

Vol MOO Page 11759

This instrument prepared by:  
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T.E. Williams, III  
Midas Realty Corporation  
1300 North Arlington Heights Road  
Itasca, Illinois 60143

MTC 50429

3956 S. 6<sup>th</sup> Avenue  
Klamath Falls, OR

### SUBORDINATION, ATTORNMENMENT AND NON-DISTURBANCE AGREEMENT OF LEASE

This Agreement (hereinafter referred to as "Agreement") is made as of this Third day of April, 2000 between CENTRAL OREGON INTERGOVERNMENTAL COUNCIL, with a place of business at 2363 SW Glacier Place, Redmond, Oregon 97756, (hereinafter referred to as "Mortgagee/Trustee") and MIDAS REALTY CORPORATION, a Delaware corporation, having its principal offices at 1300 North Arlington Heights Road, Itasca, Illinois 60143 (hereinafter referred to as "Midas").

### WITNESSETH

**WHEREAS**, Midas and FOOTPRINTS L.L.C. (hereinafter referred to as "Lessor") have entered into that certain Optional Lease Agreement dated March 24, 2000 (hereinafter referred to as "Optional Lease Agreement") pursuant to which Lessor granted to Midas the right and option to lease, on the terms and conditions set forth therein, those certain premises legally described on Exhibit A attached hereto and made a part hereof located at 3956 S. 6<sup>th</sup> Avenue, City of Klamath Falls, County of Klamath, State of Oregon, together with the automotive repair facility located thereon and any and all appurtenances thereto (hereinafter referred to as "Premises"); and

**WHEREAS**, Midas and Lessor have executed that certain Memorandum of Optional Lease Agreement dated March 24, 2000 (hereinafter referred to as "Memorandum") and caused the Memorandum to be recorded in the Office of the Recorder of Deeds in and for the County of Klamath, State of Oregon; and

**WHEREAS**, a copy of the Optional Lease Agreement has been delivered to Mortgagee/Trustee, the receipt of which is hereby acknowledged; and

**WHEREAS**, Mortgagee/Trustee is the holder of that certain Mortgage/Trust Deed/Deed of Trust given by Lessor and recorded in the Office of the Recorder of Deeds in and for the County of Klamath, State of Oregon, on March 31, 2000 as Document No. MOO - Page 10760 (hereinafter referred to as "Mortgage/Trust Deed/Deed of Trust"). The Mortgage/Trust Deed/Deed of Trust encumbers the Premises;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto intending to be legally bound hereby agree as follows:

1. Mortgagee/Trustee hereby (a) consents to and approves the Optional Lease Agreement and the terms and provisions thereof and (b) covenants and agrees that the exercise by Midas of

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any of the rights, options and remedies therein contained shall not constitute a default under the Mortgage/Trust Deed/Deed of Trust.

2. Midas covenants and agrees with Mortgagee/Trustee that Midas's rights under the Optional Lease Agreement are hereby made and shall continue hereafter to be subject and subordinate to the lien of Mortgage/Trust Deed/Deed of Trust, and to all modifications and extensions thereof, with the same force and effect as if the Mortgage/Trust Deed/Deed of Trust had been executed and delivered prior to the execution and delivery of the Memorandum and without regard to the order of priority of recording the Mortgage/Trust Deed/Deed of Trust and the Memorandum, subject, however, to the provisions of this Agreement.

3. Mortgagee/Trustee agrees that so long as Midas has not received written notice of a default in the performance of its obligations under the Optional Lease Agreement:

- (a) Midas shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage/Trust Deed/Deed of Trust or to enforce any rights under the Mortgage/Trust Deed/Deed of Trust or the bond or note or other obligations secured thereby;
- (b) Midas's rights under the Optional Lease Agreement, including its right to possession of the Premises if Midas exercises its right and option to lease the Premises shall not be disturbed, affected or impaired by, nor will the Optional Lease Agreement be terminated or otherwise affected by (i) any suit, action or proceeding upon the Mortgage/Trust Deed/Deed of Trust or the bond or note or other obligation secured thereby or for the foreclosure of the Mortgage/Trust Deed/Deed of Trust or the enforcement of any rights under the Mortgage/Trust Deed/Deed of Trust or any other documents held by Mortgagee or any subsequent holder of the Mortgage/Trust Deed/Deed of Trust; (ii) any judicial sale or execution or other sale of the Premises, (iii) any deed given in lieu of foreclosure of the Mortgage/Trust Deed/Deed of Trust; (iv) the exercise of any other rights given to Mortgagee or any subsequent holder of the Mortgage/Trust Deed/Deed of Trust or other documents as a matter of law; or (v) any default under the Mortgage/Trust Deed/Deed of Trust or the bond or note or other obligation secured thereby; and
- (c) All condemnation awards and insurance proceeds paid or payable with respect to the Premises and received by Mortgagee/Trustee shall be applied and paid for the restoration and/or repair of the Premises, except in the case of a condemnation which results in the termination of the Optional Lease Agreement.

4. If Mortgagee/Trustee or any subsequent holder of the Mortgage/Trust Deed/Deed of Trust shall become the owner of the Premises by reason of foreclosure of the Mortgage/Trust Deed/Deed of Trust or otherwise, or if the Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage/Trust Deed/Deed of Trust, or as a result of a transfer of ownership by deed given in lieu of foreclosure, the Optional Lease Agreement shall continue in full force and effect, without necessity for executing any new agreement, as a direct agreement between Midas and the then owner of the Premises, as "Lessor," upon all the same terms, covenants and provisions contained in the Optional Lease Agreement and in such event:

- (a) If Midas exercises its right and option to lease the Premises, Midas shall be bound to such new owner under all the terms, covenants and provisions of the Optional Lease Agreement and Midas hereby agrees to attorn to such new owner and to recognize

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such new owner as "Lessor" under the Optional Lease Agreement upon receipt of written notice from such new owner; and

- (b) Such new owner shall assume the obligations of the Lessor to Midas under all of the terms, covenants and provisions of the Optional Lease Agreement which such new owner hereby agrees to perform and Midas shall, from and after the date such new owner succeeds to the interest of "Lessor" under the Optional Lease Agreement, have the same remedies against such new owner for the breach of any covenant contained in the Optional Lease Agreement that Midas might have had under the Optional Lease Agreement against Lessor if such new owner had not succeeded to the interest of Lessor.

5. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid (a) if to Mortgagee/Trustee, at the address of Mortgagee/Trustee as hereinabove set forth or at such other address as Mortgagee/Trustee may designate by notice, or (b) if to Midas, at the address of Midas as hereinabove set forth or at such address as Midas may designate by notice, to the attention of Vice President, with a copy to the General Counsel.


6. This Agreement and the covenants and conditions thereof shall (a) be binding upon and/or inure to the benefit of the successors and assigns of the parties hereto. Including, without limitation, any subsequent holder of the Mortgage/Trust Deed/Deed of Trust and (b) be and remain covenants running with the land.



7. This Agreement contains the entire agreement between the parties hereto and cannot be changed, modified, waived or canceled without the prior written consent of the parties thereto.

8. This Agreement shall be governed and construed in accordance with laws of the State of which the Premises are located.

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

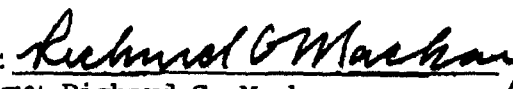
MIDAS REALTY CORPORATION

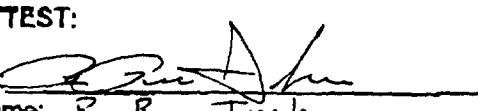
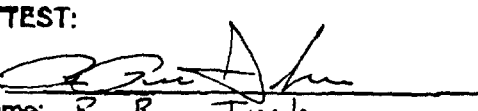
By:   
Peter D. Cooke, Vice President

ATTEST:   
By:   
T.E. Williams, III, Assistant Secretary

MORTGAGEE/TRUSTEE

CENTRAL OREGON  
INTERGOVERNMENTAL COUNCIL

By:   
Name: Richard G. Mackay  
Its: Executive Director

ATTEST:   
By:   
Name: R. R. Ingham  
Its: Manager

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STATE OF ILLINOIS       )  
                                   ) ss  
 COUNTY OF COOK        )

Before me appeared Peter D. Cooke, known to me to be the Vice President of MIDAS REALTY CORPORATION, a Delaware corporation, and acknowledged that as such Officer he executed the foregoing instrument on behalf of said corporation and caused the corporate seal of the corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND SEAL this 7 day of April, 2000

By: [Signature]  
 Notary Public

My commission expires:

2-20-02

STATE OF OREGON       )  
                                   ) ss  
 COUNTY OF Deschutes    )



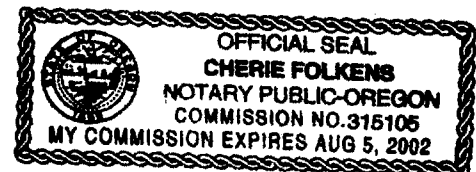
Before me appeared Richard G. Mackay, personally known to me to be the Executive Director of Central Oregon Intergovernmental Council, and acknowledged that as such Officer, (s)he signed the foregoing instrument on behalf of said Intergovernmental Entity, as his/her free and voluntary act, and as the free and voluntary act of said Intergovernmental Entity for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND SEAL this Third day of April, 2000

By: [Signature]  
 Notary Public

My commission expires:

August 5, 2002



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State of Oregon, County of Klamath  
 Recorded 04/11/00, at 11:24 a. m.  
 In Vol. M00 Page 11759  
Linda Smith,  
 County Clerk Fee \$ 36.00