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Vol M02 Page 29437

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
Toyota Motor Credit Corporation  
19001 S. Western Avenue  
P.O. Box 2958, Mail Drop FN23  
Torrance, CA 90509  
Attn: Karen E. Bedore, Esq. )  
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State of Oregon, County of Klamath  
Recorded 05/17/2002 11:15 a. m.  
Vol M02, Pg 29437-29448  
Linda Smith, County Clerk  
Fee \$ 76.00 # of Pgs 12

(Space Reserved for Recorder's Use)

mte 56396

### SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

NOTICE: THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN TENANT'S LEASEHOLD ESTATE BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

This Subordination, Nondisturbance and Attornment Agreement ("Agreement") is entered into as of the 10 day of May, 2002, by and among LITHIA KLAMATH, INC. ("Tenant"), Lithia Real Estate, Inc. ("Borrower") and Toyota Motor Credit Corporation ("Lender").

#### Factual Background

A. Borrower is the holder of a leasehold and ownership interest in certain real property located in the City of Klamath Falls, County of Klamath, State of OREGON, and more particularly and collectively described in the attached Exhibit A (the "Property").

B. Lender has agreed to make a loan to Borrower (the "Loan"), as provided in an amended and restated loan agreement dated May 10, 2002 (the "Loan Agreement"). The Loan is or is to be evidenced by an amended and restated promissory note (the "Note") which is or is to be secured by a Deed of Trust encumbering the Property (the "Deed of Trust"). The Loan Agreement, the Note, the Deed of Trust, and all other documents and instruments identified in the Loan Agreement as "Loan Documents," including this Agreement, shall be collectively referred to herein as the "Loan Documents." Capitalized terms used but not defined in this Agreement shall have the meaning ascribed to them in the Loan Documents.

C. 12/17/01 Tenant and Borrower (as Landlord) entered into a sublease and lease both dated collectively, as modified or amended from time to time, the "Lease"), under which Borrower leased to Tenant a the Improvements located within the Property, and more particularly described in the Lease (the "Premises"). Capitalized terms used but not defined in this Agreement or in the Loan Documents shall have the meaning ascribed to them in the Lease.

KLAMATH FALLS LEASE SUBORDINATION AGREEMENT (OR).DOC

D. Lender is willing to make or continue the Loan to Borrower, provided that Tenant agrees, among other things, to subordinate Tenant's rights under the Lease to the lien or charge of the Loan Documents pursuant to the terms of this Agreement and to attorn to Lender on the terms and conditions of this Agreement. tenant is willing to agree to such subordination and attornment and other conditions, provided that Lender agrees not to disturb Tenant's possession under the Lease, all as set forth more fully below.

### Agreement

Therefore, the parties agree as follows:

1. Subordination. The Loan Documents, and all supplements, amendments, modifications, renewals, replacements and extensions of and to them, shall unconditionally be and remain at all times a lien or charge on the Property prior and superior to the Lease, to the leasehold estate created by it, and to all rights and privileges of Tenant under it. That Lease and leasehold estate, together with all rights and privileges of Tenant under that Lease, are hereby unconditionally subjected and made subordinate to the lien or charge of the Loan Documents in favor of Lender. Tenant consents to Borrower's and Lender's entering into the Deed of Trust and the other Loan Documents. Tenant further declares, agrees and acknowledges that, in making disbursements under the Loan Documents, Lender has 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 they are disbursed by Lender, and any application of such proceeds by the person or persons to whom they are disbursed by Lender, and any application or use of such proceeds for purposes other than those provided for in the Loan Documents shall not defeat the subordination made in this Agreement, in whole or in part.

2. Definitions of "Transfer of the Property" and "Purchaser." As used herein, the term "Transfer of the Property" means any transfer of Borrower's interest in the Property by foreclosure, trustee's sale or other action or proceeding for the enforcement of the Deed of Trust or by deed in lieu thereof. The term "Purchaser," as used herein, means any transferee, including Lender, of the interest of Borrower as a result of any such Transfer of the Property, and also includes any and all successors and assigns, including Lender, of such transferee.

3. Nondisturbance. So long as Tenant is not in default in performance of the terms, provisions and conditions contained in the Lease beyond any period of cure contained therein, and so long as Tenant observes the provisions of this Agreement:

(a) Tenant shall not be named or joined in a foreclosure, trustee's sale or other proceeding to enforce the Deed of Trust unless the joinder is required by law in order to perfect such foreclosure, trustee's sale or other proceeding;

(b) The enforcement of the Deed of Trust shall not terminate the Lease or disturb Tenant in the possession and use of the Premises; and

(c) The leasehold estate granted by the Lease shall not be affected in any manner by any Transfer of the Property or any other proceeding instituted or action taken under or in connection with the Deed of Trust, or by Lender taking possession of the Property or the Premises in accordance with any provision of the Deed of Trust; provided that Lender, if it becomes the Purchaser or if it takes possession under the Deed of Trust, and any other Purchaser shall not:

(i) be liable for any damages or other relief attributable to any act or omission, neglect or default of any prior landlord under the Lease (including Borrower) unless such act, omission, neglect, or default continues after Lender or Purchaser takes possession of the Property or Premises beyond any period of cure provided under the Lease and Section 13 hereof;

(ii) be liable for any damages or other relief attributable to any latent or patent defects in construction with respect to any portion of the Property;

(iii) be liable for any consequential damages attributable to any breach of any representation or warranty contained in the Lease by Purchaser or any prior landlord under the Lease;

(iv) be liable for any damage or other relief attributable to any act or omission of Purchaser, or be bound by any obligation to make any payment to Tenant which was required to be made prior to the time Purchaser succeeded to any prior landlord's interest (including that of Borrower) under the Lease;

(v) be subject to any claims, counterclaims, offsets or defenses which Tenant may have against any prior landlord under the Lease; or

(vi) be bound by any prepayment by tenant of more than one month's installment of rent or for any security deposit (or other monies deposited with any prior landlord, including Borrower) not actually delivered to Purchaser or by any modification or amendment of or to the Lease unless the prepayment, amendment or modification shall have been approved in writing by Lender or by any subsequent beneficiary under the Deed of Trust.

Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated in order for Lender to avail itself of and complete any such foreclosure or other remedy.

4. Attornment. If any Transfer of the Property should occur, and if Tenant is not in default under the Lease, Purchaser shall be bound to Tenant and Tenant shall be bound to Purchaser under all of the terms, covenants and conditions of the Lease for the balance of the Lease term and any extensions or renewals of it which may then or later be in effect under any validly exercised extension or renewal option contained in the Lease, all with the same force and effect as if Purchaser had been the original landlord under the Lease. Tenant does hereby attorn to Purchaser, including Lender if it should become the Purchaser, as the landlord under the Lease. This attornment shall be effective and self-operative without the execution of any further instruments, upon Purchaser's succeeding to the interest of the landlord under the Lease.

5. Tenant's Waiver of Option Rights. In the event of any Transfer of the Property, Tenant specifically waives any right, whether arising out of the Lease or otherwise, to exercise any option which remains unexercised at the time of such transfer, to:

(a) purchase the Premises or the Property, or any interest or portion in or of either of them; or

(b) expand into other space in the Improvements. The foregoing waiver does not apply to any option to extend or renew the Lease term which is set forth in the Lease as of the date of this Agreement; Tenant does not waive any right to exercise any such option following a Transfer of the Property. If, after the date of this Agreement, Tenant acquires any purchase option, option to expand into other space in the Improvements, or option to extend or renew the term of the Lease, Tenant agrees that such option shall be subject and subordinate to the lien or charge of the Loan Documents and shall be null and void upon any Transfer of the Property.

6. Default by Borrower. In the event of a default by Borrower in its performance of the terms, provisions and conditions of the Loan Documents, Borrower directs Tenant and Tenant agrees to recognize the assignment of rents made by Borrower to Lender in the Deed of Trust, and to pay to Lender as assignee all rents due under the Lease, upon Tenant's receipt of written notice from Lender that Borrower is in default under the terms of the Loan Documents. Borrower hereby authorizes Tenant to accept such direction from Lender and waives all claims against Tenant for any sums so paid at Lender's direction. Such payments of rents by Tenant to Lender by reason of that assignment and of Borrower's default shall continue until the first to occur of the following:

(a) No further rent is due or payable under the Lease;

(b) Lender gives Tenant notice that the default of Borrower under the Loan Documents has been cured and instructs Tenant that the rents shall thereafter be payable to Borrower; or

(c) A Transfer of the Property occurs and Purchaser gives Tenant notice of such transfer. Purchaser shall thereupon succeed to the interest of Borrower under the Lease as provided in Sections 3 and 4, above, after which time the rents and other benefits of Borrower under the Lease shall be payable to Purchaser as the owner of them.

7. Limitation on Lender's Performance. Nothing in this Agreement shall be deemed or construed to be an agreement by Lender to perform any covenant of Borrower as landlord under the Lease unless and until Lender obtains title to the Property as Purchaser or obtains possession of the Property under the terms of the Deed of Trust, and then only during the time when Lender holds title to the Property.

8. Tenant's Covenants. Tenant agrees that during the term of the Lease, without Lender's prior written consent, Tenant shall not:

- (a) pay any rent or additional rent more than one month in advance to any landlord (including Borrower); or
- (b) cancel, terminate, or surrender the Lease, except at the normal expiration of the Lease term; or
- (c) enter into any amendment, modification or other agreement relating to the Lease; or
- (d) assign or sublet any portion of the Lease or the Premises, except as expressly provided in the Lease.

With respect to sub-sections (c) and (d) of this Section 8, Lender's consent thereto shall not be unreasonably withheld.

9. No Merger. Borrower, Tenant and Lender agree that unless Lender shall otherwise consent in writing, Borrower's estate in and to the Property and the leasehold estate created by the Lease shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Borrower or Tenant or any third party by purchase, assignment or otherwise.

10. Notices of Default; Material Notices. Tenant, from and after the date of this Agreement, shall send a copy of any notice of default or similar statement under the Lease to Lender at the same time such notice or statement is sent to Borrower under the Lease. Borrower and Tenant shall send copies of all material notices given under the Lease to Lender. Such notices shall be delivered to Lender in the manner and at the addresses set forth below.

11. Limitation of Liability. Regardless of anything in the Lease or this Agreement to the contrary, no Purchaser who acquires title to the Property shall have any obligation or liability

beyond its interest in the Property and the rents therefrom. Tenant shall look exclusively to Purchaser's interest in the Property and the rents therefrom for payment and discharge of any of Purchaser's obligations under this Agreement or under the Lease. Tenant shall not collect or attempt to collect any judgment based upon such obligations out of any other assets of Purchaser. Be executing this Agreement, Borrower specifically acknowledges and agrees that nothing contained in this Section shall impair, affect, lessen, abrogate or otherwise modify the obligations of Borrower to Tenant under the Lease.

12. Tenant's Estoppel Certificate.

(a) Tenant's Option Rights. Tenant has no right or option of any nature whatsoever, whether arising out of the Lease or otherwise, to purchase the Premises or the Property, or any interest or portion in or of either of them, to expand into other space in the Improvements or to extend or renew the term of the Lease.

(b) Intentionally Omitted

(c) No Default. As of the date of this Agreement, Tenant represents and warrants that to the best of the knowledge of Tenant there exist no events of default, or events that with notice or the passage of time or both would be events of default, under the Lease, on either the Tenant's part or the Borrower's, nor is there any right of offset (including audit or accounting rights which might otherwise give rise to a claim or an offset of rents paid under the Lease) against any of Tenant's obligation under the Lease. The Lease is in full force and effect as of the date of this Agreement.

(d) Rents as Stated in Lease. Tenant has made no agreement with Landlord or any agent, representative or employee of Landlord concerning free rent, partial rent, rebate of rental payments or any other type of rental or other concession except as expressly set forth in the Lease.

(e) No Bankruptcy. There has not been filed by or against 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 any state thereof, or any other action brought under said bankruptcy laws with respect to Tenant.

(f) Insurance in Force. All insurance required of Tenant by the Lease has been provided by Tenant and all premiums have been paid.

(g) Hazardous Substances. Tenant represents and warrants that it has not used, generated, released, discharged, stored or disposed of any Hazardous Substances on, under, in or about the Property other than in the ordinary and commercially reasonable course of Tenant's business in compliance with all applicable codes, laws,

ordinances, and regulations and that Tenant will so conduct itself subsequently under the Lease. As used herein, "Hazardous Substance" means any substance, material or waste (including petroleum and petroleum products), which is designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is similarly designated, classified or regulated under any federal, state or local law, regulation or ordinance.

(h) Reliance. Tenant acknowledges that Lender is relying on the representations, certifications and undertakings made by Tenant in this Agreement in Lender's making or continuing extension of credit to Borrower.

(i) Further Certificates. Within ten (10) days after Borrower's or Lender's, as the case may be, written request therefore, Tenant shall deliver to Borrower or Lender, or both, and to any person(s) reasonably designated by Borrower or Lender, or both, estoppel certificates executed by Tenant, certifying (if such is the case) that the Lease is in full force and effect, that there are no defenses or offsets outstanding under the Lease (or stating those claimed by Tenant, as the case may be) and such other information about Tenant or the Lease as Borrower or Lender may reasonably request (including without limitation the information addressed by this Section 12 of this Agreement).

13. Lender's Rights to Cure Default. In the event of any act or omission by Borrower which would give Tenant the right to terminate the Lease or to claim a partial or total eviction, Tenant shall not exercise any such right or make any such claim until it has given Borrower and Lender concurrent written notice of such act or omission and has given Lender either (i) ten (10) business days after the expiration of Borrower's cure period therefor under the Lease to cure the default, if the default is monetary, or (ii) if the default is nonmonetary, a reasonable time for Lender in exercise of diligence to obtain a receiver appointment for the Property or to itself obtain possession of the Property and cure the default. Nothing in this Agreement shall, however, be construed as a promise or undertaking by Lender to cure any default of Borrower's.

14. Integration. This Agreement integrates all of the terms and conditions of the parties' agreements regarding the matters set forth herein. This Agreement supersedes and cancels all oral negotiations and prior and other writings with respect to such matters. This Agreement is intended by the parties as the final expression of the agreement and as the complete and exclusive statement of the terms agreed to by the parties with respect to such matters. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including any of the Loan Documents, the terms, conditions and provisions of the Loan Documents shall prevail. This Agreement may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

15. Notices. All notices given under this Agreement shall be in writing and shall be given by personal delivery, overnight receipted courier, or by registered or certified United

States mail, return receipt requested, postage prepaid, sent to the party at its address appearing below. Notices shall be effective upon receipt or when proper delivery is refused. Addresses for notices may be changed by any party by notice to all other parties in accordance with this Section. Service of any notice on any one Borrower shall be effective service on Borrower for all purposes.

To Lender: Toyota Motor Credit Corporation  
19001 So. Western Avenue  
P.O. Box 2958  
Torrance, CA 90509-2958  
Attention: Vice President Operations

To Borrower: Lithia Real Estate, Inc.  
360 East Jackson Street  
Medford, OR 97501  
Attn:

To Tenant:

Attn:

16. Attorneys' Fees. If any lawsuit, reference or arbitration is commenced which arises out of or relates to this Agreement, the prevailing party shall be entitled to recover from each other party such sums as the court, referee or arbitrator may adjudge to be reasonable attorneys' fees in the action, reference or arbitration, including the allocated costs for services of in-house counsel, in addition to costs and expenses otherwise allowed by law.


17. Miscellaneous Provisions. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Agreement is governed by the laws of the State of Oregon, without regard to the choice of law rules of that State. As used herein, the word "include(s)" means "Include(s), without limitation," and the word "including" means "Including, but not limited to." Lender may but shall not be obligated to record this Agreement, at Lender's sole discretion.

**NOTICE -- THIS AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR LEASE TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN IMPROVEMENT OF THE PROPERTY.**

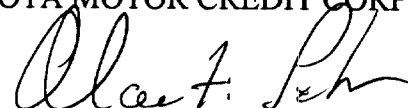


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LITHIA REAL ESTATE, INC.

By:  \_\_\_\_\_  
Name: Jeffrey B. DeBoer  
Title: Secretary / Treasurer

TOYOTA MOTOR CREDIT CORPORATION

By:  \_\_\_\_\_  
Name: Alan F. Cohen  
Title: Vice President : General Counsel

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act and deed of said organization for the uses and purposes mentioned in the instrument.

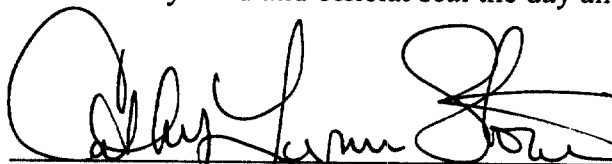
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

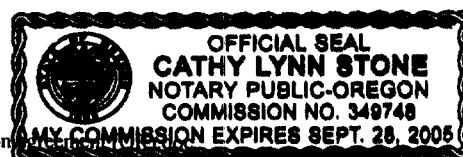
NOTARY PUBLIC in and for the State of \_\_\_\_\_  
\_\_\_\_\_, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_  
Print Name \_\_\_\_\_

STATE OF Oregon )  
COUNTY OF Jackson ) ss.

On this 7<sup>th</sup> day of May, 2002, before me, a Notary Public in and for the State of Oregon, personally appeared Jeffrey B. DeBoer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the Secretary/Treasurer of Lithia Real Estate, Inc. to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

  
NOTARY PUBLIC in and for the State of Oregon, residing at Medford  
My appointment expires Sept 28, 2005  
Print Name Cathy Stone



STATE OF California  
COUNTY OF Los Angeles } ss.

On this 16th day of May, 2002, before me, a Notary Public in and for the State of California, personally appeared Alex F. Cohen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the Vice President of Toyota Motor Credit Corporation to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



[Signature]  
NOTARY PUBLIC in and for the State of  
California, residing at Bellflower  
My appointment expires 4/26/2003  
Print Name

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**29448**

**Lot 2 in Block 5 of TRACT 1080 - WASHBURN PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.**