer of First Option Rights. The First Option is not transferable without Big O's prior written approval, which may be withheld for any reason, in Big O's sole discretion. Notwithstanding the foregoing, Big O's discretionary approval process will be in accordance with its established procedures.

3.07. Limitation on First Option Rights. The First Option rights described above are void and unenforceable with respect to:

- (a) a site proposed for development in an area which is at the time of the proposal subject to a Development Agreement between Big O and Multi-Unit Developer; and
- (b) a Conversion.

3.08. Expiration of First Option Rights. If a Franchisee has failed to qualify for or otherwise submit an application for a Franchise pursuant to this **Section 3** for a proposed franchise to be granted within the area in which Franchisee holds First Option rights, Franchisee's First Option rights for that proposed franchise shall lapse regardless of whether the site actually selected for development by Big O is different from the site which was initially proposed for development.

4. TERM

4.01. Term. This Agreement shall take effect upon the earlier of the Effective Date or of the Commencement Date and, unless previously terminated pursuant to **Section 19** hereof, its term shall extend until the earlier of the tenth anniversary of the Commencement Date or such other Expiration Date as is stated on the Summary Pages.

5. RENEWAL: EXTENSION OF FRANCHISE RIGHTS

5.01. Grant of Successor Franchise Rights. If Franchisee is not in default under this Agreement and has complied with all of its provisions during the initial term, and has complied in all material respects with all of the provisions of this Agreement and the Franchise Compliance and Procedures Manual, upon its expiration Big O will offer a Successor Franchise Agreement with Franchisee, provided the parties mutually agree to the terms of a Successor Franchise Agreement at least one hundred eighty (180) days before the Expiration Date.

5.02. Conditions to Grant of Successor Franchise. Big O will only offer to execute a Successor Franchise Agreement with Franchisee in accordance with its then current terms and conditions for granting successor franchises, which may include any or all of the following:

- (a) That Franchisee executes a Successor Franchise Agreement on the then current form being offered to franchisees in the State in which the Big O Store is located, which may include, among other matters, a different fee structure, increased fees, a modified Trade Area and different purchase requirements;
- (b) That Franchisee must agree to refurbish the Premises or relocate the Premises to conform to Big O's then current standards for similar Stores;
- (c) That Franchisee shall pay Big O's renewal administration fee equal to Big O's time to process the renewal multiplied by Big O's hourly rate (as set by Big O from time to time);
- (d) That Franchisee, and its Owners shall execute a general release in favor of Big O and its representatives on a form prescribed by Big O, of any and all known and unknown claims against Big O and its Affiliates and their officers, directors, agents, Owners and employees;
- (e) That at the time Franchisee delivers its renewal notice to Big O and at all times thereafter until the commencement of the renewal term, Franchisee shall have fully performed all of its material obligations under this Agreement, the Manuals and all other agreements then in effect between Franchisee and Big O (or its Affiliates);
- (f) Without limiting the generality of **Section 5.01**, Franchisee shall not have committed three (3) or more material breaches of this Agreement during any twelve (12) month period during the Term of this Agreement for which Big O shall have delivered notices of default, whether or not such defaults were cured; and
- (g) Franchisee shall have in all material respects maintained its status as a Franchisee in good standing (e.g., achieving at least minimum scores on inspections, and have substantially complied with all material obligations of the Big O System throughout the Term).

5.03. Notification of Non-Renewal. If Big O is willing to execute a new franchise agreement with Franchisee, at least one (1) year before the Expiration Date, Big O shall notify Franchisee of the Expiration Date and the terms and conditions upon which Big O is willing to execute a new franchise agreement with Franchisee. Franchisee must execute a Successor Franchise Agreement within sixty (60) days of its receipt. The Franchise Agreement will expire on the Expiration Date and the franchise relationship will terminate unless Franchisee and Big O have executed a Successor Franchise Agreement at least one hundred eighty (180) days prior to the Expiration Date, and Franchisee has satisfied all other terms and conditions agreed upon as a prerequisite to renewal. If Big O intends not to offer Franchisee a Successor Franchise Agreement, Big O shall give Franchisee at least one hundred eighty (180) days notice of nonrenewal prior to the Expiration Date. If Big O has not given Franchisee at least one

hundred eighty (180) days notice of nonrenewal prior to the Expiration Date, the term of this Agreement will automatically be extended by the amount of time necessary to give Franchisee one hundred eighty (180) days notice of nonrenewal.

6. FRANCHISEE'S DEVELOPMENT OBLIGATIONS

6.01. Financing Approval. Unless otherwise agreed to by Big O, Franchisee shall obtain a letter of commitment for the provision of financing through a lender approved by Big O and with minimum credit terms, also approved by Big O, no later than one hundred twenty (120) days from the Effective Date of this Agreement.

6.02. Site Selection. Franchisee shall obtain the written approval of Big O of the site for the Store within one hundred twenty (120) days from the Effective Date of this Agreement. Franchisee shall propose sites for approval by Big O on forms and in the manner designated from time to time by Big O. A proposed site shall only be submitted to Big O for approval after Franchisee has evaluated the site and determined that it meets Big O's then current criteria for sites which Big O shall have communicated to Franchisee. Franchisee shall be responsible for obtaining Big O's then current site criteria prior to submitting a site approval application. Big O shall review the site approval application and within thirty (30) days of Big O's receipt thereof, Big O shall approve or reject the proposed site. Unless otherwise agreed to in writing by Big O, final site approval will be conditioned upon Big O's receipt of evidence of Franchisee's ownership, lease or control of the property in such form as Big O, in its sole discretion shall deem to be acceptable, including, without limitation, a deed to the property, an executed contract to purchase the property, a lease with a duration of not less than ten (10) years, or an option to purchase the property. Big O may, at its sole discretion, require that the Franchisee negotiate with its landlord the right, but not the obligation, for Big O to cure any Franchisee breaches and/or the right for Big O to assume the franchisee's lease obligations. Franchisee acknowledges and agrees that Big O's approval of a site or provision of criteria regarding the site do not constitute a representation or warranty of any kind, express or implied, as to the suitability of the site for a Big O Store or for any other purpose. Big O's approval of the site indicates only that Big O believes that a site falls within the acceptable criteria established by Big O as of that time. In the case of a Converter, Big O shall deem execution of this Agreement approval of the Store location, unless additional obligations to convert or upgrade the premises are described in **Schedule 7** to this Agreement.

6.03. Real Estate Improvements, Equipment and Signage. Franchisee agrees to construct all improvements to the Premises and the Store in compliance with plans and specifications approved by Big O. Franchisee agrees to purchase, lease or otherwise use in the establishment and operation of the Big O Store only those fixtures, equipment, signs and hardware and/or software that Big O has approved as meeting its specifications and standards for quality, design, appearance, function and performance. Franchisee shall purchase or lease approved brands, types or models of fixtures, equipment, and signs only from suppliers designated or approved by Big O. Franchisee agrees to place or display at the Premises only such signs, logos and display materials that Big O approves from time to time.

6.04. Conditions to Opening. Franchisee agrees, at its sole expense, to do or cause to be done the following prior to opening the Big O Store for business: (i) secure all required financing; (ii) obtain all required permits and licenses; (iii) construct all required improvements and decorate the Store in compliance with approved plans and specifications approved by Big O pursuant to **Section 7.01(b)** below; (iv) purchase (or lease) and install all fixtures, equipment and signs required by Big O for the Big O Store; (v) purchase an opening inventory of tires and supplies in accordance with **Section 14.01 and 14.02**; (vi) provide Big O with copies of all required insurance policies, or such other evidence of coverage and payment as Big O requests; and (vii) provide Big O with any other documents as may be reasonably required by Big O, including but not limited to financing statements.

6.05. Commencement of Business. Franchisee agrees to open the Big O Store for business within fourteen (14) days after Big O notifies Franchisee that the conditions set forth in this **Section 6** have been satisfied. Unless otherwise agreed in writing by Big O and Franchisee, Franchisee has sixteen (16) months from the Effective Date of this Agreement within which to have its Big O Store opened and operating ("Development Period"). Big O will extend the Development Period for a reasonable period of time in the event that factors beyond Franchisee's reasonable control prevent Franchisee from meeting this Development Period, so long as Franchisee has made reasonable and continuing effort to comply with such development obligations and Franchisee requests, in writing, an extension of time in which to have its Big O Store open and operating before the Development Period lapses.

7. PRE-OPENING AND ONGOING ASSISTANCE

7.01. Pre-Opening Assistance. Prior to Franchisee's Commencement Date, Big O shall provide Franchisee with such of the following and on the same basis as it will from time to time provide to similarly situated franchisees of Big O:

(a) Assistance to Franchisee related to approval of a site for the Store, although Franchisee acknowledges that Big O shall have no obligation to select or acquire a site on behalf of Franchisee. Big O's assistance will consist of providing criteria for a satisfactory site, an on-site inspection and determination of whether a proposed site fulfills the requisite criteria, prior to formal approval of a site selected by Franchisee. At Big O's option, Big O may, without fee or expense to Franchisee, review the proposed Store lease. The final decision about whether to acquire a given approved site or whether to execute any particular lease shall be the sole decision of Franchisee. Big O disclaims all liability for the consequences of approving a given site. Big O's participation in site selection in no way is meant to constitute a warranty or guaranty that the Franchised Business will be profitable or otherwise successful. Big O's written approval of the Premises and Store must be obtained by Franchisee before the Store may be opened or relocated. Big O may condition its approval of a Store lease upon Franchisee's execution of a conditional lease assignment in a form, which is the same as, or similar to the one found on **Schedule 4**.

(b) A prototype floor plan, elevation and equipment layout for the Store. Big O may charge Franchisee its costs (as reasonably determined by Big O) of these. The plans must be modified by Franchisee's architect or contractor to adapt them to conditions at the Premises and to satisfy all local code requirements. Revisions or modifications to the plans must be approved by Big O. Big O's approval of the revisions or modifications to the plans will not be unreasonably withheld.

(c) Training for one person in the operation of the Franchised Business ("Initial Training Program"). This Initial Training Program consists of a number of weeks of training at one or more locations designated by Big O ("headquarters training") and of a number of weeks of field training and certification by an existing franchisee designated by Big O at one or more of this existing franchisee's Big O Stores. The number of weeks of such Initial Training Program shall be as specified by Big O from time to time in its discretion. Unless Big O waives the training requirement, the Manager of the Franchisee's Store or Franchisee's Operator and such other managerial personnel as are designated by Big O must attend and successfully complete the Initial Training Program. Franchisee shall pay the training fees charged by Big O from time to time and shall pay for its own employee costs (such as salaries and wages, benefits and uniforms), transportation, lodging, and living expenses which are incurred while attending any Big O training program, except that the training fee and the costs of lodging approved by Big O for the first person to attend the headquarters training portion of the Initial Training Program and the training fee for that same first person to attend the field training portion of the Initial Training Program are included in the initial franchise fee required by **Section 8.01** below. In the event that, in Big O's sole discretion, Franchisee's Operator fails to successfully complete the Initial Training Program, Big O may, in its sole discretion, require Franchisee's Operator to attend and successfully complete another training program at Franchisee's cost or terminate this Agreement and, upon receipt from Franchisee of a general release in a form approved by Big O, refund a portion of the initial franchise fee paid by Franchisee equal to the entire initial fee less any amounts necessary to reimburse Big O for the costs it incurred in approving Franchisee and in training Franchisee's Operator and Manager and less other administrative expenses incurred by Big O in regard to Franchisee. In some circumstances designated by Big O in its sole discretion from time to time (for instance, for Stores with real estate costs or past sales at high levels designated by Big O from time to time in its sole discretion), Big O may require and provide or arrange for certain additional training of Franchisee's Operator or Manager and such of its managerial personnel or Owners as are designated by Big O. Franchisee shall pay for its own transportation, lodging and living expenses which are incurred while attending such additional training. Big O, in its sole discretion, may charge a reasonable fee for such additional training.

(d) Big O will loan Franchisee one (1) copy of the Big O Manual or other such proprietary information.

(e) Assistance in selecting Franchisee's initial inventory.

(f) Assistance in the layout, merchandising and display of the Store.

7.02. On-Going Assistance.

(a) Big O agrees to make available to Franchisee the following ongoing assistance for which Big O will not charge the Franchisee a fee for such assistance:

(i) Big O will provide, to the extent available to Big O, a source from which Franchisee may purchase Big O private brand tires at what we believe to be below market prices;

- (ii) Big O may, in its sole discretion, provide to the Franchise Advisory Council ongoing marketing research into new tire selections and other lines of Products and Services and ways to enhance the competitive posture of Big O Stores;
 - (iii) Big O will provide recommended prices for Big O brand tires; provided that Franchisee will not be required to sell at any particular price or at or above any minimum price if such a requirement would be unlawful.
- (b) Big O agrees to make available to Franchisee the following on-going assistance for which Big O may charge the Franchisee a fee:
- (i) Additional training for the Operator or other personnel of Franchisee;
 - (ii) Regional training provided by Big O personnel and field assistance, inspections and merchandising advice pertaining to the Franchisee's Store provided by Big O area managers.
 - (iii) Point of sale advertising materials and other merchandising display materials, specialty items and wearables utilizing Big O Licensed Marks will be purchased through Big O's subsidiary, O Advertising, Inc., or such other licensee as designated by Big O for which Big O may charge the franchisee a fee, and from time to time, local advertising plans and materials, special promotions and similar advertising;
 - (iv) At the request of Franchisee's Local Group, Big O will supply Franchisee with newspaper mats and radio and television commercial tapes, for which Big O may charge a fee to the Local Group or to the Franchisee.

Notwithstanding **Subsections 7.02(b)(i)** and **(ii)**, above, in certain situations where training is being provided by Big O personnel, training will be provided at no cost to the Franchisee for the personnel conducting the training but, the Franchisee may be charged a fee for costs associated with the materials and training location.

(c) Big O, in its sole discretion, may provide other assistance from time to time under terms and conditions and for fees and charges as established by Big O in its sole discretion from time to time.

8. FEES

8.01. Initial Franchise Fee. In consideration of the execution of this Agreement, Franchisee agrees to pay Big O an initial franchise fee in the amount and at the times specified on the Summary Pages. Except as described in **Section 7.01(c)** above, the initial franchise fee is not refundable.

8.02. Royalty Fee. After the Commencement Date, Franchisee shall pay to Big O a monthly royalty fee equal to a percentage of Gross Sales. That percentage will be as set forth in the Summary Pages. The Royalty Fee for each month must be received by Big O no later than the Due Date in the following month.

8.03. National Marketing Fee. Franchisee shall pay to Big O a monthly contribution to the National Marketing Program pursuant to **Section 15.02(a)** below.

8.04. Late Fees. If any fee or any other amount due under this Agreement, including payments for Products and Services, is not received within ten (10) days after such payment is due, Franchisee shall pay Big O interest equal to the lesser of the daily equivalent of eighteen percent (18%) per annum of such overdue amount per year, or the highest rate then permitted by applicable law, for each day such amount is past due.

8.05. Taxes. If any federal, state, or local tax other than an income tax is imposed upon royalty fees paid by Franchisee to Big O which Big O cannot offset against taxes it is required to pay under the laws of the United States or the state of its domicile, Franchisee agrees to compensate Big O in the manner prescribed by Big O so that the net amount or net rate received by Big O is no less than that which has been established by this Agreement and which was due Big O on the Effective Date of this Agreement.

8.06. Rebill Cost Percentage Fee. Franchisee shall pay Big O the Rebill Cost Percentage on all tires purchased by Franchisee under the Rebill Tires program.

8.07. Allocation of Payments. Unless other written instructions accompany a specific payment, all payments made by Franchisee pursuant to this Agreement shall be applied in such order as Big O may designate from time to

time. Big O shall comply with any written instructions for allocation specified by Franchisee to the extent, in Big O's opinion, it is reasonable to do so.

9. LICENSED MARKS

9.01. Licensed Marks. Franchisee expressly acknowledges that Big O is the sole and exclusive licensor of the Licensed Marks. Franchisee shall not represent in any manner that Franchisee has acquired any ownership rights in the Licensed Marks. Franchisee shall not use any of the Licensed Marks or any marks, names, or indicia which are or may be confusingly similar in its own Entity or business name. Franchisee further acknowledges and agrees that any and all goodwill associated with the Big O System and identified by the Licensed Marks shall inure directly and exclusively to the benefit of Big O and that, upon the expiration or termination of this Agreement for any reason, no monetary amount shall be assigned as attributable to any goodwill associated with Franchisee's use of Licensed Marks.

9.02. Limitations on Use. Franchisee understands and agrees that any use of the Licensed Marks other than in accordance with the Manual or other than as expressly authorized by this Agreement, without Big O's prior written consent, is an infringement of Big O's rights therein and that the right to use the Licensed Marks granted herein does not extend beyond the termination or expiration of this Agreement. Franchisee expressly covenants that, during the term of this Agreement and thereafter, Franchisee shall not, directly or indirectly, commit any act of infringement or contest or aid others in contesting the validity of Big O's right to use the Licensed Marks or take any other action in derogation thereof.

9.03. Infringement. Franchisee acknowledges Big O's right to regulate the use of the Licensed Marks and Trade Dress of the Big O System. Franchisee shall promptly notify Big O if it becomes aware of any use or any attempt by any person or legal entity to use the Licensed Marks or Trade Dress of the Big O System, any colorable variation thereof, or any other mark, name, or indicia in which Big O has or claims a proprietary interest. Franchisee shall assist Big O, upon request and at Big O's expense, in taking such action, if any, as Big O may deem appropriate to halt such activities, but shall take no action nor incur any expenses on Big O's behalf without Big O's prior written approval.

9.04. Franchisee's Business Name. Franchisee further agrees and covenants (i) to operate and advertise only under the name or names from time to time designated by Big O for use by similar Big O System franchisees; (ii) to refrain from using the Licensed Marks to perform any activity or to incur any obligation or indebtedness in such a manner as may, in a way, subject Big O to liability therefor; (iii) to observe all laws with respect to the registration of trade names and assumed or fictitious names; (iv) to include in any application for the above a statement that Franchisee's use of the Licensed Marks is limited by the terms of this Agreement, and to provide Big O with a copy of any such application and other registration document(s); and (v) to observe such requirements with respect to trademark and service mark registrations, copyright notices, and other notices as Big O may, from time to time, require.

9.05. Change of Licensed Marks. Subject to the requirements of **Section 25** of this Agreement, Big O reserves the right, in its sole discretion, to designate one or more new, modified, or replacement Licensed Marks or trade names for use by franchisees and to require the use by Franchisee of any such new, modified, or replacement Licensed Marks or trade names in addition to or in lieu of any previously designated Licensed Marks. Any expenses or costs associated with the use by Franchisee of any such new, modified, or replacement Licensed Marks shall be the sole responsibility of Franchisee. Any expenses or costs associated with a change from the name "Big O" to an unrelated name will be allocated between Big O and the Franchisee in proportionate amounts to be determined by Big O and, if applicable in accordance with **Section 25** of this Agreement.

9.06. Franchisor's Rights. Big O retains the right to, among others: (i) use, and license others to use, the Licensed Marks and the Big O System for other Big O Stores or company-owned Stores; (ii) solicit, sell to and service local, regional or national accounts wherever located; (iii) use the Licensed Marks and the Big O System with other services or products, or in alternative channels of distribution, including the Internet, without regard to location; and (iv) use and license the use of other proprietary marks or methods which are not the same as or confusingly similar to the Licensed Marks, whether in alternative channels of distribution or with the operation of any type of tire sales and service business, at any location, which may be the same as, similar to or different from the business of a Big O Store. Big O may use or license these rights on any terms and conditions it deems advisable, and without granting Franchisee any rights in them.

10. STANDARDS OF OPERATION

10.01. Standards of Operations. Big O shall establish and Franchisee shall maintain high standards of quality, appearance and operation for the Franchised Business. For the purpose of enhancing the public image and reputation of the businesses operating under the System and for the purpose of increasing the demand for Products and Services provided by Franchisee and Big O, the parties agree as follows:

- (a) Franchisee shall not open the Store for business until Big O has provided Franchisee with written authorization to do so;
- (b) Franchisee shall make such modifications and improvements to the Store and Premises as required by Big O from time to time but may not make any modifications to the Store and Premises without Big O's prior approval.
- (c) Franchisee shall comply in good faith with all published Big O System rules, regulations, policies, and standards, including, without limitation, those contained in the Manual. Franchisee shall operate and maintain the Franchised Business solely in accordance with high standards of quality, appearance and operation for the Franchised Business, and in the manner and pursuant to the standards prescribed herein, in the Manual and in other materials provided by Big O to Franchisee, and shall make such modifications thereto as Big O may require;
- (d) Franchisee shall at all times operate the Store diligently and in a manner, which is consistent with sound business practices so as to maximize the revenues therefrom;
- (e) Franchisee shall at all times maintain working capital and a net worth which is sufficient, in Big O's opinion, to enable Franchisee to fulfill properly all of Franchisee's responsibilities under this Agreement;
- (f) Franchisee shall at all times maintain the Premises and its Store in the image of and according to the standards of Big O as prescribed in the Manual. These standards and specifications may include, but are not limited to the safety, maintenance, cleanliness, sanitation, function and appearance of the Premises, the Store and the Store's equipment and signs, as well as the requirement that the employees of the Store shall be required to wear uniforms and to maintain a standard of appearance while employed at the Store. Moreover, Franchisee agrees to cooperate with Big O at Franchisee's expense, to the extent building and site limitations permit, in the implementation of new programs, including those which may require the addition of new equipment or fixtures for the Store. In its sole discretion, Big O may waive some or all of any of its franchisees' obligations to comply with such programs;
- (g) Prior to opening, Franchisee shall provide Big O with written certificates or documentary evidence from an insurance company or companies that Franchisee has obtained the insurance coverage prescribed by Section 21;
- (h) If Franchisee maintains a customer list, such lists or parts thereof shall be disclosed to no one other than Franchisee's employees or Big O without Big O's prior written consent;
- (i) Big O will assign Franchisee to a Local Group and Franchisee must become a member of that Local Group. Big O may, in its sole discretion, require Franchisee and the other franchisees in the same marketing area (as determined by Big O) to form a Local Group, continue the Local Group in operation and manage the Local Group in accordance with the standards and requirements established by Big O from time to time. All Local Groups are required to comply with all applicable laws. Franchisee shall be bound by any decisions the Local Group makes to the extent they are approved by Big O and are consistent with the standards and within the guidelines prescribed or approved by Big O, provided however, that (i) Franchisee shall not be subject to any agreement to fix prices, or allocate customers or territories which would violate any applicable laws; and (ii) Franchisee shall not be subject to any capital investment requirements or other standards established by the Local Group which are inconsistent with this Agreement or which have not been approved or prescribed by Big O. If Franchisee's Local Group so requires, Franchisee must obtain a bond in such minimum amounts and for such periods of time as reasonably determined by Franchisee's Local Group to ensure Franchisee's timely payment of all amounts owed by Franchisee to its Local Group;
- (j) Franchisee shall use the Premises and the Store solely for the Franchised Business and for no other purpose; and

(k) Franchisee and its guarantor(s) shall not engage in or open any business at any location that is located less than a prescribed distance from Franchisee's Store. Such distance may be prescribed by Big O, in its sole discretion, from time to time.

10.02 Maximum Pricing. From time to time Big O may establish maximum pricing for certain Products and Services, for certain customers and/or for certain situations. Franchisee shall adhere to such maximum pricing as so established by Big O, provided that Franchisee shall not be required to sell Products and Services at any particular price or at or above any minimum price if such a requirement would be unlawful.

10.03 National Fleet Account Programs. Big O has established national fleet account programs and policies, which it may revise, suspend and reestablish from time to time in its sole discretion. The national fleet account programs may include, but are not limited to: (a) Big O (or its designated provider) making arrangements with larger customers with multiple locations and/or multiple vehicle users ("National Account Customers") to have Big O franchisees provide Products and Services that are specified by Big O and accepted by National Account Customers; (b) permitting designated buyers of the National Account Customers to purchase specified Products and Services from Franchisee (and the other franchisees) at prices not more than those negotiated by Big O and the National Account Customer; (c) central billing by Big O (or its designated provider) of National Account Customers for such specified Products and Services; and/or (d) fees to be paid by franchisees for administrative services (such as central billing) provided by Big O (or its designated provider) in connection with the national fleet account programs. Franchisee agrees to comply with the national fleet account policies and participate in the national fleet account programs as established by Big O from time to time. Such participation will include, among other things, carrying the inventory and making the services available as are necessary to provide the specified Products and Services to National Account Customers.

11. STORE MANAGEMENT

11.01. Store Management. Franchisee's Store shall only be operated by the Operator or a Manager employed by the Franchisee who are subject to approval by Big O. All initial and subsequent Operators and Managers are also subject to approval by Big O. Franchisee will notify Big O of each initial and subsequent Operator and Manager prior to his or her appointment to give Big O a reasonable opportunity to determine whether Big O will exercise its right of approval or disapproval as to such Operator or Manager. Big O's approval, if required, will be conditioned upon the Operator's or Manager's successful completion of any training required by Big O. Big O may waive some or all of its initial training requirements for Operators or Managers who have already received such training as a result of their affiliation with another Store or Big O franchisee or in other circumstances, in its sole discretion. If Franchisee or Franchisee's Operator has not already successfully completed such training, he/she shall be required to successfully complete the training described in **Section 7.01 (c)** above.

11.02. Completion of Training by Operator or Manager. Franchisee's Operator or Manager and such of its managerial personnel or Owners as are designated by Big O, shall complete, to Big O's reasonable satisfaction, any and all training programs Big O may reasonably require or provide at such time as Big O may reasonably prescribe. All training fees and all expenses incurred by persons receiving such training, including, without limitation, costs of travel, room and board, as well as wages of the person(s) receiving such training shall be borne by the Franchisee except as provided in Section 7.01(c).

11.03. Operation of Store by Big O. Under the circumstances described below, upon Franchisee's request, Big O has the option, but not the duty, to replace Franchisee's Operator, Manager, or both, with its own employees or agents, to operate the Franchisee's Store for the benefit of Franchisee with complete discretion over all matters relating to its operation. Franchisee shall pay Big O's then current Store management fee as well as the out-of-pocket expenses Big O incurs for travel, food and lodging in the course of providing such services, provided that such expenses are reasonably related to the services rendered. Big O may operate Franchisee's Store if:

- (a) Franchisee's Operator or Manager has failed to satisfactorily complete any training required by this **Section 11**; or
- (b) Franchisee's Operator or Manager becomes physically or mentally incapable of operating the Franchised Business; or
- (c) Franchisee's Operator or Manager dies and a new Operator or Manager has not completed initial training.

Notwithstanding the foregoing, prior to Big O operating the Franchisee's Store pursuant to the terms of this **Section 11.03**, Big O shall have provided the Franchisee with notice of the nature and extent of Franchisee's failure

to comply with the operational requirements of this **Section 11** and the reasonable opportunity to cure the failure by the Franchisee to comply with the operational requirements of this **Section 11**.

12. QUALITY CONTROL

12.01. Inspections. Franchisee hereby grants to Big O and its authorized agents the right to enter the Premises during regular business hours:

(a) To conduct inspections and, upon Big O's request, Franchisee agrees to render such assistance as may reasonably be requested and to take such steps as may be necessary immediately to correct any deficiencies in the operation of its Franchised Business pursuant to this Agreement which are detected during such an inspection; and

(b) To remove from the Premises, certain samples of any Products and Services, supplies or goods, in amounts reasonably necessary for testing or examination by Big O or an independent laboratory, to determine whether such samples meet Big O's then current standards and specifications. Big O will grant Franchisee a credit equivalent to the cost of any approved Products and Services or supplies damaged or removed by it.

13. MANUAL; NEW PROCESSES

13.01. Manual. To protect the reputation and goodwill of the businesses operating under the System and to maintain high standards of operation under the Licensed Marks, Franchisee shall conduct the Franchised Business strictly in accordance with the Manual, which Franchisee acknowledges belongs solely to Big O and shall be on loan from Big O during the term of this Agreement. Franchisee agrees to pay Big O up to Five Thousand Dollars (\$5,000) for the failure to return the Manual, Big O's Blueprint for Success, otherwise known as the Blue Book, any training module or any other proprietary information to Big O within five (5) days of the Expiration Date or Termination Date of this Agreement, or the date upon which controlling interest in the Franchisee, the Franchised Business or its assets is transferred. However, Big O will waive the payment if Franchisee notifies Big O that it has lost or mislaid all or part of the Manual at any time prior to six (6) months before the date upon which the Franchise is transferred, terminates, or expires.

13.02. Confidentiality of Information. Franchisee shall at all times use its best efforts to keep Big O's Information confidential and shall limit access to the Information to employees and independent contractors of Franchisee on a need-to-know basis. Franchisee acknowledges that the unauthorized use or disclosure of Big O's Information will cause irreparable injury to Big O and that damages are not an adequate remedy. Franchisee accordingly covenants that it shall not at any time, without Big O's prior written consent, disclose, use, permit the use thereof (except as may be required by applicable law or authorized by this Agreement), copy, duplicate, record, transfer, transmit, or otherwise reproduce such Information, in any form or by any means, in whole or in part, or otherwise make the same available to any unauthorized person or source. Any and all Information, knowledge, and know-how not generally known about the System and Big O's Products and Services, standards, procedures, techniques, and such other Information or material as Big O may designate as confidential shall be deemed confidential for purposes of this Agreement, except Information which Franchisee can demonstrate was lawfully in Franchisee's possession prior to disclosure by Big O, or which legally is or has become a part of the public domain by lawful publication or communication by others.

13.03. Revisions to Manual. Franchisee understands and acknowledges that subject to the requirements of **Section 25**, Big O may, from time to time, revise the contents of the Manual to implement new or different requirements for the operation of the Franchised Business, and Franchisee expressly agrees to comply with all such changed requirements which are by their terms mandatory, provided, that such requirements apply in a reasonably nondiscriminatory manner to comparable Big O franchisees. The implementation of such requirements may require the expenditure of reasonable sums of money by Franchisee. Big O will not alter the basic rights and obligations of the parties arising under this Agreement through changes to the Manual.

13.04. Improvements to System. If Franchisee develops any concept, process, service, or improvement in the operation or promotion of the Store, Big O may itself use or disclose it to other Big O franchisees without any obligation to compensate Franchisee therefor. If the concept, process, service, or improvement is adopted for use by the majority of Big O Stores, such concept, process, service, or improvement shall become the property of Big O and Big O may itself use or disclose it to other Big O franchisees without any obligation to compensate Franchisee therefor.

14. PRODUCTS AND SERVICES

14.01. Products and Services. Franchisee acknowledges that its principal interest in acquiring a Big O Franchise is to sell Big O private brand tires and related merchandise and benefit from Big O's Products and Services selection, purchasing programs, including programs for the purchase of major brand tires, and marketing expertise. The consuming public expects Big O Stores to offer the full line of Big O Products and Services and advertised warranty services. Accordingly, Franchisee shall at all times have, in stock and on the Premises, a complete representative line of Big O private brand tires, related merchandise, and other Products and Services in such quantities as Big O may prescribe from time to time. Franchisee agrees that from the date at the end of the one hundred eighty (180) day period from the Commencement Date (or in the case of a transferee or a Converter, from a date designated by Big O) for the rest of the calendar year after such date and for each calendar year thereafter during the term (including renewal terms) of this Agreement, fifty percent (50%) or more of all tire sales (in units) at the Store will be Big O Brand Tires, excluding sales of snow tires and farm class tires. The prices charged to Franchisee by Big O or other suppliers shall be established by Big O or the other suppliers, respectively, from time to time, but the prices charged by Big O for Big O Program Products shall be subject to Section 14.06.

14.02. Approval of Products and Services. Prior to commencing business at the Premises, Franchisee shall stock the Store with Products and Services and supplies of such variety and in such amounts as Big O may require. Franchisee may not offer or sell any product or service that has not been selected, designated or approved by Big O, and Franchisee may not sell any product or service except in accordance with the conditions required by Big O. Big O is not obliged to approve any product, service, or merchandise selected by the Franchisee. Franchisee may purchase Products and Services only from Big O or sources approved by Big O. Big O will not give its approval of suppliers selected by the Franchisee which are not at the time listed in the Manual as approved by Big O for use by the Franchisee, except in accordance with the following procedure:

- (a) The Franchisee must submit a written request to Big O for approval of the supplier;
- (b) The Franchisee must demonstrate to Big O the existence of a need for the product or service and that the product or service does not conflict with Big O's existing marketing program of Products and Services;
- (c) The supplier must demonstrate to Big O's reasonable satisfaction, that it is able to supply a commodity to the Franchisee meeting Big O's specifications for such commodity and that it is able to do so on a timely basis;
- (d) The supplier must demonstrate to Big O's reasonable satisfaction that the supplier is of good standing in the business community with respect to its financial soundness and reliability of its product and service;
- (e) The supplier must agree to indemnify and hold Big O and the Franchisee harmless from and against any claim or liability by reason of the supplier's products, including without limitation, defects in materials and workmanship and supplier must provide to Big O certificates or other evidences of insurance coverage with coverage limits sufficient to cover the risks and an endorsement reflecting that Big O and Franchisee are named as additional insureds under the supplier's insurance policies;
- (f) Big O must be reasonably satisfied that the commodity is priced competitively; and
- (g) Suppliers of tire products must meet the then current requirements under the TREAD Act.

Big O's current practice is to notify the Franchisee of its approval or disapproval in writing as soon as practicable. Big O may revoke its approval of an approved supplier at any time in its sole discretion.

14.03. Inventory and Services. Franchisee shall at all times maintain an inventory of Products in such amounts and of such variety as Big O may reasonably require, and shall offer all Services which Big O may require.

14.04. Warranties and Guaranties. (a) Subject to subsection (b) of this Section 14.04, Franchisee agrees to issue and honor warranties and guarantees written on certain Products and Services sold to consumers in accordance with the terms and procedures prescribed in the Manual. Any such warranty or guaranty will be offered through all Big O Stores on a nondiscriminatory basis. Only warranties or guarantees sponsored or approved by Big O or its Affiliates may be offered or honored by Franchisee (other than those required by law). Franchisee and Big O shall only honor warranties and guaranties on Products and Services that have been sold to and returned by consumers in accordance with the terms and procedures prescribed in the Manual. Franchisee agrees to honor any and all warranties and guarantees sponsored or approved by Big O, regardless of where or by whom they were issued. Franchisee shall make no charge to a customer for honoring such a warranty or guaranty unless the charge is permitted by the express terms of the warranty or guaranty or the then current Manual. Big O agrees not to change or alter any warranty or guaranty without giving Franchisee at least thirty (30) days prior written notice. Warranties or

guarantees issued prior to any such revocation or modification shall be honored according to their terms as interpreted in the Manual.

(b) In connection with Big O Program Products, Franchisee will use and offer to consumers the Big O Program Products Warranty. The Big O Program Products Warranty may be modified by Big O from time to time, provided that any Big O Program Products Warranties given to consumers before any such modification shall be honored as originally written. The Big O Program Products Warranty shall be the only warranty used or offered by Franchisee to consumers with respect to Big O Program Products.

14.05. Open Account Financing. In its sole discretion, Big O may provide Franchisee with open account financing for some or all of the Products and Services it sells Franchisee. Whether or not such credit is offered, Franchisee will be required to execute a security agreement and comply with all other requirements of Big O to secure Franchisee's obligations to Big O under the Franchise Agreement and perfect its security interest therein. If such credit is offered, Franchisee will be required to execute a credit agreement and security agreement and comply with all other requirements of Big O to secure such payments and perfect its security interest therein. Franchisee's failure to comply with any credit terms set forth above may cause Big O to terminate these credit terms or, where appropriate, Big O reserves the right to place Franchisee on C.O.D. as well as notifying the Franchisee of an event of default of this Agreement.

14.06 Purchase of Big O Program Products

(a) Big O shall sell to Franchisee, and Franchisee shall purchase from Big O, Big O Program Products in such quantities as ordered by Franchisee, at the Big O Program Products Price.

(b) Big O will engage its auditing firm or such other auditing firm selected by Big O to periodically conduct audits of the Big O Program Products Price. Should a dispute arise with regard to the Big O Program Products Price, the Parties acknowledge and agree that the Parties will resolve such dispute through the results of the aforementioned audits. The costs of the auditing firm's services shall be included in the Distribution Costs. In connection with the foregoing audits, the auditing firm shall review Big O's records and determine whether the Big O Program Products Price as determined in the aggregate is in accordance with the definition of Big O Program Products Price provided herein. Franchisee acknowledges that the report of Big O's audit firm shall not detail Big O's individual component costs that are used to determine the Big O Program Products Price, but rather will only state whether Big O's pricing is in compliance with the definition of Big O Program Products Price provided herein, and if not in compliance, the amount of the overcharge. The decision of Big O's audit firm pursuant to this Section shall be conclusive, final and binding on the Parties hereto. If it is determined that Big O has overcharged Franchisee, Franchisee's sole remedy shall be to receive a credit equal to the amount of the overcharge prorated for a certain time period by a calculation that determines the number of Big O Program Products units sold to Franchisee for the Store subject to this Agreement over all Big O Program Products units sold by Big O to all Big O Business Format Units for that same time period. If it is determined that Big O has undercharged Franchisee, Big O's remedy shall be to carry over the unrecovered cost to the following year as an additional component of Distribution Costs.

(c) Franchisee shall not sell any Big O Program Products to any party, including other Big O Franchisees, on a wholesale basis, other than to automotive or truck dealerships and National Account customers, or sell any Big O Program Products at any other Big O Store(s) that Franchisee or any affiliate of Franchisee may own that are not Big O Business Format Units. However, such sales may be permitted in some circumstances and under certain conditions set forth in policies adopted by Big O from time to time in its sole discretion.

(d) Franchisee is not eligible to participate in any promotional programs offered by Big O, including but not limited to, Big O's 2006 Monthly Volume Bonus Program.

15. **ADVERTISING, MARKETING AND PROMOTIONAL PLANS**

15.01. Grand Opening Advertising. Recognizing the value of standardized Advertising programs to the furtherance of the goodwill and public image of the Big O System, within the first year of business, Franchisee is required to spend on Grand Opening Advertising, in addition to the required four percent (4%) to be paid each month to the Local Group (described below), the amount specified on the Summary Pages. The manner of the Grand Opening Advertising must be approved in advance by Big O.

15.02. National Marketing Program. Big O has established a National Marketing Program which Big O, in its sole discretion, may decide to terminate or suspend at any time. If Big O does terminate or suspend the National

Marketing Program, Big O, in its sole discretion, may re-establish it at any time. Big O shall notify Franchisee as to the manner in which it shall function and the amount of contribution required of Franchisee.

(a) Not later than the Due Date, Big O or its designee must have received from Franchisee such amount as Big O shall designate, but not more than one percent (1%) of its previous month's Gross Sales, as a contribution to the National Marketing Program which shall be maintained or approved by Big O for Big O system-wide Advertising efforts. Big O shall limit any increase in Franchisee's contribution to the National Marketing Program from any amount then currently being charged to one-tenth of one percent (0.1%) in any twelve (12) consecutive month period and an additional one-tenth of one percent (0.1%) for each twelve (12) consecutive months thereafter until the one percent (1%) limitation is reached. Such incremental increases shall not be cumulative so that if Big O fails to adopt an additional incremental increase after any twelve (12) consecutive month period, the next one-tenth of one percent (0.1%) incremental increase will not accrue until actually adopted by Big O and shall constitute the maximum for the next consecutive twelve (12) months; provided, however, in the event Big O shall determine, in its sole judgment and discretion, that a special Advertising circumstance or opportunity is available to Big O and/or its franchisees, Big O may propose to the Franchise Advisory Council a greater increase during any consecutive twelve (12) month period (up to one percent (1%) limit), and if a majority of the members of the Franchise Advisory Council agree to such increase, it shall be implemented by Big O, notwithstanding Big O's limitation as to the phasing in of any increases.

(b) Big O shall, following consultation with the Franchise Advisory Council, direct all system-wide Advertising efforts which are provided through the National Marketing Program with Big O retaining sole discretion over the concepts, materials, and media used therein. All National Marketing Program contributions paid by Franchisee and other similarly situated Big O System franchisees to Big O shall be part of the National Marketing Program.

(c) Franchisee understands and acknowledges that the National Marketing Program is intended to maximize general public recognition and acceptance of the Licensed Marks and for other benefits for the System and that Big O undertakes no obligation in administering the National Marketing Program to insure that any particular franchisee benefits directly or pro rata from the national Advertising. Franchisee agrees that the National Marketing Program may be used to meet any and all costs incident to such Advertising; provided that no part thereof shall be used by Big O to defray its general operating expenses other than (i) those reasonably allocable to such Advertising, or (ii) other activities reasonably related to the administration or direction of the National Marketing Program and its related programs. No refund of contributions to the National Fund shall be due Franchisee upon termination or nonrenewal of this Agreement.

(d) Any part of the National Marketing Program contributions paid to Big O, but not spent by Big O during Big O's fiscal year, which Big O may change in its sole discretion, shall remain in the National Marketing Program. Any taxes imposed on the National Marketing Program shall be paid from the National Marketing Program.

(e) The Franchise Advisory Council shall have the right to review all expenditures of the National Marketing Program on a regular basis.

15.03. Local Fund.

(a) Franchisee shall also contribute by the Due Date a minimum of four percent (4%) of its Store's Gross Sales for the previous month to Big O or as directed by Big O; provided, however, that such contributions shall be subject to the annual (by calendar year) per Store maximum, if any, set forth in the Summary Pages and the Manual and may be reduced periodically at times, in circumstances and on conditions set forth in policies adopted by Big O from time to time in its sole discretion. If a Local Fund has been established by a Local Group in Franchisee's marketing area, Big O may, in its discretion, direct that all or any part of that contribution be (i) paid to the Local Fund formed by the Local Group for the purpose of local Advertising and operated pursuant to such structure and guidelines as Big O may prescribe or approve or (ii) paid to Big O, which may include all or some of such payment in a Local Fund administered by it or may forward all or some of such payment to the Local Fund formed by the Local Group. Franchisee agrees to be bound by the decisions of Big O (or its designee) and its Local Group, if one has been established in Franchisee's marketing area, pertaining to local Advertising, provided such decisions have been approved by Big O and do not violate any applicable laws. From time to time, the Local Group may agree to increase the amount Franchisee is required to spend for Advertising (by contributions to the Local Fund or otherwise), but, subject to the terms of certain documents already effective on this Agreement's Effective Date. The Local Group may not reduce this required expenditure below the four percent (4%) minimum, but such four percent (4%) may be subject to limitations and reductions as stated above in this Section 15.03(a). Some Local Groups may offer other

services such as insurance, information technology, and accounting services, and may charge additional amounts for these services.

(b) Franchisee understands and acknowledges that the Local Fund to which it contributes will generally be used for Advertising in local areas or regions where Big O Stores are located, but Big O undertakes no obligation with regard to any Local Funds administered by it or by any Local Group to insure that all or any portion of the Local Funds are used in the local area or region of the Store location identified in the Summary Pages or to insure that any particular franchisee benefits directly or pro rata from the expenditures by the Local Fund. The Local Funds may be used to meet any and all costs incident to the Advertising it supports; provided that, as to Local Funds administered by Big O, no part thereof shall be used by Big O to defray its general operating expenses other than (i) those reasonably allocable to such Advertising, or (ii) other activities reasonably related to the administration or direction of the Local Funds and related programs. Franchisee acknowledges that, under these criteria, it may require a portion of the Local Funds be contributed to other funds administered by Big O for the development of Advertising or for Advertising-related matters. No refund of contributions to the Local Fund shall be due Franchisee upon termination or nonrenewal of this Agreement. Any part of the Local Fund contributions not spent by Big O or a Local Group during its fiscal year, shall remain in the Local Fund. Any taxes imposed on the Local Fund shall be paid from the Local Fund. Big O retains the discretion to take such action or refrain from taking action as it deems appropriate to enforce the obligation of Franchisee to contribute to a Local Fund as provided in this Agreement and to enforce or refrain from enforcing the obligation of other franchisee to contribute to Local Funds as provided in their franchise agreements with Big O, but Big O has no obligation to Franchisee to enforce payments or contributions (in whole or in part) by other franchisees.

15.04. Other Required Advertising. Franchisee will purchase and use other advertising or marketing materials as designated by Big O from time to time in the Manual.

15.05. Approval of Advertising. Franchisee or the Local Group shall submit (through the mail, return receipt requested) to Big O for its prior written approval (except with respect to prices to be charged), samples of all marketing materials and advertising to be used by Franchisee that have not been prepared or previously approved in all respects by Big O or its designated agents, such approval by Big O shall not be unreasonably withheld. Franchisee shall submit tear sheets, receipts, and other evidence of such Advertising in the manner prescribed by Big O. Franchisee will not be required to submit to Big O copies of any proposed Advertising which has been adopted for use by the Local Group and which was previously approved by Big O for use by the Local Group. Franchisee shall not set up, maintain or utilize an Internet website or home page to sell Products and Services nor cause or allow the Licensed Marks, or any of them, to be used or displayed, in whole or in part, as an Internet domain name or on or in connection with any Internet website or home page without Big O's express prior written consent (which Big O may grant or withhold in its sole discretion), and then only in such manner and in accordance with such procedures, standards and specifications as Big O establishes from time to time.

16. STATEMENTS AND RECORDS

16.01. Invoices. Every sale of Products and Services from the Franchisee's Store shall be accurately recorded on a consecutively numbered invoice or in such other format as Big O may reasonably approve. All invoices, whether voided or used, shall be accounted for by Franchisee.

16.02. Audit. Throughout the term of this Agreement and for two (2) years thereafter, Franchisee shall maintain for not less than three (3) years original, full, and complete records, accounts, books, data, licenses, and contracts which shall accurately reflect all particulars relating to the Franchised Business and such other statistical and other information or records as Big O may require. Big O or its designated agent shall have the right to examine and audit such records, accounts, books, and data during regular business hours or at reasonable times. If any such examination or audit discloses that Franchisee has understated its Store's Gross Sales by more than two percent (2%), Franchisee shall be obliged to reimburse Big O for the cost and expense of such examination or audit. If Franchisee has understated any amount due Big O or any Local Group or Local Fund, it shall tender payment of the amount due not later than ten (10) days following receipt of the auditor's report, plus interest calculated at a rate which is the lower of eighteen percent (18%) per annum or the highest rate permitted by law. If Franchisee has overpaid Big O or such Local Group or Local Fund, such amount will be credited to Franchisee against monthly royalty fees or advertising or marketing contributions due to Big O, the Local Group or the Local Fund beginning with the month following receipt of the auditor's report and continuing until the credit is exhausted.

16.03. Monthly Reports. On or before each Due Date, Franchisee shall mail to Big O, together with its payments of royalty fees and advertising or marketing contributions, monthly reports on forms prescribed from time to time by Big O, stating the fees or contributions due to Big O on account of Gross Sales for the prior month, copies of all sales tax receipts or returns and such other information as Big O may require, all signed and certified as true and

correct by Franchisee or Franchisee's Operator. Big O reserves the right to require such reporting and payments to be performed and submitted to Big O electronically.

16.04. Financial Statements. Franchisee shall deliver to Big O, no later than sixty (60) days from the end of each of Franchisee's fiscal quarters, an unaudited profit and loss statement covering the Franchised Business for such quarter and a balance sheet of the Franchised Business as of the end of such quarter, all of which shall be certified by Franchisee as true and correct. All such statements shall be prepared in a format that has been prescribed or approved by Big O from time to time. If Franchisee breaches the foregoing requirements of this **Section 16.04**, Big O may, in its sole discretion, perform an operational audit of the Franchisee's Store for each period for which Franchisee failed to comply on a timely basis and failed to cure each breach after thirty (30) days notice and Franchisee shall be obligated to reimburse Big O for the cost and expenses of such audit. In addition, Franchisee, as well as any guarantor(s) of this Agreement, shall, within thirty (30) days after request from Big O, deliver to Big O a financial statement, certified as correct and current, in a form which is satisfactory to Big O and which fairly represents the total assets and liabilities of Franchisee and any such guarantor(s).

16.05. Management Systems. Franchisee must implement any Management Systems required by Big O. Notwithstanding the foregoing, if Franchisee is required to implement a Management System, it will not be required to make material changes in the Management System more than once every four (4) years.

16.06. Retail Accounting Center. Franchisee may be required, in Big O's sole discretion, to use a Retail Accounting Center operated by Big O or operating within the Franchisee's Local Group, as Big O may designate in its discretion for the generation of financial statements and/or for providing accounting, payroll and/or related services. If the Franchisee utilizes the services of a Retail Accounting Center, Franchisee will be required to provide sufficient financial information to a Retail Accounting Center to enable that center to prepare on an accurate and timely basis the financial statements that the Franchisee is required to deliver to Big O. Franchisee authorizes the Retail Accounting Centers to deliver such financial statements directly to Big O. Franchisee shall be responsible for and pay on a timely basis the fees charged by the Retail Accounting Centers.

17. COVENANTS

17.01. Noncompetition During Term. Except for any businesses already operating and identified on the Summary Pages, during the term of this Agreement, Franchisee and any guarantor(s) hereof covenant, individually, not to engage in or open any business, at any location, other than as a Franchisee of the Big O System, which offers or sells tires, wheels, automotive services, or other products or services which compete with Big O Products and Services. The purpose of this covenant is to encourage Franchisee and any guarantor(s) hereof to use their best efforts to promote the Big O System, its Products and Services, to protect its information and trade secrets, and to generate a successful business at the Store.

17.02. Confidentiality. During the term of this Agreement and thereafter, Franchisee covenants not to communicate either directly or indirectly, divulge or provide access to or use for its benefit or the benefit of any other person or legal entity, any trade secrets which are proprietary to Big O or any information, knowledge, or know-how deemed confidential under **Section 13** hereof, except as expressly authorized by Big O. The protection granted hereunder shall be in addition to and not in lieu of all other protections for such trade secrets and confidential information as may otherwise be afforded in law or in equity.

17.03. No Interference with Business. Franchisee agrees that during the term of this Agreement that it shall not divert or attempt to divert any business of or any actual customers of the Big O System to any competitive business, by direct or indirect inducement or otherwise.

17.04. Post Termination Covenant Not to Compete. If Franchisee terminates this Agreement other than in a manner prescribed by **Section 19.04** or if this Agreement is terminated for "good cause" as defined in **Section 19.01**, Franchisee, its Owners, officers, directors, and guarantors covenant that they shall not directly or indirectly, for a period of two (2) years after the Termination Date of this Agreement, engage in any business, other than as a Franchisee of the Big O System, which offers or sells tires, wheels, automotive services, or other products or services which compete with Big O Products and Services within a ten (10) mile radius of the Premises or within a ten (10) mile radius of any other Big O Store which was operational or under construction on the Termination Date. If a former Franchisee or guarantor commits a breach of this **Section 17.04**, the two year period shall start on the date that the former Franchisee or guarantor is enjoined from competing or stops competing, whichever is later.

17.05. Survivability of Covenants. The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this **Section 17** is held unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to

which Big O is a party, Franchisee expressly agrees to be bound by any lesser covenant imposing the maximum duty permitted by law that is subsumed within the terms of the covenant, as if the resulting covenant were separately stated in and made a part of this **Section 17**. Franchisee further expressly agrees that the existence of any claim it may have against Big O, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Big O of the covenants in this **Section 17**. The covenants in this **Section 17** shall survive the Termination Date or Expiration Date of this Agreement.

17.06. Modification of Covenants. Franchisee understands and acknowledges that Big O shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in this **Section 17** or any portion hereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof; and Franchisee agrees that it shall comply immediately with any covenant as so modified.

17.07. Anti-Terrorism Laws. Franchisee and each Owner represents, warrants and covenants that, at all times during the term of this Agreement, neither Franchisee, the Operator nor any executive officer of Franchisee will violate any law prohibiting money laundering or the aid or support of anyone who conspires to commit acts of terror against any person, entity or government, including acts prohibited by the U.S. Patriot Act or U.S. Executive Order 13224. Franchisee shall immediately notify Big O in writing of any event or circumstance that might render any of the foregoing representations and warranties false, inaccurate or misleading.

18. TRANSFER AND ASSIGNMENT

18.01. Assignment by Big O. This Agreement and all rights and duties hereunder may be freely assigned or transferred by Big O and shall be binding upon and inure to the benefit of Big O's successors and assigns.

18.02. Right of First Refusal. Because Big O or someone known to Big O may be interested in purchasing Franchisee's Franchised Business, the Premises, or an interest in either, if Franchisee decides to make a Transfer, Franchisee agrees to offer in writing to make the Transfer to Big O, and describe the terms under which Franchisee offers to make such a Transfer. If Big O has not offered to purchase what the Franchisee has offered to Transfer to Big O within thirty (30) days after Big O receives the notice from Franchisee, Franchisee may then offer to make the Transfer to third parties on the same or not more favorable terms and conditions as were offered to Big O. If Franchisee does not consummate, in accordance with the terms offered to Big O, the Transfer within six (6) months after Franchisee gives notice of the Transfer to Big O, Franchisee shall not make the Transfer without again first offering to make the Transfer to Big O.

18.03. Transfer Legend. Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee and that Big O has granted the Franchise in reliance on Franchisee's personal background, business skills, experience, and financial capacity. It is important to Big O that Franchisee be known to Big O and always meet Big O's standards and requirements. Accordingly, neither Franchisee nor any Owner shall be permitted or have the power, without the prior written consent of Big O, to make any Transfer. To assure compliance by Franchisee with the transfer restrictions contained in this **Section 18**, all share or stock certificates of Franchisee, or other evidence of ownership in a Franchisee which is an Entity, shall at all times contain a legend sufficient under applicable law to constitute notice of the restrictions on such stock, or other said evidence of ownership, contained in this Agreement and to allow such restrictions to be enforceable. Such legend shall appear in substantially the following form:

"The sale, transfer, pledge, or hypothecation of this [stock] is restricted pursuant to the terms of **Section 18** of a Franchise Agreement dated _____ between Big O Tires, Inc., and the issuer of these [shares]."

Any Transfer that does not comply with the terms of this **Section 18** shall be null and void.

18.04. Pre-Conditions to Franchisee's Assignment. If Franchisee or any Owner desires to make a Transfer, such person or Entity must comply with the following terms, conditions, and procedures to effectuate a valid Transfer:

(a) If any proposed assignment of any rights under this Agreement, or if any other Transfer would in the reasonable opinion of Big O result in a Change of Control:

(i) The transferee must apply for a Big O franchise and must meet all of Big O's then current standards and requirements for becoming a Big O franchisee, which standards and requirements need not be written and which standards may vary with the circumstances (such as past or anticipated sales volume or real estate value of a particular Store).

(ii) The transferee or Franchisee shall, at Big O's election, execute the then current form of Franchise Agreement generally being offered to franchisees in the State in which the Big O Store is located. Such agreement shall generally provide for a new term equal to the term of the standard Big O franchise agreement then being offered, and may include, without limitation, different fee structures, modified Trade Areas and/or increased fees;

(iii) Notwithstanding the foregoing, Big O or its assignee may, within thirty (30) days after receipt of notice as provided in **Section 18.04(b)(i)**, below, elect the Option to purchase the interest being offered by Franchisee or any Owner at the same terms, conditions and fees set forth in such notice; and

(iv) The transferee or Franchisee shall, at Big O's election, have obtained prior to the Transfer a surety bond or letter of credit in an amount not less than \$10,000 (or such other amount as designated by Big O from time to time) per each Big O Store which is subject to the Transfer issued by a surety company or bank reasonably acceptable to Big O in favor of Big O or, at Big O's election, to the Local Group designated by Big O, which surety bond or letter of credit may not be revoked, terminated or modified until two years (or such other time period as designated by Big O from time to time) after the date of the Transfer. Such bond or letter of credit shall be payable to the order of Big O or the Local Group, as the case may be, for any nonpayment by the transferee or Franchisee of contributions due to the National Marketing Program or the Local Fund pursuant to the Franchise Agreement to which the transferee or Franchisee is a party; or

(b) Regardless of the degree of control which would be affected by a proposed Transfer:

(i) Franchisee shall first notify Big O in writing of any bona fide proposed Transfer and set forth a complete description of all terms, conditions and fees of the proposed Transfer in the manner prescribed by Big O, including the name, address, financial qualifications, and previous five (5) years business experience of the prospective transferee and its owners, officers, directors, partners, members and management, in the case of an Entity;

(ii) If Big O or its assignee fails to exercise the Option to purchase the interest as provided in **Section 18.04(a)(iii)** or if the Option right is not available to Big O due to a transfer of less than fifty percent (50%) of Franchisee's ownership, Franchisee shall be required to obtain Big O's approval of the proposed Transfer and the proposed transferee. Big O shall, within thirty (30) days after receipt of the notice as provided in **Section 18.04(b)(i)**, above, notify Franchisee in writing of its approval or disapproval of the prospective Transfer and transferee. Big O's approval will be granted only if the prospective transferee, its Owners, and/or Operator: (a) meets Big O's then current standards for new franchisees, which standards need not be in writing and which standards may vary with the circumstances (such as past or anticipated sales volume or real estate value of a particular Store); (b) demonstrates to Big O's satisfaction that it or its Operator meets Big O's managerial, business, and technical standards; (c) possesses a good moral character, business reputation, and satisfactory credit rating; and (d) has the aptitude, ability, and financial capacity to operate the Franchised Business (as may be evidenced by prior related business experience or otherwise). Big O also reserves the right to disapprove a Transfer or a particular transferee where such Transfer or transferee would result in Big O having any material increased risk, burden, chance of not obtaining performance of all the provisions of this Agreement or chance of not obtaining financial performance as good as that achieved by the Franchised Business prior to the prospective Transfer. Big O also reserves the right to disallow a transfer of the Premises (without a transfer of the Franchised Business) to a person which would operate a business from the Premises which sells or offers for sale products or services which are the same as or similar to those offered for sale through the Franchised Business. Big O also reserves the right to seek to negotiate a general release of Big O as part of its approval of the proposed Transfer;

(iii) If Big O approves the proposed transferee, Franchisee or the Owner may transfer the interest to the proposed transferee at a price and under terms and conditions which are not more favorable to the transferee than the terms offered to Big O. Big O's approval is conditioned upon the proposed transferee or its Operator having completed (to the satisfaction of Big O) the training program then currently required of Big O franchisees or Operators, and, in some circumstances (such as high past sales volume) additional training as required by Big O from time to time;

(iv) Prior to the consummation of any such Transfer, Franchisee shall pay all amounts due to Big O and cure all other breaches of this Agreement and any other agreement or loan document it may have with Big O;

(v) Big O will, as a condition of any Transfer involving an assignment of this Agreement or a Change in Control, require Franchisee or transferee to pay a transfer fee (but no initial franchise fee). The transfer fee will be as set by Big O from time to time (and is currently \$1,500). Franchisee acknowledges that such a transfer fee is appropriate as necessary to reimburse Big O for any expenses which may be incurred in its review, analysis, and preparation of any documentation relating to the Transfer, including legal and accounting fees, and additional assistance as may be requested by the Franchisee related to the Franchisee's resale of the Store but is not determined by the actual amount of such expenses and costs. In addition, if the transferee requires training, the Franchisee or transferee will also be charged a training fee of up to four thousand dollars (\$4,000) plus, in Big O's discretion, a reasonable additional training fee if additional training is required as described in **Section 18.04(b)(iii)**. Big O shall be the sole arbiter of whether a Change in Control occurred as a result of a single Transfer or a group of Transfers.

For any Transfer not involving an assignment of this Agreement or a Change of Control, Big O will, as a condition of any such Transfer, require the Franchisee or the transferee to pay a transfer fee (but no initial franchise fee) equal to Big O's expenses that it incurs in its review, analysis and preparation of any documentation relating to the Transfer, including legal and accounting fees and additional assistance as may be requested by the Franchisee related to the resale of the Store, but not more than one thousand five hundred dollars (\$1,500). Big O shall be the sole arbiter of whether a Change in Control will occur as a result of a single Transfer or a group of Transfers;

(vi) Big O may require the transferor and its Owners and guarantors to guarantee the obligations of Transferee under this Agreement or under any new Franchise Agreement entered into between transferee and Big O;

(vii) Prior to approving a Transfer involving a Change in Control, Big O may inspect Franchisee's Store and as a result of such inspection, Big O may prepare a "Punch List" setting forth the necessary repairs, maintenance, or other upgrading of the Store which will become a condition of Big O's approval of the Transfer;

(viii) If the Franchisee acquired its interest in the Franchise as a Pioneer, Converter, or pursuant to a Multi-Unit Development Agreement, or otherwise paid less than the standard initial franchise fee (that is, the initial franchise fee charged by Big O for new franchises when the Franchisee executed this Agreement) when it acquired its interest in the Franchise, and the Franchisee within two (2) years of the Effective Date of this Agreement makes a Transfer of its interests that, if made prior to the date of this Agreement, would have disqualified it from the program allowing such lower initial franchise fee in regard to the Franchise that is the subject of this Agreement, the Franchisee must pay Big O as a condition of such Transfer the difference between the initial franchise fee paid by Franchisee and thirty thousand dollars (\$30,000.00), which is the standard initial franchisee fee charged by Big O for new franchises when Franchisee executed this Agreement; provided, however, that to the extent that the Franchisee received the lower initial franchise fee pursuant to a Converter Rider or a Multi-Unit Development Agreement with special provisions governing payment of the balance of lower initial franchise fees on a Transfer or change in certain ownership criteria, those special provisions will govern in lieu of this Section 18.04(b)(viii); and

(ix) Franchisee shall comply with all other applicable transfer requirements as designated in the Manual or otherwise in writing.

18.05. Death of Franchisee. Notwithstanding any other provision in this **Section 18**, if a Survivor desires to acquire or retain the interest of a decedent of a Franchisee or in a Franchisee and continues to operate the Franchised Business pursuant to the System, the Survivor may do so under the terms of this Agreement subject only to:

(a) The Survivor's execution and delivery to Big O of a written agreement to be bound:

(i) By the terms of this Agreement; and

(ii) By the terms of any guaranty of this Agreement;

(b) Satisfactory completion of training by the Survivor, Survivor's Operator, or Manager and such other managerial personnel as Big O may designate within the time periods prescribed by Big O; and

(c) The Survivor's payment of all training fees, travel, lodging, food, and similar expenses incurred by it or its Operator or managerial personnel in attending the training prescribed by **Section 11.02**. If the Survivor does not desire to acquire or retain such interest, then the Survivor shall have a reasonable period of time, but no more than six (6) months, to make a Transfer to a transferee acceptable to Big O subject to compliance with the procedures set forth in this **Section 18**, provided, the Survivor throughout such period fulfills all duties of Franchisee under this Agreement.

18.06. **No Waiver.** Big O's consent to a Transfer hereunder shall not constitute a waiver of any claims Big O may have against Franchisee or the transferring party or Big O's right to demand exact compliance with any provision of this Agreement.

18.07. **Excepted Transfers.** The provisions of **Sections 18.02** and **18.04(b)(ii)** shall not apply to: (a) any Transfer to a spouse, parent, child, or sibling of Franchisee or any Owner; (b) a Transfer to a spouse, parent, child, or sibling of Franchisee or any Owner which, in the aggregate, amounts to a Transfer of less than a controlling interest in Franchisee, the Franchised Business, or the Premises; or (c) any Transfer to a Manager or Operator of the Franchised Business pursuant to an equity acquisition program or agreement of Franchisee approved by Big O prior to such Transfer.

19. **DEFAULT AND TERMINATION**

19.01. **Termination by Big O.** Big O may terminate this Agreement for good cause, without prejudice to the enforcement of any legal or equitable right or remedy, immediately upon giving written notice of such termination and the reason or cause for the termination, and, except as hereinafter provided, without providing Franchisee an opportunity to cure the default. Without in any way limiting the generality of the meaning of the term "good cause," the following occurrences shall constitute sufficient basis for Big O to terminate the Agreement:

- (a) If Franchisee fails to pay any financial obligation pursuant to this Agreement including, but not limited to, payments to Big O or any other supplier for Products and Services, and fails to cure such failure to pay within five (5) days after Big O gives Franchisee a written notice of default;
- (b) If Franchisee fails to perform or breaches any covenant, obligation, term, condition, warranty, or certification herein and fails to cure such non-compliance within thirty (30) days after Big O gives Franchisee written notice of default;
- (c) If Franchisee fails to open the Store and commence business within eighteen (18) months of the Effective Date of this Agreement, or if Franchisee fails to commence business on such other Commencement Date as the parties hereto may have agreed. Notwithstanding the foregoing, Big O will agree to extend the time period to commence business so long as the Franchisee can demonstrate to Big O's reasonable satisfaction that the need to extend the time period is a result of factors beyond the Franchisee's reasonable control;
- (d) If Franchisee makes, or has made, any materially false statement or report to Big O in connection with this Agreement or the application therefor;
- (e) If Franchisee operates the Franchised Business or uses the Licensed Marks in a manner contrary to or inconsistent with this Agreement or Big O's policies, standards or specifications as stated in the Manual or elsewhere, and Franchisee fails to cure such deficiency within thirty (30) days after Big O gives a written notice of default;
- (f) If Franchisee, a Owner, guarantor, or transferee violates any transfer or assignment provision contained in **Section 18** of this Agreement;
- (g) If Franchisee receives from Big O more than three (3) valid notices of default of this Agreement in the same twelve (12) month period, regardless of whether previous defaults have been cured;
- (h) If Franchisee fails to operate or keep the Franchised Business open for more than five (5) consecutive business days other than with Big O's express written approval or due to an event beyond the Franchisee's reasonable control (e.g.: damage or destruction, flooding, civil disturbance), or if Franchisee ceases to operate all or any part of the Franchised Business conducted under this Agreement or if Franchisee loses possession of the Store or Premises due to a lease termination or otherwise, or defaults under any loan, lending agreement, mortgage, deed of trust or lease with any party covering the Premises, and such party treats such act or omission as a default, and Franchisee fails to cure such default to the satisfaction of such

party within any applicable cure period granted Franchisee by such party and such default with a third party has or would likely have an adverse impact to the Franchisee or the Big O System generally;

(i) If Franchisee or any person owning an interest in Franchisee is convicted of any felony or crime of moral turpitude regardless of the nature thereof, or any other crime or offense relating to the operation of the Franchised Business, or if Franchisee engages in any conduct which reflects materially and unfavorably upon the operation of the Franchised Business;

(j) If Franchisee becomes insolvent or makes a general assignment for the benefit of creditors, or if a petition in bankruptcy is filed by Franchisee, or such a petition is filed against and consented to by Franchisee, or if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee, or if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, other than as described in **Section 18.05**, is appointed;

(k) If Franchisee, any Affiliate of Franchisee or any guarantor(s) hereof defaults in any other agreement or loan document with Big O or if Franchisee, or any Affiliate of Franchisee, defaults under the terms of any lease or sublease of the Premises or if Franchisee fails to comply with the requirements of any Local Group operating pursuant to standards prescribed or approved by Big O including, but not limited to, any requirement to pay dues or make advertising or marketing contributions, and such default is not cured in accordance with the terms of such other agreement, loan document, or lease, or the by-laws of the Local Group;

(l) If Franchisee fails, for a period of ten (10) days after notification of non-compliance, to comply with any law or regulation applicable to the operation of the Franchised Business;

(m) If Franchisee sells, offers for sale, or gives away at the Premises any products or services which have not been previously approved by Big O in writing, or which have been subsequently disapproved;

(n) If Franchisee shall have understated its Gross Sales to Big O on two (2) or more occasions;

(o) If a court of competent jurisdiction or an arbitration tribunal in a final and unappealed judgment determines that any significant amount of the payments or compensation which Franchisee has agreed to pay Big O pursuant to the terms hereof is unlawful, or that all or a significant part of Franchisee's payment obligations hereunder are void or voidable by Franchisee; or

(p) If Big O receives an excessive number (as determined by Big O in its sole discretion) of complaints from Franchisee's customers or Franchisee operates its Franchised Business in a manner that reflects negatively on Big O or the Big O System.

19.02. Remedies to Big O. If the Franchisee is in default and has failed to cure such default in a manner prescribed by the Franchise Agreement, in addition to the rights Big O has to terminate the agreement, the Franchisee agrees to pay to Big O, among the many remedies available to Big O, royalties and any lost gross profits.

19.03. Governing State Law. If a different notice or cure period or good cause standard is prescribed by applicable law, it shall apply to a termination of this Agreement.

19.04. Termination by Franchisee. Franchisee may only terminate this Agreement if Big O has committed a material breach of any of Big O's obligations under this Agreement and has failed to cure such breach within thirty (30) days after Franchisee has given written notice to Big O of such breach.

19.05. Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither party shall be in default hereunder by reason of its delay in performance of, or failure to perform, any of its obligations hereunder, if such delay or failure is caused by:

- (a) strikes or other labor disturbance;
- (b) acts of God, or the public enemy, riots or other civil disturbances, fire, or flood;
- (c) interference by civil or military authorities;

(d) compliance with governmental laws, rules, or regulations that were not in effect and could not be reasonably anticipated as of the date of this Agreement;

(e) delays in transportation, failure of delivery by suppliers, or inability to secure necessary governmental priorities for materials; or

(f) any other fault beyond its control or without its fault or negligence. In any such event, the time required for performance of such obligation shall be the duration of the unavoidable delay.

20. POST TERMINATION OBLIGATIONS

20.01. Post-Termination Obligations. Upon the Expiration or Termination of this Agreement by any means or for any reason, Franchisee shall immediately:

(a) Cease to be a Franchisee of Big O and cease to operate the former Franchised Business under the Big O System. Franchisee shall not thereafter, directly or indirectly, represent to the public that the former Franchised Business is or was operated or in any way connected with the Big O System or hold itself out as a present or former Franchisee of Big O;

(b) Pay all sums owing to Big O. Upon termination for any default by Franchisee, such sums shall include actual and consequential damages, costs, and expenses incurred by Big O as a result of the default;

(c) Return to Big O the (i) Manual and any training modules or other proprietary information and supplements thereto and all trade secrets and confidential materials owned or licensed by Big O and all copies thereof other than Franchisee's copy of the Franchise Agreement, copies of any correspondence between the parties, and any other document which Franchisee reasonably needs for compliance with any applicable law; (ii) return or discontinue use of all forms, advertising matter, marks, devises, insignias, slogans, designs, signs, any computer systems including software and/or hardware; and (iii) discontinue the use of all copyrights, Licensed Marks, trade names and patents now or hereafter applied for or granted in connection with the operation of the Franchise;

(d) Provide to Big O, upon its request, a complete list of any outstanding obligations that Franchisee may have to any third parties including outstanding customer orders. Big O shall have the right, but not the obligation, to fill any such outstanding customer orders generated by Franchisee and in such event, Franchisee shall immediately reimburse Big O for any costs or expenses incurred by Big O in doing so. In addition, Big O shall have the right to cancel any orders placed by Franchisee for which delivery has not been made;

(e) Take such action as may be required by Big O to transfer and assign to Big O or its designee all telephone numbers, white and yellow page telephone references and advertisements, and all trade and similar name registrations and business licenses, and to cancel any interest which Franchisee may have in the same. The Franchisor is hereby appointed as the Franchisee's attorney-in-fact for such purpose and such power, being coupled with an interest, shall be irrevocable;

(f) Cease to use in Advertising, or in any manner whatsoever, any methods, procedures, or techniques associated with the Big O System in which Big O has a proprietary right, title, or interest; cease to use the Licensed Marks, and any other marks and indicia of operation associated with the Big O System and remove or change all Trade Dress, Products and Services, and other indicia of operation under the Big O System from the Premises, at Franchisee's expense and in a manner satisfactory to Big O. Unless otherwise approved in writing by Big O, Franchisee shall return to Big O all copies of materials bearing the Licensed Marks;

(g) Cease accepting the Big O credit card Franchisee has with Bank One, or any other designated lender;

(h) Franchisee shall immediately make available to Big O all customer lists as such was developed while a Franchisee;

(i) Strictly comply with all other provisions of this Agreement pertaining to post-termination obligations, including, without limitation, those contained in Sections 13 and 17; and

(j) Cease performing any tire adjustments as of the Termination Date and refer such adjustments to other existing RSCs or other Stores for processing. Franchisee shall receive no allowance for tire adjustments upon termination.

20.02. Right to Repurchase. Big O shall have the right, but not the obligation, to purchase:

(a) Some or all of the Products and Services and supplies at the Store and the equipment, furnishings, fixtures, or signs at the Premises which bear the Licensed Marks for a mutually agreed upon price within thirty (30) days of the Termination Date or the Expiration Date.

(b) If Big O elects to exercise such a right, it may offset the purchase price against any other amounts owed by Franchisee to Big O pursuant to this or any agreement or loan document. Before exercising any such rights, Big O shall have the right to enter upon the Premises during reasonable hours to take an inventory of the Franchised Business.

20.03. Right of First Refusal. Upon receipt by Franchisee of an offer to purchase Franchisee's Products and Services, equipment, supplies, fixtures or signs at the Premises, Franchisee hereby grants Big O a right of first refusal to purchase any of such items by matching the bona fide monetary purchase price, and payment schedule terms, less any brokerage commission without having to match any other non-monetary terms of the proposed purchase by Franchisee's buyer(s). Franchisee must give Big O written notice of any such bona fide offer. If within thirty (30) days after receipt of such notice, Big O has neither exercised its right of first refusal nor notified Franchisee of its rejection thereof, Franchisee may sell such items as were covered by the offer at the expiration of the thirty (30) day period.

20.04. De-Identification of Assets Upon Sale. If Big O determines not to exercise its option to repurchase any such items, Franchisee may continue to sell its remaining Products and Services, equipment, supplies, and fixtures, but may not identify itself as a Big O Franchisee. Franchisee shall otherwise abide by the terms of this Section 20.

21. INSURANCE

21.01. Insurance Coverage. Franchisee shall, at its expense and no later than upon the Commencement Date, procure and maintain in full force and effect throughout the term of this Agreement insurance that shall be in such coverages, limits and amounts as may from time to time be required by Big O in the Manual or otherwise and which shall designate Big O and Big O's Affiliates designated by Big O, and their directors, officers, employees, agents and other Big O designees as additional named insured(s).

21.02. Proof of Insurance. Prior to the Commencement Date, Franchisee shall make timely delivery of a signed original certificate or certificates of all required insurance coverages to Big O, which shall contain the authorized agent's business name, address and phone number, together with a statement by the insurer that the policy will not be canceled or materially changed without at least sixty (60) days prior written notice to Big O that the alteration or cancellation is being made. All insurance coverages will be underwritten by a company acceptable to Big O, with a Best's Rating of no less than "A-" or a financial statement of the insurer approved by Big O. If Franchisee fails to purchase required insurance conforming to the standards prescribed by Big O, Big O may obtain such insurance for Franchisee, and Franchisee shall pay Big O the cost of such insurance plus a ten percent (10%) administrative surcharge. If Big O deems it appropriate, Franchisee shall, upon Big O's request, provide to Big O a true, complete certified copy of all, or a part of the Franchisee's insurance policies within 10 days of receiving such request. The Franchisee shall provide to Big O renewal certificates of insurance, or certified insurance binders, for all required coverages no fewer than 10 days before the indicated anniversary date(s) of such insurance coverages.

21.03. Survival of Indemnification. The procurement and maintenance of the prescribed insurance coverages set forth in the Manual shall not relieve Franchisee of any liability to Big O assumed under any indemnification requirement of this Agreement.

22. TAXES, PERMITS, AND INDEBTEDNESS

22.01. Payment of Taxes. Franchisee shall promptly pay when due any and all federal, state, and local taxes including without limitation, unemployment and sales taxes, levied or assessed with respect to any Products and Services distributed or sold pursuant to this Agreement and all accounts or other indebtedness of every kind incurred by Franchisee in the operation of the Franchised Business.