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DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

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DK T BK 3,065 PG 83
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT ("Agreement") made as of the 8 day of January, 2009 between THE PRUDENTIAL INSURANCE COMPANY OF AMERICA (together with its successors or assigns in interest, collectively "Lender") and EARLE INDUSTRIES, INC. ("Tenant," which includes any permitted assigns and successors in interest of Tenant under the Lease).

RECITALS:

A. Lender is the owner and the holder of a loan evidenced by certain promissory notes (collectively, the "Note") dated April 24, 2008, in the face amount of \$66,900,000. The Note is secured by a Deed of Trust, Assignment of Leases and Rents, Security and Fixture Filing Agreement (the "Mortgage") dated the same date as said Note, and recorded in the Real Property Records of DeSoto County Mississippi, covering the real property described therein (the "Mortgaged Premises").

in Book 2,890, Page 527,

and Memorandum of Lease dated December 10, 2008

B. Tenant is the tenant under that certain Lease Agreement dated December 10, 2008 (the "Lease"), between Tenant and US INDUSTRIAL REIT II, a Texas real estate investment trust, as landlord (said landlord and its successors and assigns under the Lease hereinafter called "Landlord"), covering all or part of the Mortgaged Premises as set forth under the Lease (hereinafter called the "Demised Premises").

and recorded in the Real Property Records of DeSoto County Mississippi in Trust Deed Book 133, Page 15

C. Tenant and Lender desire to confirm their understanding with respect to the Lease and the Mortgage.

THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, Lender and Tenant agree as follows:

1. Subordination. The Lease is now, and will at all times and for all purposes be, subject and subordinate, in every respect, to the Mortgage and the lien imposed by the Mortgage, with the provisions of the Mortgage and this Agreement controlling over the provisions of the Lease. The Lease is subordinate and subject, in each and every respect, to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage, (collectively a "Modification"), and all other loan documents securing the Note, provided that any and all Modifications shall nevertheless be subject to the terms of this Agreement.

2. Non-Disturbance. So long as Tenant is not in default, beyond the applicable cure periods, under any of the terms, provisions, agreements, covenants, or obligations set forth in the Lease,

(i) Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon default under the Mortgage, unless applicable law requires Tenant to be made a party, and

(ii) Tenant's possession of the Demised Premises under said Lease shall not be disturbed or interfered with by Lender.

3. Attornment. If Lender or any other party that succeeds to the interest of Landlord under the Lease in any manner ("Successor Landlord"), including but not limited to foreclosure, exercise of any power of sale, succession by deed in lieu or other conveyance (a "Succession"), Tenant will attorn to and be bound to Successor Landlord upon Succession and will recognize any Successor Landlord as the landlord under the Lease. The Lease shall continue in full force and effect as a direct lease, in accordance with its terms, except as provided in this Agreement. Such attornment is effective and self-operative without the execution of any further instrument. Tenant, upon request, will sign and deliver any instruments reasonably requested to evidence such attornment. Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder as a result of any such foreclosure or trustee's sale.

4. Limitation On Successor Landlord's Liability. Upon any Succession, Successor Landlord shall not be (a) liable for any act or omission of the Landlord under said Lease, (b) subject to any offsets or defenses which Tenant may have against the Landlord arising or occurring prior to the Succession, (c) bound by any rent or additional rent which Tenant may have paid to Landlord for more than the current month, (d) bound by any amendment or modification of the Lease that would reduce or shorten any economic obligations of Tenant under the Lease or materially impair Landlord's rights under the Lease made without Lender's prior written consent; provided, however,

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Lender shall not be bound by any amendment or modification unless Lender receives a fully executed copy of such amendment or modification within ten (10) business days after execution, (e) liable for any security deposit paid by Tenant to Landlord unless such deposit is delivered to Lender, (f) liable for or obligated to pay for repairs, replacements, damages or allowances not made, performed or paid by the Landlord if such performance or payment was due prior to the Succession, or (g) liable for the payment of any leasing commissions, the triggering event for which arose or occurred prior to the Succession. Any reference to Landlord includes all prior landlords under the Lease. Successor Landlord shall not be liable for the performance of the obligations of the Landlord under the Lease, except for those obligations which first arise during the period of Successor Landlord's ownership of the Mortgaged Premises and for "Continuing Defaults" (as defined below). In the case of a casualty or condemnation repair obligation, Lender must receive the insurance or condemnation proceeds as a condition precedent to Lender's repair obligation under the Lease.

A "Continuing Default" is defined as a non-monetary default by Landlord under the Lease that began prior to Succession, is ongoing and continuing following Succession, is susceptible to being cured, and for which Tenant provided Lender with notice as required hereunder prior to Succession. Successor Landlord shall only have liability for actual damages (not consequential or special damages) that arise after Succession as a result of its failure to cure a Continuing Default.

5. Tenant's Warranty. Tenant warrants to Lender, as of the date hereof, that (a) attached is a true, correct and complete copy of the Lease, (b) there are no known defaults on the part of Landlord, (c) the Lease is a complete statement of the agreement of the parties with respect to the leasing of the Demised Premises, (d) the Lease is validly executed by Tenant and in full force and effect, and (e) all conditions to the effectiveness or continuing effectiveness thereof required to be satisfied as of the date hereof have been satisfied. Tenant acknowledges and warrants to Lender that it has not subordinated the Lease or any of its rights under the Lease to any lien or mortgage other than the Mortgage.

6. Lender Cure Rights. Tenant will notify Lender in writing of any default by Landlord under the Lease that would entitle Tenant to cancel or terminate the Lease or abate the rents payable thereunder. Such notice shall be sent to Lender at 2100 Ross Avenue, Suite 2500, Dallas, Texas 75201, Reference Loan Number 706107967, certified mail, return receipt requested. If within thirty (30) business days after receipt of such default notice Lender notifies Tenant in writing of its intent to cure such default, Lender shall have thirty (30) days beyond the curative period available to Landlord under the Lease to cure the default by Landlord. Lender has no obligation to cure any default by Landlord and shall have no liability for not curing any default. In addition, as to any default by Landlord the cure of which requires possession and control of the Mortgaged Premises, Lender's cure period shall continue for such additional time as Lender may reasonably require to obtain possession and control of the Mortgaged Premises.

7. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, Tenant shall look exclusively to Successor Landlord's interest in the Mortgaged Premises or any proceeds from the disposition thereof, any rents or profits derived from the Mortgaged Premises, or any insurance or condemnation proceeds related thereto, for the satisfaction of Tenant's remedies in the event of default by Successor Landlord as landlord under the Lease or any payment or discharge of any money judgment in favor of Tenant against Successor Landlord with respect to the Lease.

8. Rent Payment. Immediately upon written notice to Tenant (a) that Lender is exercising its rights under the Mortgage or any other loan documents acting to secure the Note following a default under the Loan, or (b) of Lender's succeeding to the Landlord's interest under the Lease, Tenant agrees to pay all rents due under the Lease directly to Lender in accordance with the Lease.

9. Complete Agreement. This Agreement supersedes, as between the parties hereto, all of the terms and provisions of the Lease which are inconsistent herewith.

10. No Oral Modification/Binding Effect. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

11. Laws. This Agreement shall be construed in accordance with the laws of the State where the Mortgaged Premises are located.

12. Automatic Amendment of Lease. Upon a Succession, the Lease is automatically amended as follows:

- a. Hazardous Materials. All representations, warranties, indemnities or hold harmless provisions in favor of Tenant from Landlord dealing with the presence, use, transportation, disposal, contamination, exposure to or in any way arising out of hazardous or toxic materials, chemicals or wastes ("Hazardous Materials") are deleted as to Lender. Lender, however, as Successor Landlord covenants and agrees to (a) comply with all laws governing Hazardous Materials ("Hazardous Materials Laws"), (b) store, use and dispose of all Hazardous Materials at the Mortgaged Premises in accordance with all applicable Hazardous Materials Laws, and (c) remove, remediate and/or clean up, as applicable, in accordance with all applicable Hazardous Materials Laws, all Hazardous Materials at the Mortgaged Premises (to the extent not caused by Tenant or its employees, contractors or agents) impairing Tenant's use or access to the Demised Premises.
- b. Insurance. Tenant will at all times carry comprehensive general liability coverage for its activities and operations at the Demised Premises, listing Lender and Landlord as additional insureds, in such coverage amounts as are required by the Lease but in no event less than One Million Dollars. Lender will have no liability to Tenant for any indemnity or hold harmless provision under the Lease where Lender is otherwise covered by Tenant's comprehensive general liability coverage(s) as carried by Tenant or which Tenant is required to carry under the Lease. All insurance required to be carried by Landlord under the Lease may be effected by Lender by self-insurance or by a policy or policies of blanket insurance covering additional items or locations or assureds and with such deductibles as Lender may from time to time determine. Tenant has no rights in any policy or policies maintained by Lender.
- c. Option or Right of First Refusal. Lender will not be bound to honor any option or right of first refusal in favor of Tenant to purchase all or any part of the Mortgaged Premises.
- d. [Insert additional amendments.]

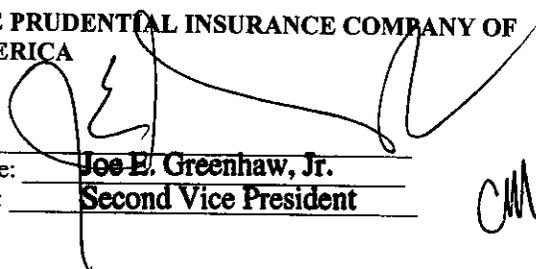
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

LENDER:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

ATTEST:

Kathryn H. Butler
Assistant Secretary

By: 
Name: Joe E. Greenhaw, Jr.
Title: Second Vice President

CM

(Corporate Seal)

STATE OF TEXAS)
)SS:
COUNTY OF DALLAS)

This instrument was acknowledged before me on the 8 day of January, 2009, by Joe E. Greenhaw Jr., the Second Vice President of The Prudential Insurance Company of America, a New Jersey corporation, on behalf of the company.



Notary Public, State of Texas

[seal]



TENANT:
EARLE INDUSTRIES, INC.,
an Arkansas corporation

ATTEST
Louise Colestock
Secretary

By: Peter A. Felsenthal
President

(Corporate Seal)

STATE OF TN)
COUNTY OF Shelby)

The foregoing instrument was acknowledged before me this 5 day of December, 2008, by Peter Felsenthal as President of Earle Industries, Inc., an Arkansas corporation, on behalf of said corporation.

Lorraine D. Wolf
Notary Public

My Commission Expires:

My Commission Expires March 31, 2010

