

Prepared by and upon
recording return to:

Matthew S. Atkins, Esq.
Wallace, Jordan, Ratliff & Brandt, L.L.C.
800 Shades Creek Parkway, Suite 400
Birmingham, Alabama 35209

STATE OF ALABAMA)
SHELBY COUNTY)

**TENANT ESTOPPEL AND
SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENMENT AGREEMENT**

Inst # 1999-40431

09/28/1999-40431
10:54 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 CJI 21.00

THIS AGREEMENT is dated the 20th day of SEP, 1999, and is made between **NEW SOUTH FEDERAL SAVINGS BANK**, a federal savings bank ("Mortgagee"), and **RIVERCHASE AUTO SALES, INC.**, an Alabama corporation ("Tenant").

WITNESSETH:

WHEREAS, Tenant has entered into a certain lease (the "Lease") dated August 27, 1999 with **CARCO, INC.**, an Alabama corporation, as lessor ("Landlord"), covering premises as referenced in said lease (the "Premises") located at 2025 Valleydale Road, Birmingham, Alabama 35244 in Shelby County, Alabama and described more fully on Exhibit A hereto (the "Project"); and

WHEREAS, Mortgagee has become justly indebted to Mortgagee under certain promissory notes which are secured by, *inter alia*, that certain Real Estate Mortgage and Security Agreement filed in the Office of the Judge of Probate of Shelby County, Alabama at Instrument # 1998-21303 and that certain Mortgage and Security Agreement filed in the Office of the Judge of Probate of Shelby County, Alabama at Instrument # 1999-14043 (collectively, the "Mortgages") to the Landlord, secured in part by the Premises, and the parties desire to set forth their agreement as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) by each party in hand paid to the other, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. **Subordination of Lease**. Said Lease is and shall be subject and subordinate to the Mortgages insofar as it affects the real property of which the demised Premises form a part, and to all renewals, modifications, consolidations, replacement and extensions thereof, to the full extent of amounts secured thereby and interest thereon.

2. Attornment. Notwithstanding the subordination described in paragraph 1, Mortgagee and Tenant hereby agree that the Lease shall not terminate in the event of a foreclosure of the Mortgages, and Tenant further agrees that it will attorn to and recognize any purchaser at a foreclosure sale under the Mortgages, any transferee who acquires the demised Premises by deed in lieu of foreclosure, and the successors and assigns of such purchasers, as its landlord for the unexpired balance (and any extensions, if exercised) of the term of said Lease upon the same terms and conditions set forth in said Lease.

3. Non-Disturbance. If it becomes necessary to foreclose the Mortgages, Mortgagee will not terminate said Lease nor join Tenant in summary or foreclosure proceedings so long as Tenant is not in default under any of the terms, covenants, or conditions of said Lease.

4. Mortgagee Responsibilities. If Mortgagee succeeds to the interest of Landlord under the Lease, Mortgagee shall not be

- (a) liable for any act or omission of any prior landlord (including Landlord); or
- (b) liable for the return of any security deposit; or
- (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or
- (d) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or
- (e) bound by any amendment or modification of the Lease made without its consent.

5. Tenant's Certification: Tenant hereby certifies that:

(a) The Lease has not been modified, changed, altered, assigned, supplemented or amended in any respect. The Lease is not in default and is valid and in full force and effect on the date hereof. The Lease is the only Lease or agreement between the Tenant and the Landlord affecting or relating to the Premises. The Lease represents the entire agreement between the Landlord and the Tenant with respect to the Premises.

(b) The Tenant is not entitled to, and has made no agreement(s) with the Landlord or its agents or employees concerning, free rent, partial rent, rebate of rent payments, credit or offset or deduction in rent, or any other type of rental concession, including without limitation, lease support payments, or lease buy-outs or any provisions for lease termination.

(c) The Tenant has accepted and now occupies the Premises, and is and has been open for business since 8/15, 1999. The Lease term began August 15, 1999. The termination date of the present term of the Lease, excluding unexercised renewals, is _____.

(d) The Tenant has paid rent for the Premises for the period up to and including August 1, 1999. No rent has been paid more than one (1) month in advance of its due date. The Tenant's security deposit is \$ 0.

(e) All conditions under this Lease to be performed by the Landlord have been satisfied. All required contributions by the Landlord to the Tenant on account of the Tenant's tenant improvements have been received by the Tenant.

(f) The Lease contains, and the Tenant has, no outstanding options or rights of first refusal to purchase the Premises or any part thereof or all or any part of the real property of which the Premises are a part.

(g) No actions, whether voluntary or otherwise, are pending against the Tenant or any general partner of the Tenant under the bankruptcy laws of the United States or any state thereof.

(h) The Tenant has not sublet the Premises to any sublessee and has not assigned any of its rights under the Lease.

6. Tenant acknowledges that all the interest of the Landlord in and to the Lease is being duly assigned to Mortgagee, and that pursuant to the terms hereof, all rent payments under the Lease shall continue to be paid to the Landlord in accordance with the terms of the Lease unless and until the Tenant is notified otherwise in writing by Mortgagee or its successors or assigns.

It is particularly noted that:

(a) Under the provisions of the assignment, the Lease cannot be terminated (either directly or by the exercise of any option which could lead to termination) or modified in any of its terms, or consent be given to the release of any party having liability thereon, without the prior written consent of Mortgagee or its successors or assigns, and without such consent, no rent may be collected or accepted more than one (1) month in advance.

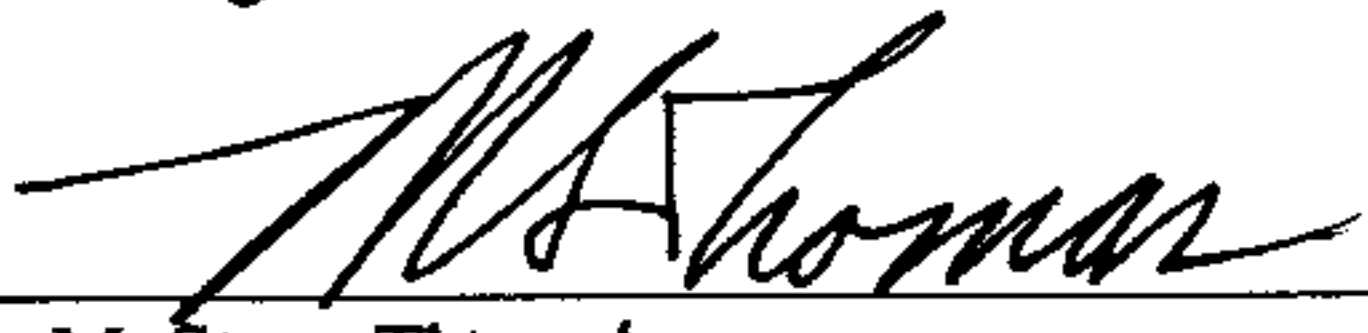
(b) The interest of the Landlord in the Lease has been assigned to Mortgagee for the purposes specified in the assignment. Mortgagee, or its successors or assigns, assumes no duty, liability or obligation whatever under the Lease or any extension or renewal thereof.

7. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

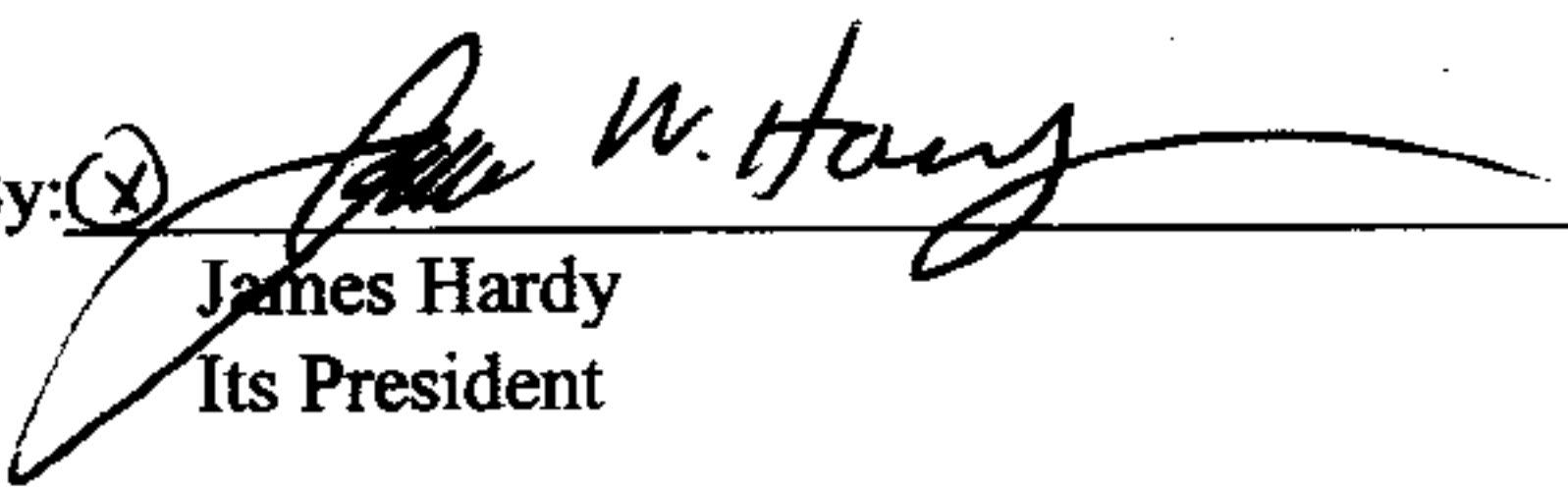
✓ 8. Notice of Default. Tenant agrees to give Mortgagee, by certified mail, a copy of any notice of default served upon the Landlord. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in the Lease, then Mortgagee shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within such thirty (30) days, Mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default, (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure) in which event the Lease shall not be terminated while such remedies are being so diligently pursued. Any notices sent to Mortgagee should be sent by certified mail and addressed to New South Federal Savings Bank, 215 N. 21st Street, Birmingham, Alabama 35203, Attention: Mr. Steve Thomas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**NEW SOUTH FEDERAL SAVINGS BANK, a
federal savings bank**

By: 
M. Steve Thomas
Its Vice President

**RIVERCHASE AUTO SALES, INC., an Alabama
corporation**

By: (X) 
James Hardy
Its President

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that M. Steve Thomas, whose name as Vice President of New South Federal Savings Bank, a federal savings bank, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said bank.

Given under my hand and official seal, this the 20 day of SEPTEMBER, 1999.

Ramela P. Weeks
Notary Public

My Commission Expires: 11-20-99

STATE OF ALABAMA)

COUNTY OF SHELBY)

X. I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that James Hardy, whose name as President of Riverchase Auto Sales, Inc., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 20 day of Sept, 1999.

Louise J. Prestwood
Notary Public

My Commission Expires: 8-8-02

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land situated in the Southwest 1/4 of the Southwest 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, based on the Survey of Thomas J. Sanders, P.L.S. No. 721, dated August 14, 1965, being more particularly described as follows:

Commence at the Southwest corner of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama; thence go East along the South line of said Section 670.00 feet map, to a 5/8" rebar at the point of beginning of the parcel described herein; thence continue East along said line 212.25 feet measured, 213.00 feet deed, to a 3/4" crimped iron; thence a right interior angle of 82°02'32" measured, 85°10' map, and go Northerly 92.22 feet measured, 92.00 feet map, to a 1/2" open pipe; thence a right interior angle of 177°16'42" measured, 164°40' map, and go Northerly 249.02 feet measured, 252.00 feet map, to a 2" open pipe on the north right of way line of Valleydale Road (Shelby County Highway 17); thence a right interior angle of 81°36'57" to a tangent of a curve to the right (radius 1949.51 feet, central angle 4°42'24", tangent 80.12 feet) and go Westerly along said right of way line 160.14 feet measured, 158.50 feet map, to a 3/8" rebar; thence a right interior angle of 104°21'19" from tangent and go South 290.02 feet measured, 296.70 feet map, to the point of beginning.

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