

2007-016157

Klamath County, Oregon



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09/14/2007 09:47:31 AM

Fee: \$46.00

~~WHEN RECORDED MAIL TO:~~

~~Umpqua Bank
Eugene Commercial Banking Center
c/o Loan Support Services
P.O. Box 1580
Roseburg, OR 97470~~

Recording Requested by &
When Recorded Return To:
US Recordings, Inc.
2925 Country Drive
St. Paul, MN 55117

39092236

SUBORDINATION, ATTORNMENMENT AND NON-DISTURBANCE AGREEMENT / TENANT ESTOPPEL CERTIFICATE

Parties:

Borrower: Klamath-Hillyard, LLC, an Oregon limited liability company
P.O. Box 1583
Corvallis, OR 97339

Tenant: AutoZone Development Corporation, a Nevada corporation
c/o AutoZone, Inc. Property Management
Dept. 8700
P.O. Box 2198
Memphis, TN 38103

Lender: Umpqua Bank
Eugene Commercial Banking Center
c/o Loan Support Services
P.O. Box 1580
Roseburg, OR 97470

RECITALS

- A. Borrower and Tenant have entered into that certain unrecorded Lease Agreement dated October 24, 2006 (the "**Lease**"), with respect to all or a portion of the building more particularly described in Exhibit "A" attached hereto ("**Premises**") now or to be located on certain real property known commonly as 2977 Washburn Way, Klamath Falls, Oregon (the real property and improvements now or hereafter located thereon are referred to herein as the "**Property**").
- B. Tenant agrees that, to the best of Tenant's knowledge the Lease is not in default and desires to certify to the items set forth in Section 15 below.
- C. Lender has made a loan (the "**Loan**") to Borrower that is secured by a Deed of Trust, a Commercial Security Agreement and an Assignment of Rents relating thereto. The Deed of Trust, Commercial Security Agreement and Assignment of Rents, as any of the same may hereafter be amended, are collectively referred to herein in as the "**Security Instruments**."
- D. The Parties desire to execute this Agreement to confirm that the Lease will be subordinate to the Security Instruments and that Tenant's possession of the Property will not, subject to the terms and conditions of this Agreement, be disturbed by reason of a foreclosure of the Security Instruments.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals and the covenants of the Parties hereto, the Parties agree as follows:

1. The Lease shall at all times be subject and subordinate in all respects to the Security Instruments and to all renewals, modifications and extensions thereof. Any amendments heretofore or hereafter made to the Security Instruments or the Related Documents (as defined in the Deed of Trust) shall not require the consent of Tenant.

2. Tenant shall give written notice to Lender of all defaults by Borrower of those obligations under the Lease which are of such a nature as to give Tenant a right to terminate the Lease and Lender shall have the following periods of time during which it may (but shall not be required) to cure the same: (a) in the case of monetary defaults, twenty (20) days after written notice, and (b) in the case of non-monetary defaults, sixty (60) days after written notice.

3. So long as Tenant is not in default in the payment or performance of the Lease as the same may hereafter be modified or amended, Tenant shall not be disturbed by Lender in Tenant's possession, enjoyment, use and occupancy of the Premises during the original or any renewal term of the Lease or any extension or modification thereof.

4. If Lender, any receiver, or other person or entity exercises a right arising under the Security Instruments to receive the rents payable by Tenant under the Lease, such person or entity shall not thereby become obligated to Tenant for the performance of any of the terms, covenants, conditions and agreements of Borrower under the Lease. Subject to any Tenant's right to offset any rents due pursuant to the Lease, Borrower and Tenant agree that Tenant shall make the payments to be made by Tenant under the Lease to Lender or such receiver or other person or entity upon receipt of written notice of the exercise of such rights. Such receipt of rent by Lender or other person or entity shall not relieve Borrower of its obligations under the Lease, and Tenant shall continue to look to Borrower only for performance thereof.

5. If Lender acquires the interest of Borrower by reason of foreclosure pursuant to the Security Instruments or other proceedings brought to enforce the rights of the holder thereof, by deed in lieu of foreclosure, or by any other method, and Lender succeeds to the interest of Borrower under the Lease, the Lease shall continue in full force and effect and shall not be terminated or disturbed except in accordance with the terms of the Lease. Tenant shall thereupon be bound to Lender under all the terms, covenants, and conditions of the Lease for the balance of the term remaining, and any extensions or renewals thereof which may be effected in accordance with any option contained in the Lease, with the same force and effect as if Lender were the Borrower under the Lease. Tenant hereby attorns to Lender as if to Borrower, said attornment to be effective and self-operative without the execution of any other instruments on the part of any Party hereto immediately upon Lender succeeding to the interest of Borrower under the Lease. Tenant agrees that Lender shall not be responsible or liable in any way for any default under the Lease occurring prior to the time Lender obtains title to the estate owned by Borrower and is entitled to actual, unrestricted possession of the Property, subject only to Tenant's rights under the Lease.

6. If Lender succeeds to the interest of Borrower under the Lease, as described above, Lender shall assume and perform the obligations of the Borrower under the Lease except that Lender shall not in any way or to any extent be:

- (a) liable for any act or omission of Borrower or any other Landlord; or
- (b) bound by any rent or other amounts which Tenant might have paid or might hereafter pay to Borrower for more than thirty (30) days in advance; or
- (c) bound by any amendment, modification or termination of the Lease entered into hereafter or by any waiver or forbearance by Borrower or any other prior Landlord made without Lender's written consent, provided, however, that Borrower and Tenant may, without Lender's consent, make non-material amendments to the Lease, but in no event shall such amendments decrease the size or configuration of the Premises, term of the Lease, amount or frequency of lease payments or any other financial obligations of either Party thereunder; or
- (d) in any way responsible for any deposit or security which was delivered to Borrower but which was not subsequently delivered to Lender; or
- (e) responsible for any obligation to construct, repair or improve the Property which arises before Lender obtains title to and possession of the Property; or
- (f) bound by any representations or warranties by Borrower under the Lease.

7. If Tenant and Borrower modify the Lease or enter into a new lease agreement, it shall be subject to all provisions hereof relating to the Lease.

8. This Agreement shall inure to the benefit of and be binding upon the Parties and their heirs, successors and assigns.

9. In the event any provision hereof is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed hereon by any court, this Agreement shall be construed as not containing such provision, and the invalidity of such provision shall not affect any other provisions which are otherwise lawful and valid and shall remain in full force and effect.

10. The failure at any time or times to require strict performance of any of the provisions, warranties, terms and conditions contained herein or in any other agreement, document or instrument heretofore, now or hereafter executed by the Borrower or Tenant and delivered to the Lender shall not waive, affect or diminish any right of the Lender to thereafter demand strict compliance or performance therewith, and any waiver of any default shall not waive or affect any other default, whether prior or subsequent thereto and whether of the same or of a different type. None of the warranties, conditions, provisions and terms contained in this Agreement or in any other agreement, document or instrument heretofore, now or hereafter executed by the Borrower or the Tenant and delivered to the Lender shall be deemed to have been waived by any act, knowledge or inaction of the Lender, its agents, officers or employees, but only by an instrument in writing signed by an officer of the Lender and directed to the Borrower and Tenant specifying such waiver.

11. In the event Lender employs its in-house or outside counsel to commence, defend, intervene, file a petition, complaint, answer, motion or other pleading or take any other action with respect to any suit or proceeding relating to this Agreement or any other agreement, instrument or document heretofore, now or hereafter executed by the Tenant and delivered to the Lender with respect to the Borrower, the Tenant, the Lease or this Agreement, or to represent Lender in any litigation with respect to the affairs of the Tenant or to enforce any rights of the Lender or the obligations of Tenant or Borrower or any other person, firm or corporation which may be obligated to Lender by virtue of this Agreement, then in any such events all the reasonable attorneys' fees arising from such service, including attorneys' fees in appellate and bankruptcy proceedings, and expenses, costs or charges relating thereto, shall be due and payable to Lender by Borrower upon Lender's demand.

12. All notices, demands, or requests, and responses thereto, required or permitted to be given pursuant to this Agreement or by applicable law shall be in writing and shall be deemed to have been properly given or served and shall be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified), (b) three days following the date deposited in the United States mail, postage prepaid and certified with return receipt requested, or (c) one day following the date deposited with Federal Express or other national overnight carrier, to the names and addresses set forth above or at such other single address in the United States as Borrower, Lender or Tenant may by notice in writing designate for notice.

13. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

14. This Agreement has been delivered to Lender and accepted by Lender in the State of Oregon. If there is a lawsuit, Tenant and Borrower agree upon Lender's request to submit to the jurisdiction of the courts of Lane County, Oregon, unless a different venue is required by law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

15. Tenant Estoppel Certificate. Tenant hereby certifies to the best of Tenant's knowledge, as follows:
- The Lease constitutes the entire agreement between Tenant and Borrower with respect to the subject matter thereof, and the Lease has not been modified, amended or supplemented in any way except by the amendment(s) or other agreement(s), if any, which are set forth in Schedule A attached hereto and by this reference incorporated herein.
 - Except as provided in the above described amendment(s) or other agreement(s), if any, Tenant has not assigned or entered into a sublease for any portion of the Premises covered by the Lease, and no person or firm other than the undersigned Tenant or its employees is in possession of the Premises or any portion thereof.
 - To the knowledge of Tenant, (a) Tenant is not in default under the Lease, (b) Tenant has no claim, off-set or counterclaim against Borrower, save and except for any unpaid "OFI Items" due to Tenant (as that term is defined in the Lease) and (c) Borrower is not in default under the Lease.
 - Tenant is not the subject of any bankruptcy, insolvency, debtor's relief, reorganization, receivership or other similar proceedings.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

May 2 IN WITNESS WHEREOF, the Parties hereto have properly executed and delivered this Agreement as of 2007.

LENDER:

Umpqua Bank

By: _____

Name: Aaron Walker

Title: Vice President

BORROWER:

Klamath-Hilyard, LLC

By: _____

Name: Darren Dickerhoof

Title: Managing Member

TENANT:

AutoZone Development Corporation

By: _____

Name: Wm. David Gilmore

Title: Vice President

By: _____

Name: Rebecca W. Ballou

Title: Vice President

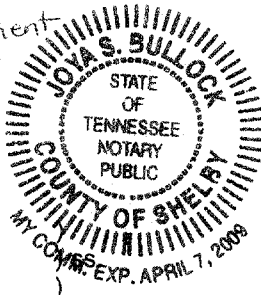
APPROVED, VERIFIED AND
PASSED FOR SIGNING

DM

STATE OF ~~Oregon~~ Tennessee)
COUNTY OF ~~Lane~~ Shelby) ss.

The foregoing instrument was acknowledged before me this 2nd day of May, 2007, by Wm. David Gilmore as Vice President for ~~Umpqua Bank~~.

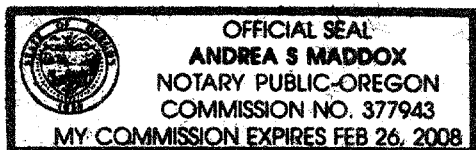
AutoZone Development Corporation



Notary Public for

STATE OF Oregon
COUNTY OF Lane

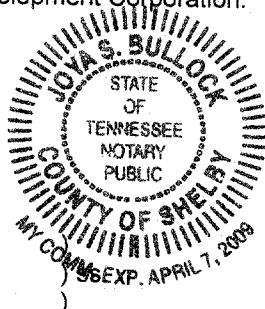
The foregoing instrument was acknowledged before me this 8 day of May, 2007, by Aaron Walker as Vice President for ~~AutoZone Development Corporation~~ Umpqua Bank.



Andrea S. Maddox
Notary Public for

STATE OF Tennessee)
COUNTY OF Shelby) ss.

The foregoing instrument was acknowledged before me this 2 day of May, 2007, by Rebecca W. Baller as Vice Pres for AutoZone Development Corporation.



[Signature]
Notary Public for

STATE OF Oregon
COUNTY OF Benton

The foregoing instrument was acknowledged before me this 9 day of May, 2007, by Darren Dickerhoof, as Managing Member of Klamath-Hillyard, LLC.

[Signature]
Notary Public for Oregon

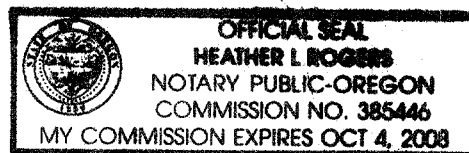


EXHIBIT "A"

Demised Premises:

Parcel 3 of Land Partition 22-00 in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East, Willamette Meridian, as on file with the Clerk of Klamath County, Oregon.