

After Recording Return to:

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200411120106
Skagit County Auditor

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Document Title or Titles:

LEASE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

111916
LAND TITLE OF SKAGIT COUNTY
LAND TITLE OF SKAGIT COUNTY

Reference Nos. of Documents Amended:

Instrument No. 9901270043
Instrument No. 200406150004

Name of Landlord:

Larry Gordon and Virginia Gordon

Name of Tenant:

Valley Freightliner, Inc., a Washington Corporation

Name of Lender:

DaimlerChrysler Services North America LLC, a Michigan limited liability company

Legal Description:

Lot 9, Hilde Commercial Facility Binding Site Plan No. 97-0361, approved November 25, 1998, recorded November 25, 1998 in Volume 13 of Short Plats, pages 186 and 187, under auditor's File No. 9811250022 and being a portion of the Northwest ¼ of the Southwest ¼, Section 32, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington

Assessor's Property Tax Parcel Number or Account Number: P113741

**LEASE SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS AGREEMENT, made this 9th day of ^{Nov} July, 2004 between VALLEY FREIGHTLINER, INC., a Washington corporation, having an address at 277 Stewart Road SW, Pacific, WA 98047 ("Tenant") and LARRY GORDON AND VIRGINIA GORDON, husband and wife, having an address at 277 Stewart Road SW, Pacific, WA 98047 ("Landlord") for the benefit of DAIMLERCHRYSLER SERVICES NORTH AMERICA, LLC, a Michigan limited liability company, having its principal office and place of business at 27777 Inkster Road, Farmington Hills, Michigan 48334-5326 (hereinafter called "Lender").

WITNESSETH

WHEREAS, the Tenant has entered into a certain lease dated January 26, 1999* with Landlord (the "Lease") covering premises located in Skagit County, Washington, more particularly described in Exhibit A attached hereto (the "Premises");

* Recorded 1/27/99 Auditors # 9901270044

WHEREAS, Lender has previously made a loan to Landlord in the amount of \$741,115.00 (the "Original Loan"), evidenced by a Promissory Note in the amount of the Original Loan, as amended on even date herewith (the "Original Note"), which Original Note is secured by, among other things, a Deed of Trust upon the Premises dated January 27, 1999, recorded as Instrument No. 9901270043 in Book 1934, Page 0253, in the Record's Office of Skagit County, Washington, as amended by that certain First Amendment to Deeds of Trust, Assignment of Rents, Security Agreement and Fixture Filing, recorded as Instrument No. 200406150004 (the "Deed of Trust");

WHEREAS, Lender and Landlord have agreed to amend and restate the Original Note to reflect, among other things, a change in the interest rate and an extension of the term of the Original Note (the "Renewal Loan") and Landlord has executed a First Amended and Restated Promissory Note in the amount of \$618,085.15 (the "Amended Note"). The Original Note and the Amended Note are collectively referred to herein as the "Note."

WHEREAS, it is to the mutual benefit of the parties hereto that Lender make the Renewal Loan to Landlord;

WHEREAS, it is a condition to the continuation of the Original Loan and Renewal Loan, that the Deed of Trust securing same be a lien or charge upon the Premises unconditionally prior and superior to the Lease and leasehold interest of Tenant;

WHEREAS, Tenant acknowledges that the Deed of Trust constitutes a lien or charge upon the Premises which is, or should be, unconditionally prior and superior to the Lease and leasehold interest of Tenant; and



WHEREAS, Lender 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 hereinafter contained, the parties hereto mutually covenant and agree as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of the Tenant in and to said Premises are and shall be subject and subordinate to the Deed of Trust and to all of the terms and conditions contained therein, and to any renewals, modifications, replacements, consolidations and extensions thereof.

2. Lender has consented to the Lease and, in the event of foreclosure of the Deed of Trust, or in the event Lender comes into possession or acquires title to the Premises as a result of the enforcement of foreclosure of the Deed of Trust or the Note, or as a result of any other means, Lender may elect to recognize Tenant and may agree that Tenant shall not be disturbed in its possession of the Premises for any reason other than one which would entitle the Landlord to terminate the Lease under its terms or would cause, without any further action by such Landlord, the termination of the Lease or would entitle such Landlord to dispossess the Tenant from the Premises.

3. Tenant agrees with Lender that, if the interests of Landlord in the Premises shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it, or any other manner, or shall be conveyed thereafter by Lender or shall be conveyed pursuant to a foreclosure sale of the Premises (and for purposes of this paragraph, the term "Lender" shall be deemed to include any grantee of the Lender or purchaser at foreclosure sale), Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any option therefor in the Lease, with the same force and effect as if Lender were the Landlord under the Lease, and Tenant does hereby attorn to Lender as its Landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Lender succeeding to the interest of the Landlord in the Premises. Tenant agrees, however, upon the election of and written demand by Lender within twenty (20) days after Lender receives title to the Premises, to execute an instrument in confirmation of the foregoing provisions, satisfactory to Lender, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.

4. Tenant agrees that if Lender shall succeed to the interest of Landlord under the Lease, Lender shall not be (a) liable for any action or omission of any prior landlord under the Lease, or (b) subject to any offsets or defenses which Tenant might have against any prior landlord, or (c) bound by any rent or additional rent which Tenant might have paid for more than one month in advance to any prior landlord, unless such deposit is in an escrow fund available to Lender, or (e) bound by any amendment or



modification of the Lease made without Lender's consent, or (f) bound by any provision in the Lease which obligates the Landlord to erect or complete any building or to perform any construction work or to make any improvements to the Premises. Tenant further agrees that Tenant will not voluntarily subordinate the Lease to any other lien or encumbrance without Lender's consent.

5. In the event that the Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to the Lender and the Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including without limitation any action in order to terminate, rescind or void the Lease or to withhold any rental thereunder, for a period of ten (10) days after receipt of such written notice thereof by the Lender with respect to any such default capable of being cured by the payment of money and for a period of thirty (30) days after receipt of such written notice thereof by the Lender with respect to any other such default (provided that, in the case of any default which cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period because of the nature of such default or because Lender requires time to obtain possession of the Premises in order to cure the default, if the Lender shall proceed promptly to attempt to obtain possession of the Premises, where possession is required, and to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity).

6. Tenant agrees it shall not take any action or allow the Premises to be used in such a manner that violates any applicable federal, state and local environmental laws and regulations. In the event Lender shall succeed to the interest of Landlord under the Lease or title to the Premises shall be transferred to Lender by foreclosure sale or by deed in lieu of foreclosure, Tenant shall defend, indemnify and hold harmless Lender, and its successors and assigns, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to (a) the presence, disposal, release or threatened release of any hazardous materials on, over, under, from or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals caused by or related to Tenant's use or occupancy of the Premises; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials on the Premises; (c) any lawsuit brought or threatened, settlement reached or government order relating to such hazardous materials with respect to the Premises; and/or (d) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of Lender, which are based upon or in any way related to such hazardous materials used on the Premises.



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7. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein the term "Tenant" shall include the Tenant, its successors and assigns; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure, and the word "Lender" shall include the Lender herein specifically named and any of its successors and assigns, including anyone who shall have succeeded to Landlord's interest in the Premises by, through or under foreclosure of the mortgage.

8. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Lease and leasehold interest of Tenant to the lien or charge of the Deed of Trust in favor of Lender, and shall supersede and cancel any prior agreements as to such, or any, subordination, including, but not limited to, those provisions, if any, contained in the Lease which provide for the subordination of the Lease and leasehold interest of Tenant to a deed or deeds of trust or to a mortgage or mortgages to be thereafter executed, and shall not be modified or amended except in writing signed by all parties hereto.

9. Tenant declares, agrees, represents and warrants that:

- (a) It consents to (i) all provisions of the Note and Deed of Trust and (ii) all agreements, including but not limited to any loan or escrow agreements, between Landlord and Lender for the disbursement of the proceeds of Lender's Loan;
- (b) Lender, in making disbursements pursuant to any such agreement, is under no obligation or duty to, nor has Lender represented that it will see to, the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;
- (c) It is in exclusive possession of the Premises. The current Lease term expires on December 31, 2038;
- (d) Rental payments commenced on Jan. 1, 1999, and rental payments have been made through Oct. 31, 2004. The current fixed minimum monthly rental is \$ 6200-.
- (e) To the best of Tenant's knowledge, there are no offsets or credits against minimum rentals, nor have rentals been prepaid, and there are no unused concessions, bonuses, free months rental, rebates or other matters affecting the rental.



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- UNOFFICIAL DOCUMENT
- (f) To the best of Tenant's knowledge, there are no actions, whether voluntary or otherwise, pending against the undersigned under the bankruptcy or other insolvency laws of the United States or any state thereof.
 - (g) All improvements and space required to be furnished according to the Lease have been duly delivered by Landlord and accepted by Tenant, and all work required to be performed by Landlord under the Lease has been completed.
 - (h) To the best of Tenant's knowledge, there are no defaults by Landlord under the Lease. This representation is intended to indicate the serviceability of the premises for Tenant's business purposes as of the date hereof, and may not be deemed a warranty as to their continuing fitness, nor shall it relieve Landlord, its successors or assigns, of any obligations provided for in the Lease.
 - (i) The Lease has not been modified, altered or amended except as noted above, and the Lease is in full force and effect.

The foregoing is made with the knowledge that Lender may consummate a loan to Landlord secured by the Deed of Trust on this property and that it will rely upon the truth of this certificate among other factors in disbursing funds under said loan.

10. The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.



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IN WITNESS WHEREOF the parties hereto have placed their hands and seals the day and year first above written.

TENANT:

VALLEY FREIGHTLINER, INC., a Washington corporation.

By: *Larry Gordon*
Name:

Its:

LANDLORD:

Larry Gordon
LARRY GORDON

Virginia Gordon
VIRGINIA GORDON

STATE OF WASHINGTON)
COUNTY OF Peace) ss.
)

On this 9 day of November, 2004, before me, the undersigned a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Larry Gordon, to me known to be the President of the corporation that executed the within instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and each on oath stated that he was authorized to execute said instrument.

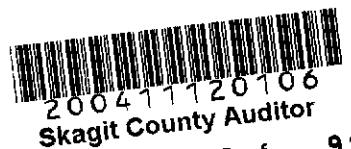
WITNESS my hand and official seal hereto affixed the day and year first above written

Mary V. Bailey
Signature of Notary

MARY V. BAILEY
Printed Name of Notary

NOTARY PUBLIC in and for the State of Washington

My appointment expires: 12-7-2005



STATE OF WASHINGTON)
) ss.
COUNTY OF Spice)

On this 9 day of November, 2004, before me, the undersigned a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Larry Gordon and Virginia Gordon to me known to be the individuals described and who executed the foregoing instrument, and acknowledged to me that they signed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned..

WITNESS my hand and official seal hereto affixed the day and year first above written



Mary V. Bailey
Signature of Notary

MARY V. BAILEY
Printed Name of Notary
NOTARY PUBLIC in and for the State of Washington



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EXHIBIT A

Description of Premises

Lot 9, Hilde Commercial Facility Binding Site Plan No. 97-0361, approved November 25, 1998, recorded November 25, 1998 in Volume 13 of Short Plats, pages 186 and 187, under auditor's File No. 9811250022 and being a portion of the Northwest ¼ of the Southwest ¼, Section 32, Township 34 North, Range 4 East, W.M.

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Assessor's Property Tax Parcel Number or Account Number: P113741



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