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Skagit County Auditor

7/5/2011 Page 1 of 5 10:33AM

After recording mail to:

George D. Horton Jr.  
Wells Fargo Bank, National Association  
MAC P6101-121  
1300 SW Fifth Avenue, Suite 1200  
Portland, OR 97201

GUARDIAN NORTHWEST TITLE CO.  
73840-2

**SUBORDINATION AND ATTORNMENT AGREEMENT**

THIS AGREEMENT, made as of the 30th day of June, 2011 by JERRY L. SMITH, INCORPORATED (the "Lessee"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (the "Lender").

**WITNESSETH:**

WHEREAS, the Lessee and Jerry L. Smith (the "Borrower"), have entered into that certain lease dated January 1, 2011 (the "Lease"), pursuant to which all of the real property legally described as set forth on Exhibit A attached hereto and the building located thereon (the "Leased Property") have been or will be leased by the Borrower to the Lessee for a term through December 31, 2015; and

WHEREAS, the Borrower has executed and delivered to the Lender that certain Deed of Trust, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents dated as of May 19, 2003, which was recorded in the office of the Skagit County Auditor on May 19, 2003, as Document No. 200305190202 (the "Deed of Trust"), pursuant to which the Borrower has granted a mortgage to the Lender in and to the Leased Property to secure repayment of certain indebtedness of the Borrower to the Lender; and

WHEREAS, the Deed of Trust has been amended by that certain Amendment to Deed of Trust, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents dated as of June 16, 2006, which was recorded in the office of the Skagit County Auditor on July 10, 2006 as Document No. 200607100172 (the "First Amendment"); and

[CHEVROLET FACILITY PROPERTY]  
[12484 Reservation Road, Anacortes]

WHEREAS, the Deed of Trust has been amended by that certain Second Amendment to Deed of Trust, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents dated as of even date herewith (the "Second Amendment") (the Deed of Trust, the First Amendment and the Second Amendment shall hereafter be referred to collectively as the "Deed of Trust"); and

WHEREAS, as a condition of Lender's willingness to enter into the Second Amendment, Lender has required the subordination and attornment agreement of the Lessee set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, and further in consideration of the above-mentioned indebtedness, the receipt and sufficiency of which are hereby acknowledged, the Lessee hereby agrees as follows:

1. The Lessee hereby subordinates in all respects all of the Lessee's right, title and interest in and to the Leased Property under the Lease or otherwise (including, without limitation, any successor lease or subsequent lease or any other present or future agreement for occupancy of all or any portion of the real property described on Exhibit A) to the right, title and interest of the Lender in and to the Leased Property by virtue of the Deed of Trust, and without limiting the generality of the foregoing, the Lessee hereby acknowledges and agrees that any and all such right, title and interest, including, without limitation, any option to purchase the Leased Property granted to the Lessee pursuant to the Lease, are and shall be subject and subordinate to the Deed of Trust as fully as if the Deed of Trust were recorded prior to the recording of the Lease and the taking of possession of the Leased Property by the Lessee.

2. The Lessee hereby agrees that, if the Lender or any purchaser of the Leased Property or any part thereof at a foreclosure sale succeeds to the interest of the Borrower under the Lease, whether by reason of foreclosure of the Deed of Trust or a deed in lieu of foreclosure, by reason of enforcement of the Lender's rights under the assignment of leases and rents portion of the Deed of Trust, or by any other manner, the Lessee shall be bound to such party under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof that may be effected in accordance with the Lease, with the same force and effect as if such party were originally the landlord under the Lease, and the Lessee does hereby attorn to each of such parties as its landlord, such attornment to be automatically effective immediately upon such party succeeding to the interest of the landlord under the Lease without the execution of any further instruments on the part of any of the parties hereto; provided, however, that the Lessee shall be under no obligation to pay rent to any such party until the Lessee receives written notice that such party has succeeded to the interest of the landlord under the Lease; and the respective rights and obligations of the Lessee and such party upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals thereof, shall be and are the same as now set forth in the Lease, subject to any modification of the Lease made with the prior written consent of the Lender; it being the intention of the parties hereto for such purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.



201107050094

Skagit County Auditor

3. The Lessee: (a) is not presently engaged in nor does it presently permit; (b) has not at any time in the past engaged in nor permitted; (c) has no knowledge that any third person or entity has engaged in or permitted; and (d) will not in the future engage in or permit, any operations or activities upon, or any use or occupancy of the Leased Property, or any portion thereof, for the purpose of or in any way involving, the handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether legal or illegal, accidental or intentional) of any hazardous substance, materials or wastes, or any wastes in violation of any local, state or federal law.

4. The Lessee hereby acknowledges that the Lender has made or will make a loan to the Borrower in reliance upon the agreements, acknowledgments and subordination of the Lessee set forth herein.

5. The Lessee hereby agrees that, until the indebtedness of the Borrower to the Lender is paid in full, the Lessee shall not collect or seek to collect from the Borrower by subrogation, offset or otherwise, any claim the Lessee has against the Borrower.

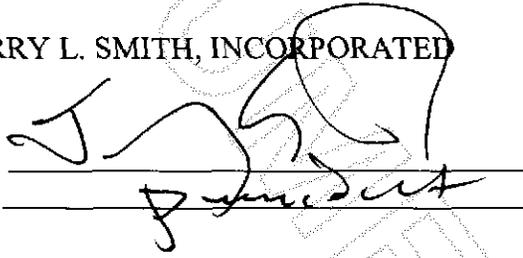
6. The Lessee hereby agrees that this Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the Lessee and its successors and assigns, including, without limitation, each and every holder of the Lease or any other person having an interest therein, and shall inure to the benefit of the Lender, its successors and assigns, and any other holder of the Deed of Trust.

7. The Lessee hereby agrees that this Agreement is made and executed under, and in all respects is to be governed and construed by, the laws of the State of Washington.

IN WITNESS WHEREOF, the Lessee has caused this Agreement to be duly executed and delivered as of the day and year first above written.

LESSEE:

JERRY L. SMITH, INCORPORATED

By: 

Its: \_\_\_\_\_



201107050094

Skagit County Auditor



**EXHIBIT A**

(Legal Description of Leased Property)

Lot 1 of Short Plat No. 95-020, as approved May 6, 1996 and recorded May 13, 1996 in Volume 12 of Short Plat, pages 96 and 97, under Auditor's File No. 9605130078, records of Skagit County, Washington.



201107050094  
Skagit County Auditor