

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

This Agreement, to be made effective as of this 22nd day of March, 2004, is entered into by and among **FIRST BANK OF BEVERLY HILLS, FSB**, a federally chartered savings and loan, with an address of 23901 Calabasas Road, Suite 1050, Calabasas, California, 91302 (the "Mortgagee"), **LYNN KIRK, TRUSTEE OF THE FRANK AND LYNN KIRK REVOCABLE TRUST DATED OCTOBER 30, 1982 AND RE-STATED DECEMBER 26, 2000**, with an address of 1209 ½ De La Vina Street, Santa Barbara, California 93101 (the "Landlord") and **HEARTLAND AUTOMOTIVE SERVICES II, INC.**, a Delaware corporation, with an address of 11308 Davenport Street, Omaha, Nebraska 68154 (the "Tenant"). For purposes of recording, Landlord and Tenant shall be deemed the Grantors hereunder and the Mortgagee shall be deemed the Grantee hereunder.

WHEREAS, Tenant has executed with Landlord a written Build-To-Suit Lease Agreement dated July 7, 2003 (the "Lease") pursuant to which Tenant has leased approximately 4,070 square feet of total building area (the "Leased Premise") on the real property described below:

Lot #9 of the Fifth Revision of the Stansell Square 3-Lot Subdivision; Section 26, Township 1 South, Range 8 West, Horn Lake, DeSoto County, Mississippi. Containing approximately 39,990 square feet (0.916 acres)

WHEREAS, Mortgagee has, in part in reliance on the Lease, agreed to lend money to Landlord to be secured by a First Deed of Trust, Assignment of Leases and Rents, Security Agreement, and Fixture Filing (the "Mortgage"), which is to be recorded prior to this instrument with the Recorder of Deeds of DeSoto County, Mississippi on the Leased Premises; and

WHEREAS, Tenant and Mortgagee wish to establish certain rights and priorities with respect to their respective interests.

NOW, THEREFORE, in consideration of the premises and the mutual terms, covenants and conditions herein contained, the parties agree as follows:

1. Non-Disturbance. Provided Tenant is not in default (beyond any grace periods) under the Lease, then:

(a) The right of Tenant to possession of the Leased Premises and Tenant's rights arising out of the Lease shall not be affected or disturbed by Mortgagee in the exercise of any of its rights under the Mortgage or the indebtedness secured thereby; nor shall Tenant be named as a party defendant to any foreclosure of the lien of the Mortgage, unless required by law, nor in any other way be deprived of its rights under the Lease.

(b) If Mortgagee or any other person acquires title to the Leased Premises pursuant to the exercise of any remedy provided for in the Mortgage, or as a result of a default by Landlord thereunder, the Lease shall not be terminated or affected by said foreclosure or sale or any such proceeding, and Mortgagee hereby covenants that any sale by it of the Leased Premises pursuant

to the exercise of any rights and remedies under the Mortgage, or otherwise shall be made subject to the Lease and the rights of Tenant thereunder.

2. Attornment. In the event Tenant is entitled to remain in possession under paragraph 1 or is permitted to remain in possession by Mortgagee or any other person who acquires title to the Leased Premises pursuant to the exercise of any remedy provided in the Mortgage, or as a result of default by Landlord thereunder, then Tenant covenants and agrees to attorn to Mortgagee or such other person as its new landlord, and the Lease shall continue in full force and effect as a direct lease between Tenant and Mortgagee or such other person upon all the terms, covenants, conditions and agreements set forth in the Lease, provided that in no event shall Mortgagee or such person be:

(i) bound by any payment of rent or additional rent made by Tenant to Landlord for more than one (1) month in advance; or

(ii) bound by any amendment or modification of the Lease made without the written consent of Mortgagee which shall not be unreasonably withheld; or

(iii) liable for any prior act or omission of any prior landlord (including Landlord) under the Lease; or

(iv) liable for any security deposit or last month's rent that Tenant may have paid in an aggregate amount greater than two (2) times the rent for the then-current month, and in any event, Mortgagee shall not be liable or accountable for any security deposit required by Landlord under the Lease, unless those sums have actually been received by Lender as cash security for Tenant's performance of the Lease; or

(v) bound by any provision in the Lease that obligates the Landlord to erect or complete any building or to perform any construction work or to make any improvements to the Leased Premises or to expand or rehabilitate any existing improvements or to restore any improvements following any casualty or taking; or

(vi) bound by any notice of termination given by Landlord to Tenant without Mortgagee's written consent thereto; or

(vii) personally liable under the Lease (Landlord and Tenant expressly agreeing that any liability of Mortgagee under the Lease shall be limited to the security interest of Mortgagee in the Premises); or

(viii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord).

3. Right of Mortgagee to Cure Defaults. In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate the Lease, or to claim a partial or total eviction, Tenant shall not exercise

such right (a) until it has given written notice of such act or omission to Mortgagee at the following address:

First Bank of Beverly Hills
23901 Calabasas Road, Suite 1050
Calabasas, California 91302
Attn: LOAN ADMINISTRATION

and (b) until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise, after similar notice, to effect such remedy) and (c) until the time period, if any, during which Landlord shall have under the Mortgage to remedy the same shall have elapsed. Mortgagee shall have the right, but not the obligation, to remedy such act or omission within such period.

4. Subordination. Subject to the foregoing, the Lease shall be subject and subordinate to the lien of the Mortgage and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof.

5. Further Assurances. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of either party hereto; however, Tenant agrees to exercise and deliver to Mortgagee, or to any person to whom Tenant herein agrees to attorn, such other instrument as either shall request in order to further evidence the terms, covenants and conditions herein contained.

6. Tenant Estoppel Certificates. Tenant has executed and delivered to Mortgagee an estoppel certificate in the form attached hereto as Exhibit A (with appropriate insertions; Exhibit A shall not be recorded, but shall be kept on file with the Mortgagee). Tenant agrees from time to time hereafter, at the reasonable request of Mortgagee or Landlord to execute and deliver to Mortgagee a new estoppel certificate substantially in the form of Exhibit A (with appropriate insertions and with changes to reflect the status of completion of the improvements).

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

8. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

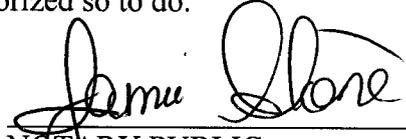
9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

10. Termination. This Agreement shall terminate upon termination or release of the Mortgage.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

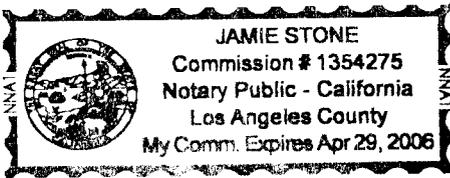
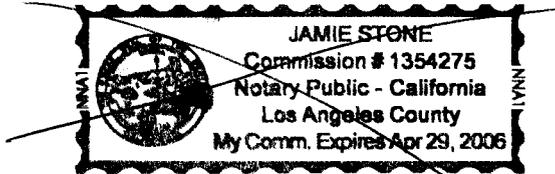
Eisenberg

Personally appeared before me, the undersigned authority in and for the said county and state, on this 10TH day of MAY, 2004, within my jurisdiction, the within named, Sheldon who acknowledged that (he)(she) is SENIOR VICE PRESIDENT of FIRST BANK OF BEVERLY HILLS and that in said representative capacity (he)(she) executed the above and foregoing instrument, after first having been duly authorized so to do.



NOTARY PUBLIC

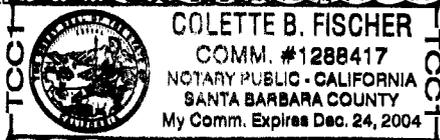
My Commission expires: Apr 29, 2006



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STATE OF California
COUNTY OF Santa Barbara

Personally appeared before me, the undersigned authority in and for the said county and state, on this 18th day of May, 2004, within my jurisdiction, the within named, Lynn Kirk who acknowledged that ~~(he)~~(she) is Trustee of Frank and Lynn Kirk Revocable Trust and that in said representative capacity ~~(he)~~(she) executed the above and foregoing instrument after first having been duly authorized so to do.



Colette B. Fischer
NOTARY PUBLIC

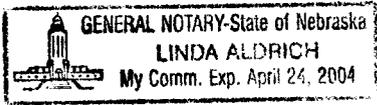
My Commission expires:

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 22nd day of March, 2004, before me, a Notary Public, appeared Brian/^{D.}Clark, to me personally known, who being by me duly sworn, did say that he is the Vice President and CFO of Heartland Automotive Services II, Inc., a corporation, and that the foregoing instrument was executed ~~signed~~ on behalf of said corporation by authority of its Board of Directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Omaha, the day and year last above written.



Linda Aldrich
Notary Public in and for said County and State

My Commission Expires: 4-24-04

EXHIBIT A

March 22, 2004

First Bank of Beverly Hills
23901 Calabasas Road, Suite 1050
Calabasas, California 91302
Attn: _____

Re: \$ 137,000.00 Promissory Note secured by real estate at 1652 Goodman Road West, Horn Lake, DeSoto County, Mississippi ("Premises")

Gentlemen:

The undersigned are the Landlord and Tenant under that certain Build-To-Suit Lease Agreement dated July 7, 2003 (the "Lease") by which a portion of the Premises described in the Lease have been leased by Landlord to Tenant ("Demised Premises") and, understanding that First Bank of Beverly Hills (the "Mortgagee") has required as a condition for the making of the above loan, that this estoppel letter be executed by Landlord and Tenant, and further understanding that Mortgagee will rely on the information herein contained in connection with the contemplated loan to Landlord from Mortgagee, advise, represent, warrant and certify to, Mortgagee as follows:

1. A true, correct and complete copy of the Lease (including all amendments, riders and exhibits thereto) is attached to this letter. There are no other agreements, amendments, supplements, understandings or the like between Landlord and Tenant relating to the Demised Premises or the Premises or the Lease except the Construction Agreement dated July 7, 2003.
2. Tenant will accept possession of the Demised Premises when a certificate of occupancy is obtained for the Demised Premises. The execution of the Lease was duly authorized, the Lease was properly executed, is in full force and effect, is binding upon Tenant and Landlord, and there exists no default, nor state of facts which with notice, the passage of time, or both, could ripen into default, on the part of either Tenant or Landlord, and there are no defenses to Landlord's enforcement of its rights under the Lease.
3. Under the Lease, Tenant is obligated to pay rent commencing on the Lease Commencement Date of March 1, 2004 as defined in the Lease, without present right of defense or offset, and there are no periods of free rentals applicable to the term of the Lease. The present rental at the annual rate of \$88,977.83 is paid equal monthly installments. No rent has been paid in advance, and Tenant has no claim against Landlord for any deposits. Tenant will in no event look to Mortgagee for the return of any security deposit under the Lease. Tenant has no charges, liens, claims, credits or offsets under said Lease or otherwise against rentals due or to become due thereunder.

4. The primary term of the lease commences on the Lease Commencement Date, and ends twenty (20) years later, and Tenant has the option to extend the term of the Lease for four (4) extended terms of five (5) years each.

5. There has not been filed by or against, nor, to the best of the knowledge and belief of Landlord and Tenant is there threatened against or contemplated by, Landlord or Tenant, a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or of any state thereof, or any other action brought under said bankruptcy laws.

6. Landlord has not assigned, hypothecated or pledged the Lease, or any of the rents accruing under the Lease other than to Mortgagee pursuant to an Assignment of Leases and Rents in connection with the above-referenced financing and Tenant has not subleased any portion of the Demised Premises or assigned any of its rights under the Lease. Tenant has no knowledge or notice of any assignment, hypothecation or pledge of the rents accruing under the Lease except to Mortgagee. Landlord and Tenant each agree not to subordinate the Lease to any other mortgagee or other party whatsoever.

7. Tenant agrees that it will not pay any rent under the Lease more than thirty (30) days in advance of its due date without Mortgagee's consent; will not surrender the Lease nor consent to the modification of any of the terms of the Lease nor to the termination thereof by Landlord; and will not seek to terminate the Lease by reason of any act or omission of the Landlord, without giving notice to the Mortgagee at your above address and until a reasonable period of time shall have elapsed. Tenant also agrees that it will attorn to Mortgagee, at Mortgagee's option, if and when Mortgagee succeeds to the position of Landlord. Landlord and Tenant agree that no modification of the Lease shall be valid against Mortgagee.

8. Tenant has no right of first refusal, option or other right to purchase the Premises, or any part thereof, including, without limitation, the Demised Premises.

9. All agreements and conditions of the Lease to be performed or complied with by Landlord relating to the improvements or the use of the Premises or Demised Premises have been satisfied and all of the improvements, if any, required to be constructed by Landlord pursuant to the Lease have been entirely and satisfactorily completed as required therein and in all collateral agreements, plans, and specifications respecting the same. Tenant has accepted the construction of such improvements as complete and in accordance with all requirements therefor contained in the Lease or any other agreement.

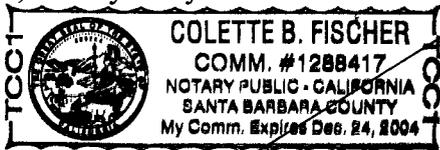
10. Tenant acknowledges that in the event the holder of said Assignment of Leases and Rents shall exercise its rights thereunder, Tenant will pay all rents and other charges due and payable under said Lease directly to such holder. Upon request, so long as there is no default under the Lease, Landlord and Tenant will, in the future, timely execute and deliver estoppel letters in the form hereof to Mortgagee, and if there is a default under the Lease, Landlord and Tenant will, in the future, timely execute and deliver estoppel letters in the form hereof to Mortgagee, except such estoppel letter shall specify such default. This letter and the

ACKNOWLEDGMENT

STATE OF California)
) ss.
COUNTY OF Santa Barbara

On this 25TH day of March, 2004, before me, a Notary Public, appeared Ms. Lynn Kirk, to me personally known, who being by me duly sworn, did say that she is the Trustee of The Gottlieb Family Trust, and that the foregoing instrument was signed on behalf of said trust, and such person duly acknowledged the execution of the same to be the free act and deed of said trusts.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.



Colette B. Fischer
Notary Public

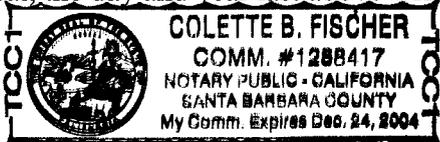
My commission expires: 12-24-04

ACKNOWLEDGMENT

STATE OF California)
) ss.
COUNTY OF Santa Barbara

On this 25TH day of March, 2004, before me, a Notary Public, appeared Ms. Lynn Kirk, to me personally known, who being by me duly sworn, did say that she is the Trustee of the Frank and Lynn Kirk Revocable Trust, and that the foregoing instrument was signed on behalf of said trust, and such person duly acknowledged the execution of the same to be the free act and deed of said trust.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.



Colette B. Fischer
Notary Public

My commission expires: 12-24-04

STATE MS.-DESOTO CO.
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BK 103 PG 245
W.E. DAVIS CH. CLK.