

BIRMINGHAM, ALABAMA
4617 (4621) U.S. Highway 280
PN# 149381

20050920000487430 1/6 \$26.00
Shelby Cnty Judge of Probate, AL
09/20/2005 10:43:39AM FILED/CERT

**NON-DISTURBANCE, ATTORNMENT AND
SUBORDINATION AGREEMENT
(MORTGAGE)**

THIS NON-DISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT (Mortgage) ("Agreement"), dated this 16th day of March, 2005 is by and between **PROTECTIVE LIFE INSURANCE COMPANY**, a Tennessee corporation (the "Mortgagee"), having an office at 2801 Highway 280 South, Birmingham, Alabama 35223, and **BFS RETAIL & COMMERCIAL OPERATIONS, LLC**, a Delaware limited liability company, as successor-in-interest to Bridgestone/Firestone, Inc., formerly known as the Firestone Tire & Rubber Co., an Ohio corporation (the "Tenant"), having an office at 333 East Lake Street, Bloomington, Illinois, 60108, Attn: Law Department/Real Estate Section.

PRELIMINARY STATEMENTS

A. The Tenant has executed that certain Lease dated June 1, 1987, that certain letter agreement dated July 14, 1987, that certain Lease Amendment No. 1 dated July 10, 1989 and that certain Lease Amendment No. 2 dated March 15, 2005 (hereinafter collectively referred to as the "Lease") with Realty Investors of Alabama, LLC, an Alabama limited liability company as successor-in-interest to BBB Builders, a general partnership (the "Landlord") for certain premises described in Exhibit A (the "Premises").

B. The Mortgagee holds a mortgage on the Premises or a portion of the Premises. The mortgage is dated April 27, 2005 and is recorded in the office of Shelby Co, AL as probate (the "Mortgage").

C. The Tenant and the Mortgagee desire to establish certain rights, safeguards, obligations, and priorities with regard to their respective interests by means of this Non-Disturbance, Attornment and Subordination Agreement.

TERMS OF THE AGREEMENT

IN CONSIDERATION of the mutual covenants of the parties and other good and valuable consideration, the Mortgagee and the Tenant agree as follows:

1. Provided the Lease is in full force and effect and the Tenant is not in default under the Lease (beyond any period given the Tenant to cure such defaults, if any), then:

(a) The Tenant's right of possession to the Premises and the Tenant's other rights arising out of the Lease shall not be affected or disturbed by the Mortgagee in the exercise of any of its rights under the mortgage or the note which it secures. Further, the Tenant shall not be named as a party defendant in any foreclosure of the lien of the Mortgage nor in any other way be deprived of its rights under the Lease.

(b) In the event the Mortgagee or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in the mortgage, or by conveyance in lieu of foreclosure, the Lease shall not be terminated or affected by the foreclosure, conveyance or sale in any such proceeding. The Mortgagee covenants that any sale by it of the Premises as a result of the exercise of any rights and remedies under the mortgage, or otherwise, shall be made subject to the Lease and the rights of the Tenant under the Lease, and the Tenant covenants and agrees to attorn to the Mortgagee, or such person, as its new Landlord, and the Lease shall continue in full force and effect as a direct Lease between the Tenant and Mortgagee, or such other person, upon all of the terms, covenants, conditions and agreements set forth in the Lease. However, in no event shall the Mortgagee or such person be:

- (i) liable for any act or omission of the Landlord;
- (ii) subject to any offsets or deficiencies which the Tenant might be entitled to assert against the Landlord;
- (iii) bound by any payment of rent or additional rent made by the Tenant to the Landlord for more than one month in advance;
- (iv) bound by any amendment or modification of the Lease as it relates to the term or the rental or other payments now required to be made by Tenant, which is made without its consent.

2. Subject to the terms of this Agreement, the Lease shall be subject and subordinate to the lien of the mortgage and to all of its terms, conditions and provisions, to all advances made or to be made and to any renewals, extensions, modifications or replacements.

3. Any notice, communication, request, reply or advise in this Agreement provided or permitted to be given, made or accepted by either party to the other must be in writing, and unless it is otherwise in this Agreement expressly provided, may be given or be served by depositing the same in the United States mail, postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or in person to the party to be notified. Notice shall be effective only if and when received by the party to be notified for purposes of notice, the addresses of the parties shall be as follows (unless otherwise indicated in writing):

If to the Mortgagee

Protective Life Insurance Company
2801 Highway 280 South
Birmingham, Alabama 35223
Attention: Investment Department

If to Tenant:

BFS Retail & Commercial Operations, LLC
333 East Lake Street
Bloomington, Illinois 60108
Attention: Law Department/Real Estate Section

4. The above provisions shall be self-operative and effective without the execution of any further instruments on the part of either party.

5. This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest.

6. This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.

7. Tenant acknowledges and agrees that the right of first refusal to purchase granted to Tenant pursuant to Section 29 of the Lease shall not apply to Mortgagee's acquisition of the Premises pursuant to a foreclosure under the Mortgage (or a deed in lieu thereof). The foregoing acknowledgement and agreement shall not negate or usurp any rights or protections provided to the Tenant under the United States Bankruptcy Code, as same may be amended and modified from time to time.

(End of text of Agreement; signatures by the parties on the following page.)

TO INDICATE THEIR AGREEMENT TO THE ABOVE, the parties or their authorized representatives or officers have signed this document.

MORTGAGEE:

**PROTECTIVE LIFE INSURANCE
COMPANY**, a Tennessee corporation

By: [Signature]
Senior Vice President

TENANT:

**BFS RETAIL & COMMERCIAL
OPERATIONS, LLC**, a Delaware limited
liability company

By: [Signature]
Thomas A. Leshner
Manager, Assets/Transactions
and Authorized Signatory

Attest: [Signature]
Assistant Secretary

Date: March 16th, 2005

Attest: [Signature]
James S. Sager, Asst. Secretary

Date: March 14, 2005

WITNESS:

[Signature]
Linda C. Gerstein

[Signature]
Caroline Castle

WITNESS:

[Signature]
Claudia Reinko

[Signature]

Prepared by and Return to:

Law Department - Real Estate Section
BFS Retail & Commercial Operations, LLC
333 East Lake Street
Bloomington, IL 60108

ACKNOWLEDGMENT - MORTGAGEE

20050920000487430 5/6 \$26.00
Shelby Cnty Judge of Probate, AL
09/20/2005 10:43:39AM FILED/CERT

STATE OF AZ)
) ss
COUNTY OF Jefferson

Before me, Rebecca T. Carter, a Notary Public in and for the above State and County, on this 16th day of March, 2005, personally appeared Carl S. Thigpen & Natalie B. Reid, Sr. VP & Asst Sec respectively, of Protective Life Insurance Company, a Tennessee corporation known to me to be the same person who signed and acknowledged that ~~(she)~~ they signed the foregoing instrument as such ~~officers~~ officers of said corporation/~~partnership~~ for and on behalf of said corporation, and that ~~(she)~~ they executed the same as ~~his/her~~ their free and voluntary act and deed and as the free and voluntary act and deed of the corporation, for the uses and purposes set forth in the instrument.

IN TESTIMONY WHEREOF, I have subscribed my signature and affixed my official seal on the day and year set forth above.

Rebecca T. Carter

Notary Public

My commission expires: 7/22/05

ACKNOWLEDGMENT - BFS RETAIL & COMMERCIAL OPERATIONS, LLC

STATE OF ILLINOIS)
) ss
COUNTY OF DUPAGE)

Before me, Melinda K. Smith, a Notary Public in and for the above State and County, on this 14th day of March, 2005, personally appeared **THOMAS A. LESHER**, Manager, Assets/Transactions and Authorized Signatory, and **JAMES S. SAGER**, Assistant Secretary of BFS Retail & Commercial Operations, LLC, a Delaware limited liability company, known to me to be the same persons who signed and acknowledged that they signed the foregoing instrument as such Manager, Assets/Transactions and Authorized Signatory and Assistant Secretary, respectively, of said limited liability company for and on behalf of the limited liability company, and that they executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of the limited liability company, for the uses and purposes set forth in the instrument.

IN TESTIMONY WHEREOF, I have subscribed my signature and affixed my official seal on the day and year set forth above.

Melinda K. Smith

Notary Public

My commission expires:



EXHIBIT A

DESCRIPTION OF THE PREMISES



20050920000487430 6/6 \$26.00
Shelby Cnty Judge of Probate, AL
09/20/2005 10:43:39AM FILED/CERT

Lot 5 of a Subdivision of Acreage known as "Cahaba Park South" situated in the Northwest $\frac{1}{4}$ - Northwest $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and the Southwest $\frac{1}{4}$ - Southwest $\frac{1}{4}$ of Section 25, Township 18 South, Range 2 West, Jefferson County, Alabama.