

STATE OF ALABAMA )

COUNTY OF SHELBY )

**LANDLORD'S SUBORDINATION  
AND NON-DISTURBANCE AGREEMENT**

THIS AGREEMENT is made and entered into by and among **BIRMINGHAM REALTY COMPANY**, an Alabama corporation (the "Fee Owner"), whose mailing address is 2118 First Avenue North, Birmingham, Alabama 35203, **SPECTRUM ENTERPRISES, INC.**, an Alabama corporation (the "Lessee"), whose mailing address is Post Office Box 8605, Dothan, Alabama 36304, and **SOUTHLAND BANK**, a state banking corporation organized under the laws of the State of Alabama (the "Leasehold Mortgagee"), whose mailing address is Post Office Box 5676, Dothan, Alabama 36304.

**WITNESSETH:**

**WHEREAS**, the Fee Owner owns the premises more particularly described in **Exhibit "A"** annexed hereto and made a part hereof by reference (the "Premises"), together with any improvements (the "Leasehold Improvements") now or hereafter situated thereon (the Premises and all such Leasehold Improvements hereinafter, the "Leased Premises"); and

**WHEREAS**, the Fee Owner, by a Lease dated December 5, 1997 (the "Ground Lease") (a memorandum of which being recorded on or before the delivery and recording of this Agreement), has leased the Leased Premises to the Lessee (the "Leasehold Estate"); and

**WHEREAS**, pursuant to the terms of the Ground Lease, the Fee Owner provided the Lessee with an allowance up to Two Hundred Eighty Thousand (\$280,000.00) to be applied only to site work, building construction and architectural fees in the construction of a restaurant facility of approximately 3,000 square feet on the Premises, and the Lessee has in fact caused to be constructed on the Premises said improvements; and

**WHEREAS**, the Leasehold Mortgagee has agreed to finance a substantial portion of the costs of the Leasehold Improvements and equipment (the "Equipment") that the Lessee will utilize in the operation of a Schlotzsky's Deli on the Leased Premises by loaning the Lessee Two Hundred Sixty Thousand and No/100 (\$260,000.00) Dollars (the "Interim Financing") and Three Hundred Twenty-Five Thousand and No/100 (\$325,000.00) Dollars (the "Permanent Financing") (the Interim Financing and the Permanent Financing hereinafter sometimes collectively referred to as the "Loans"); and

**WHEREAS**, in order to secure the repayment of the Permanent Financing, the Lessee, in addition to other instruments, has entered into a Leasehold Mortgage, dated of even date herewith (the "Leasehold Mortgage"), whereby the Lessee has mortgaged its leasehold estate in and to the Leasehold Premises and Equipment to the Leasehold Mortgagee as security for any and all indebtedness, obligations and liabilities of the Lessee to the Leasehold Mortgagee, and in order to secure the repayment of the Interim Financing, the Lessee, in addition to other instruments, has entered into a Second Leasehold Mortgage, dated of even date herewith (the "Second Leasehold

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Mortgage"), whereby the Lessee has mortgaged its leasehold estate in and to the Leased Premises and Equipment, but subject and subordinate to the first lien of the Leasehold Mortgage, to the Leasehold Mortgagee, whether or not arising out of or otherwise related to the Loans individually or collectively, including but not limited to, any and all instruments and documents pertaining to the Loans (the "Financing Documents"); and

WHEREAS, in order to induce the Leasehold Mortgagee to make the Loans to the Lessee, the Fee Owner has executed a Landlord's Waiver, dated as of the date hereof; and

NOW, THEREFORE, in consideration of Ten (\$10.00) Dollars, of the mutual covenants, obligations, terms and agreements herein contained and of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. **Premises.** The Fee Owner warrants and represents that the Fee Owner owns the Premises consisting of the real property located in Pelham, Shelby County, Alabama, together with all improvements thereon, as described on the attached Exhibit "A".

In addition, the Fee Owner acknowledges that the Leasehold Mortgagee will make the Loans to Lessee secured partially by personal property located on or in the Leased Premises.

2. **Consideration.** To induce the Leasehold Mortgagee to make the Loans, to allow Lessee to incur obligations, to allow Lessee to pledge collateral or other property to the Leasehold Mortgagee and for the consideration hereinabove stated, the Fee Owner, the Lessee and the Leasehold Mortgagee agree to all the terms of this Agreement.

3. **Subordination.** Notwithstanding anything in the Ground Lease which may be construed to the contrary, the Fee Owner hereby subordinates to the Leasehold Mortgagee, for the benefit of the Leasehold Mortgagee under the Leasehold Mortgage and the Second Leasehold Mortgage, including but not limited to any modifications or amendments thereto, which shall not be made without the consent of the Fee Owner, which consent shall not be unreasonably withheld, and the Lessee, its statutory landlord's lien and all other liens, claims, demands or rights, however, arising, including ~~without limitation~~, the right to levy, distrain, sue, execute or sell for unpaid rent, which the Fee Owner now has or may hereafter acquire with respect to any or all of the Leasehold Estate, Equipment or other property utilized in the operation of a Schlotzsky's Deli on the Leased Premises mortgaged to the Leasehold Mortgagee or in which the Lessee or the Leasehold Mortgagee may have an interest (whether such property is now or hereafter located on or in the Leased Premises), including with limitation, machinery, equipment, furniture, fixtures, inventory and goods or merchandise and all additions, replacements and substitutions therefor, and all of the proceeds thereof.

In the event that proceedings of any nature are filed under the United States Bankruptcy Act by or against the Lessee or Lessee is involved in any insolvency proceedings of any kind, the Leasehold Mortgagee is hereby authorized to file a claim in any such proceeding for all amounts owing by the Lessee on the Loans or any indebtedness secured by the Leasehold Mortgage and the Second Leasehold Mortgage and to collect and receive all payments and dividends that may be



declared or become payable in any such proceedings to be applied to payment of the Loans until payment thereof in full.

The Fee Owner waives presentment and demand with respect to the Loans and waives all notices to which the Fee Owner might otherwise be entitled at law or in equity, including notice of acceptance of the benefits hereof, notice of default in payment of the Loans, and all other notices whatsoever. The Fee Owner consents to all extensions or renewals, whether the same form or otherwise and whenever made, of all or any part of the Loans, and any forbearance which may be granted by the Leasehold Mortgagee in enforcing payment of the Loans and release and/or substitution of any property now or hereafter held by the Leasehold Mortgagee as security for the Loans.

**4. Non-Disturbance Agreement.** If the Lessee shall not then be in default under the Ground Lease beyond the time period therein to cure such default, if any, or if the Leasehold Mortgage, as may be modified from time to time, shall then be a lien on the Lessee's leasehold estate, the time of the Leasehold Mortgagee to cure any such default or to obtain a new lease in place of the Ground Lease shall not have expired and neither the Lessee, nor any person claiming through or under the Lessee, shall be evicted from the Premises or the Leased Premises, or any part thereof, nor shall the leasehold estate or possession of the Lessee or any person claiming through or under the Lessee be cut-off or terminated by reason of a default or event of default under the Ground Lease or otherwise.

**5. Notice of Default; Right To Cure.** If, at any time prior to the stated expiration date of the Ground Lease the Ground Lease shall terminate as a result of a default or event of default (whether any such default and/or termination or surrender shall occur voluntarily, involuntarily or by operation of law) under the Ground Lease or otherwise, the Fee Owner shall notify the Leasehold Mortgagee of the occurrence of such default or event of default and if such default can be remedied by the Leasehold Mortgagee without taking possession of the Leased Premises, the Leasehold Mortgagee shall have thirty (30) days after receipt of such notice to remedy or cure any such default, or if the remedy or cure cannot with diligence be remedied within such 30 day period, the Leasehold Mortgagee shall have such additional period as may be necessary to remedy or cure such default with diligence, but in no event shall the period of default exceed ninety (90) days. Within ten (10) days of receiving notice from the Fee Owner of Lessee's default under the Ground Lease, the Leasehold Mortgagee shall provide the Fee Owner with written notice of its intention to cure said default.

If such default or event of default is a default that can only be remedied or cured by the Leasehold Mortgagee obtaining possession of the Leased Premises, the Leasehold Mortgagee shall obtain such possession with diligence, through a receiver or otherwise, and shall remedy or cure such default within thirty (30) days after obtaining possession; provided that, if the default cannot with diligence be remedied or cured within such 30 day period, the Leasehold Mortgagee shall have such additional period as may be necessary to remedy or cure such default with diligence, but in no event shall the period of default exceed one hundred eighty (180) days. However, upon obtaining possession, the Leasehold Mortgagee shall be liable for paying rent and all other charges accruing under the Ground Lease.

Upon compliance with the provisions of this paragraph, the Ground Lease shall be reinstated as if no default or event of default had occurred.

Upon default by the Lessee, the Leasehold Mortgagee shall, with the prior written consent of the Fee Owner, which consent shall not be unreasonably withheld, have the right, after curing any existing default, to assign said Ground Lease to a new tenant. However, the Lessee nor the Guarantor shall be relieved of any liability or obligation under the Ground Lease.

6. **Term.** This Agreement shall remain in full force and effect until the Loans, including all notes, debts, loans and other obligations of the Lessee to the Leasehold Mortgagee evidencing the indebtedness described in the Financing Documents for the Loans, are fully and finally paid. Upon such final payment, the Leasehold Mortgagee shall provide the Fee Owner with written notice.

7. **Notices.** Any notice, demand or request to be given hereunder and any option or election to be exercised by a party hereto shall be effective only when made in writing and delivered (or mailed by registered or certified mail with postage prepaid) to the other party at the address given below:

Fee Owner: Birmingham Realty Company  
2118 First Avenue North  
Birmingham, Alabama 35203

Lessee: Spectrum Enterprises, Inc.  
8 Woodmere Drive  
Dothan, Alabama 36303  
ATTN: Larry Rister

Leasehold  
Mortgagee: Southland Bank  
3299 Ross Clark Circle NW  
Dothan, Alabama 36303

8. **General Provisions.**

A. The Leasehold Mortgagee's course of dealing, or the Leasehold Mortgagee's forbearance from, or delay in, the exercise of any of the Leasehold Mortgagee's rights, remedies privileges or right to insist upon the Lessee's or the Fee Owner's strict performance of any provision contained in this Agreement, the Financing Documents or other loan documents, shall not be construed as a waiver by the Leasehold Mortgagee, unless any such waiver is in writing and is signed by the Leasehold Mortgagee.

B. This Agreement may not be modified or amended, except through a written modification agreement or amendment which is signed by the Lessee, the Fee Owner and the Leasehold Mortgagee.

C. This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama, provided such laws are not otherwise preempted by Federal laws and regulations.

D. This Agreement shall inure to the benefit of and bind the heirs, personal representatives, successor and assigns of the parties; provided however, that the Lessee may not assign, transfer or delegate any of the rights or obligations under this Agreement.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be executed by their respective, duly authorized and empowered officers, intending to be legally bound hereby, on the date first above-written.

LESSEE:

SPECTRUM ENTERPRISES, INC.

By: James T. Reister  
Its: President

FEE OWNER:

BIRMINGHAM REALTY COMPANY

By: Stephen W. House  
Its: Senior Vice President

LEASEHOLD MORTGAGEE:

SOUTHLAND BANK

By: Don K. Sommer  
Its: Senior Vice President



STATE OF ALABAMA )

COUNTY OF Houston )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify, that Harry L. Rister, as President of SPECTRUM ENTERPRISES, INC., who is personally known to me, executed the foregoing instrument before me this day in person and acknowledged that he, as such officer and with full authority, signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto voluntarily as and for the free and voluntary act of said corporation on the day the same bears date.

Given under my hand and official seal this 12<sup>th</sup> day of August, 1998.

Lisa B. Bonner  
Notary Public

My Commission Expires: 3-25-2001

STATE OF ALABAMA )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify, that Stephen W. Hearn, as Senior V/P of BIRMINGHAM REALTY COMPANY, who is personally known to me, executed the foregoing instrument before me this day in person and acknowledged that he, as such officer and with full authority, signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto voluntarily as and for the free and voluntary act of said corporation on the day the same bears date.

Given under my hand and official seal this 6<sup>th</sup> day of August, 1998.

Manda Dail Stone  
Notary Public

My Commission Expires: MY COMMISSION EXPIRES OCTOBER 11, 1998

STATE OF ALABAMA     )  
                                      )  
COUNTY OF HOUSTON    )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify, that Jon K. Sonmor, as Senior Vice President of **SOUTHLAND BANK**, who is personally known to me, executed the foregoing instrument before me this day in person and acknowledged that he, as such officer and with full authority, signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto voluntarily as and for the free and voluntary act of said corporation on the day the same bears date.

Given under my hand and official seal this 12<sup>th</sup> day of August, 1998.

Lisa R. Bonner  
Notary Public

My Commission Expires: 3-25-2001

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**EXHIBIT "A"**

*Seal*

**REAL PROPERTY DESCRIPTION**

Lot 4, according to the Survey of the Oak Mountain Commerce Place, as recorded in Map Book 18, Page 58, in the Probate Office of Shelby County, Alabama.

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10:28 AM CERTIFIED

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