

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT, made this 21 day of JAN, 2010, by and between Enterprise Leasing Company-South Central, LLC, a Delaware limited liability company ("Tenant"), M & F Bank ("Mortgagee") and Susan Schein ("Landlord").

WITNESSETH:

WHEREAS, Tenant and Landlord have entered into a certain lease dated November 13, 2009, as assigned, modified, supplemented or amended (the "Lease") covering premises located at 2650 Pelham Pkwy., Pelham, Alabama, as more specifically set forth in the Lease and as more particularly described on Exhibit A hereto (the "Premises"); and

WHEREAS, Mortgagee has made or has agreed to make a mortgage loan ("Loan") to Landlord evidenced by a promissory note secured by, among other security, a certain Mortgage and Security Agreement ("Mortgage") on Landlord's property; and

WHEREAS, the Mortgage, and any other documents or instruments evidencing or securing the Loan are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, Mortgagee has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, Mortgagee and Tenant and Landlord hereby agree and covenant as follows.

1. The Lease and any extensions, renewals, replacements or modifications thereof, and Tenant's interest in the Premises under the Lease, are and shall at all times be subject, subordinate, and inferior to the lien of the Loan Documents and to the lien of all renewals, modifications and extensions thereof, subject to the terms and conditions set forth in this Agreement.

2. Notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of fixed rent or any other monetary obligation of Tenant as set forth on the Lease, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Mortgagee, and Tenant's occupancy of the Premises shall not be disturbed by Mortgagee for any reason whatsoever during the term of the Lease or any such extension or renewal thereof, except as would be permitted for Landlord to do so.

3. In addition, notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of fixed rent or any other monetary obligation of Tenant as set forth on the Lease, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part

to be performed, Mortgagee will not join Tenant as a party defendant in any foreclosure action or other proceeding for the purpose of terminating Tenant's interest and estate under the Lease or for any other purpose.

4. If the interests of Landlord in the Premises shall be transferred to and owned by Mortgagee by reason of foreclosure, deed in lieu of foreclosure, or other proceedings brought by it, or if Mortgagee takes possession of the Premises pursuant to any provision of the Loan Documents, then (i) Mortgagee and Tenant shall be directly bound to each other under all the terms, covenants and conditions of the Lease for the balance of the term thereof and for any extensions or renewals thereof which may be exercised by Tenant, with the same force and effect as if Mortgagee were the Landlord under the Lease; and (ii) Tenant does hereby attorn to Mortgagee as its landlord, said attornment to be effective and self-operative (without the execution of any further instruments), immediately upon Mortgagee succeeding to the interests of the Landlord under the Lease; provided, however, regarding items (i) and (ii) above, that Tenant shall have received written notice from Mortgagee that it has succeeded to the interests of the Landlord under the Lease. The respective rights and obligations of Tenant and Mortgagee upon such attornment, to the extent of the then-remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth from and after Mortgagee's succession to the interests of the Landlord under the Lease, and Tenant shall have the same remedies against Mortgagee for the breach of any agreement contained in the Lease that Tenant might have under the Lease against Landlord if Mortgagee had not succeeded to the interest of Landlord; provided, however, that Mortgagee shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), except to the extent such act or omission continues by Mortgagee during the period of possession by Mortgagee or during a period during which Mortgagee is receiving rent from Tenant pursuant to Paragraph 5 hereof, provided however, in any event Mortgagee shall only be liable for Mortgagee's acts or omissions; or

(b) subject to any defenses which Tenant might have against any prior landlord (including Landlord) prior to the date that Mortgagee first takes possession of the premises; or

(c) bound by any fixed rent which Tenant might have paid for more than the current month; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is in an escrow or other fund available to Mortgagee.

5. Tenant shall not be under any obligation to pay rent to Mortgagee until the Tenant shall have received written notice from Mortgagee that a default has occurred under the Loan Documents and directing such payments be made to Mortgagee. Landlord by its execution of this Agreement hereby consents to such direct payments by Tenant to Mortgagee and hereby releases and discharges Tenant of and from all liability to Landlord on account of any such payments. Upon receipt of such notice, Tenant shall make future payments due under the Lease to Mortgagee until notified otherwise in writing in accordance with the terms of the Lease and Tenant shall not be liable to Landlord to account for such payments.

6. (a) Tenant shall notify Mortgagee in writing at the address set forth herein of the occurrence of any default or event of default by Landlord under the Lease which would give Tenant the right to cancel or

terminate the Lease; and Tenant will grant to Mortgagee up to 30 days or a reasonable time (not to exceed 30 days) in which to cure Landlord's default (which time shall be at least the period of time granted to the Landlord by the Lease), provided, however, that Mortgagee shall give Tenant written notice of Mortgagee's intent to cure Landlord's default within ten (10) days of receipt of Tenant's notice of Landlord's default. Tenant agrees that it will not terminate or cancel the Lease on account of such default until such notice to Mortgagee has been given, and Mortgagee has had the opportunity to cure any such default. Should Mortgagee fail to so notify Tenant of Mortgagee's intent to cure Landlord's default within said ten (10) days, then Tenant shall have all available rights and remedies (including the right to cure Landlord's default) under the Lease, at law and/or in equity. It is expressly understood and agreed that the above shall not be deemed to create any obligation of Mortgagee to cure any such default or defaults.

(b) Mortgagee shall copy Tenant on any notice of Mortgagor's default under the Loan Documents at the same time that Mortgagee shall serve a Notice of Default on Mortgagor. Failure of Mortgagee to give such notice to Tenant shall not invalidate or vitiate such notice as between Mortgagee - Mortgagor.

7. This Agreement may not be modified or amended except by a writing by all parties hereto. Upon satisfaction of the Mortgage, this Agreement shall become null and void and be of no further effect.

8. Whenever in this Agreement it is provided that notice be given to or served upon any of the parties, each such notice or demand shall be in writing, and shall be given or served as follows: if given or served by the Mortgagee, by mailing the same to the Tenant and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at the addresses listed on Page 1 of this Agreement, or at such other addresses as the Landlord and Tenant may from time to time designate by notice given to the Mortgagee; and if given or served by the Tenant, by mailing the same to the Mortgagee and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Mortgagee and the Landlord at the addresses listed on Page 1 of this Agreement or at such other addresses as the Mortgagee and Landlord may from time to time designate by notice given to the Tenant; and if given or served by the Landlord, by mailing the same to Tenant and Mortgagee by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Tenant and Mortgagee at the addresses listed on Page 1 of this Agreement or at such other addresses as the Tenant and Mortgagee may from time to time designate by notice given to Landlord.

9. Tenant hereby waives any priority it may have over Mortgagee with respect to any share of any condemnation award for a taking of all or part of the Premises, except any award for Tenant's loss of business, or loss of trade fixtures or improvements or installations made by Tenant; and agrees that all of any such award, except as above provided, shall be first payable to Mortgagee.

10. Notwithstanding anything herein to the contrary, Tenant shall not be deemed to be in default under any of the terms or conditions of this Agreement until Tenant has received a fully executed original copy of this Agreement.

11. This Agreement shall be binding upon the parties hereto, and their successors and assigns. In addition, this Agreement shall be binding upon any successor to Mortgagee's interest as Landlord of the

Lease.

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

WITNESS:

TENANT:

Enterprise Leasing Company-South Central, LLC
a Delaware limited liability company

BY: 

Bruce McKee

ITS: _____

President/General Manager

WITNESS:

MORTGAGEE:

M & F Bank

BY: 

ITS: 

Vice President

WITNESS:

LANDLORD:

Susan Schein

BY: 

Susan Schein

ITS: 

Owner



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 Shelby Cnty Judge of Probate, AL
 02/02/2010 12:43:40 PM FILED/CERT

STATE OF Alabama
 COUNTY OF Jefferson

On this 21 day of January, 2010 before me personally appeared Bruce McKee, who, being by me duly sworn, did depose and say that he resides at 200 Vestavia Pkwy., Ste. 3700, Birmingham, AL 35216; that he is President/General Manager of **Enterprise Leasing Company-South Central, LLC**, a Delaware limited liability company described in and which executed the above instrument, and that he executed this instrument on behalf of said corporation and that he/she had authority to do so.


 NOTARY PUBLIC
 My commission expires **August 16, 2011**

STATE OF Alabama
 COUNTY OF Shelby


On this 21st day of January, 2010, before me personally appeared David Noten, who, being by me duly sworn, did depose and say that he/she resides at Birmingham, Alabama; that he/she is Vice President of **M & F Bank**, the corporation described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.


 NOTARY PUBLIC

Jamie A. Lucas
My Commission Expires
September 1, 2012

STATE OF Alabama
 COUNTY OF Shelby

On this 25 day of January, 2010 before me personally appeared Susan Schein, who, being by me duly sworn, did depose and say that he/she resides at Birmingham, Alabama; that he/she is **Susan Schein** of Susan Schein Chevrolet, the corporation described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.


 NOTARY PUBLIC

my commission expires
 2-20-2010



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Shelby Cnty Judge of Probate, AL
02/02/2010 12:43:40 PM FILED/CERT

EXHIBIT A

(Legal Description of Leased Premises)

ALL THAT PART OF THE SE $\frac{1}{4}$ OF THE SE $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA, LYING WEST OF HIGHWAY NO. 31 AND SOUTH OF THE PROPERTY DEEDED TO LOUIE REESE AS TRUSTEE BY DEED BOOK 238, PAGE 801, MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR POINT OF BEGINNING, BEGIN AT THE SW CORNER OF THE SE $\frac{1}{4}$ OF THE SE $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 3 WEST AND RUN NORTH 422 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE REESE PROPERTY AS DESCRIBED IN DEED BOOK 238, PAGE 801; THENCE TURN AN ANGLE TO THE RIGHT OF 90 DEGREES AND RUN EASTERLY 465 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U. S. HIGHWAY NO. 31; THENCE RUN SOUTHWESTERLY ALONG SAID HIGHWAY TO THE SOUTH LINE OF SAID $\frac{1}{4}$ - $\frac{1}{4}$ SECTION; THENCE RUN WESTERLY ALONG THE SOUTH LINE OF SAID $\frac{1}{4}$ - $\frac{1}{4}$ BACK TO THE POINT OF BEGINNING; BEING SITUATED IN SHELBY COUNTY, ALABAMA.