

LEASE

THIS LEASE (the "Lease") is made as of May 20, 2005, by and between **NCP Colorado, LLC**, a Texas limited liability company ("Landlord"), and **AutoZone Development Corporation**, a Nevada corporation ("Tenant").

1. **ACCEPTANCE/ EFFECTIVE DATE:** This Lease shall be effective upon the date that Tenant receives said fully executed original of this Lease (the "Effective Date"). This Lease shall be deemed fully executed on the last date all necessary signatures and/or initials of all parties have been obtained. The submission of this Lease for examination does not constitute a reservation or option for the Demised Premises and this Lease becomes effective as a binding agreement only upon Tenant's receipt of a Lease fully executed by all parties hereto. Notwithstanding any provision of this Lease to the contrary, Tenant acknowledges that Landlord is the purchaser under contract of the Demised Premises, and that Landlord's ability and obligation to perform hereunder shall be subject to and conditioned upon its acquisition of the Demised Premises. If Landlord has not acquired the Demised Premises by **September 30, 2005**, as extended, if applicable, then Tenant shall have the right to terminate this Lease by written notice to Landlord, in which case the parties shall be released from all further obligations hereunder.

2. **EXHIBITS:** The following exhibits are or, upon availability, will be attached hereto and incorporated herein by reference:

Exhibit "A" - Legal Description

Exhibit "B" - Plot Plan

Exhibit "C" - Title Exceptions

Exhibit "D" - Non-Disturbance and Attornment Agreement

Exhibit "E" - Subordination, Non-Disturbance, and Attornment Agreement

Exhibit "F" - Site Plan

Exhibit "G" - Intentionally Omitted

Exhibit "H" - OFI Package

3. **DEMISED PREMISES:** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon the terms, covenants and agreements and subject to the conditions set forth herein, approximately 7,370 square foot premises (together with a building containing approximately 7,370 square feet of ground floor space to be constructed thereon by Landlord pursuant to terms and conditions of this Lease) located in the City of Woodland Park, County of Teller, State of Colorado, and more particularly described in **Exhibit "A"** and shown outlined on **Exhibit "B"**, together with all improvements now existing or hereafter erected thereon and all rights, appurtenances, privileges, benefits, rights of way and easements benefiting the Demised Premises thereunto belonging (collectively, the "Demised Premises"). Tenant shall have a right to verify the legal description of the Demised Premises. The Demised Premises is described in **Exhibit "A"** and identified on **Exhibit "B"**.

3.1 **CONSTRUCTION:** (a) Within the timeframes stated in this Lease and pursuant to the Plans and the Final Approved Plans (each as defined herein) and any changes thereto as agreed upon by the parties in writing, Landlord shall, at Landlord's sole risk and expense, completely construct the following on the Demised Premises in accordance with the terms, conditions, timeframes and provisions of the Lease:

(1) The building and appurtenances to be located on the Demised Premises in accordance with Prototype plans and specifications prepared by Tenant and in accordance with the site plan to be engineered by Landlord which shall be in substantial accordance with **Exhibit "F"**;

(2) Parking Area as shown on **Exhibit "F"** including, without limitation, a loading area for Tenant's exclusive use to be located in the area shown as "Loading Area" on **Exhibit "F"** and a service drive with a minimum width of twenty five (25) feet connecting the loading area with a public street or highway; a parking area or areas as shown on **Exhibit "F"**; and entrances and exits from and to public streets or highways as shown on **Exhibit "F"** (all of the foregoing are sometimes collectively referred herein as the "Parking Area"). All of the foregoing shall also be shown on the Plans and the Final Approved Plans to be approved by Tenant.

(3) Any other matters which may be shown on **Exhibits "F"** and **"B"**, including, without limitation, dumpsters and signage.

(4) Any additions to Plans requested by Tenant as provided in Section 3.2(a)-(c) and approved by Landlord, which approval shall not be unreasonably withheld.

(b) All of said construction shall be performed by Landlord at its own cost and expense in a good and workmanlike manner using first quality materials and in full compliance with (i) all codes, laws, rules and regulations of all governmental authorities having jurisdiction thereof and (ii) recorded documents affecting title. Said Parking Areas shall be constructed in substantial accordance with the Final Approved Plans. Tenant shall have the right, but not the duty, to perform inspections of all construction performed by Landlord. Landlord shall assign or otherwise make applicable all third party warranties available to Tenant such that Tenant may directly enforce the same in Tenant's name and at Tenant's expense.

(c) The obligations of Landlord to construct the building and improvements shall be a personal non-transferable obligation of Landlord named in this Lease and shall continue notwithstanding any sale or other transfer of title to the Demised Premises prior to completion of the said building and improvements.

(d) For purposes of this Lease, any matters shown on the Final Approved Plans shall also be deemed to have been shown on **Exhibit "F"**.

3.2 **PLAN APPROVAL:** (a)(1) By July 1, 2005, Landlord shall furnish to Tenant the survey and geotechnical reports referred to in this Lease and engineered site plans for the Demised Premises in accordance with **Exhibit "F"** (the "Landlord's Plans"). Within thirty (30) days after Tenant's receipt of Landlord's Plans, Tenant shall provide Landlord with written approval of Landlord's Plans, or if not approved, provide Landlord with written notice of disapproval and the reason(s) for such disapproval and comments on Landlord's Plans and specifications for the Demised Premises. Within thirty (30) days after Landlord receives said written notice of disapproval, Landlord shall resubmit revised Landlord's Plans (along with any changes requested by Tenant) to Tenant for its approval. This schedule shall continue until Landlord's Plan's are approved. If the Plans are not approved by the parties on or before **September 30, 2005**, then Landlord or Tenant may within thirty (30) days thereafter, terminate this Lease without owing any liability to the other by providing written notice of such termination to the other party. There shall be no changes to Landlord's Plans, Tenant's plans referred to below, or the Final Approved Plans (as defined herein) without the consent of Landlord and Tenant, said consent not to be unreasonably withheld, conditioned or delayed; otherwise,

Landlord or Tenant may terminate this Lease without owing any liability to the other. Notwithstanding the foregoing, the parties may by mutual consent agree to extend the dates set forth herein.

(2) Tenant shall, within forty-five (45) days after receipt of the geotechnical report, survey and engineered site plan deliver to Landlord a set of engineered building plans stamped by a licensed architect. Landlord shall, within thirty (30) days after receipt of said plans from Tenant, reimburse Tenant Five Thousand Dollars (\$5,000.00) for said plans; otherwise, Tenant may offset/abate Rent and Additional Rent together with interest accruing from the due date thereof to the day of payment at the rate of eighteen percent (18%) per annum or the highest amount permitted by law, whichever is less, until such time as Tenant has been completely reimbursed (together with interest thereon) or seek any other remedy available to it at law or equity or provided in this Lease. The provisions of this Paragraph shall survive any termination or expiration of the Lease. As used herein, the term "Plans" shall mean the Landlord's Plans and the engineered building plans prepared by Tenant. Landlord shall thereafter be responsible for obtaining all permits for the Plans (together with all other approvals of the Final Approved Plans) for constructing the building on the Demised Premises in connection therewith as provided below. Said work shall be completed on or before the Completion Date (as defined herein) and shall be a condition of Delivery as if such were set forth in Section 3.3. The Plans (and the Final Approved Plans), once approved by Tenant pursuant to the provisions of this Lease, shall not be amended or modified without the prior written consent of Tenant, which consent shall not be unreasonably withheld, delayed or conditioned. In the event that Landlord or any governmental authority makes any material changes to the Plans (and/or the Final Approved Plans) including, without limitation, changes to the Parking Areas and/or access lanes, which Tenant deems unacceptable, then within ten (10) days after receipt thereof, Tenant may terminate this Lease without owing any liability to Landlord.

(b) Except as provided in (e) below, Tenant shall, upon at least thirty (30) days prior written notice from Landlord, order the OFI Items (as defined herein and set forth in **Exhibit "H"**), and within seven (7) days thereafter, Tenant shall provide Landlord with a list of contacts and numbers in order for Landlord to coordinate the delivery of the OFI Items. The OFI Items (the "OFI Items") shall include all those matters set forth on **Exhibit "H"**, attached hereto and incorporated herein by reference, except that the OFI Items shall not include the Signage

mentioned on **Exhibit "H"** (but shall include the "Coming Soon" Signs). Tenant shall have the right to update the OFI Items from time to time upon written notice to Landlord.

(c) The OFI Items shall be ordered (as provided above) and paid for by Tenant, subject to reimbursement from Landlord. Landlord shall, within thirty (30) days after receipt of an invoice from Tenant, or within such reasonable time as is mutually agreeable to both Landlord and Tenant, reimburse Tenant for its costs associated with the OFI Items (except that Landlord shall not be required to reimburse Tenant for any signage (including the Coming Soon Signs)); otherwise, Tenant may fully offset/abate Rent and Additional Rent (notwithstanding any provision of this Lease to the contrary), together with interest accruing from the due date thereof to the day of payment at the rate of eighteen percent (18%) per annum or the highest amount permitted by law, whichever is less, until such time as Tenant has been completely reimbursed (together with interest thereon) or seek any other remedy available to it at law or equity or provided in this Lease. The parties acknowledge that the costs listed on **Exhibit "H"** are estimates only and that such numbers may vary. The provisions of this Paragraph shall survive any termination or expiration of the Lease.

(d) On or before the Completion Date (as defined herein), Landlord shall install the OFI Items to the building, and such shall be part of Landlord's work, and such work shall be a condition to Delivery as if such were set forth in Section 3.3 of the Lease.

(e) Notwithstanding anything contained herein to the contrary, Tenant shall not be required to order the OFI Items until (i) until Tenant has approved of the environmental report, title and survey and obtained the Non-Disturbance and Attornment Agreement, (ii) Landlord has obtained all the Approvals and (iii) Landlord has completed at least seventy-five (75%) of the building and any other Landlord's work hereunder, and has acquired title to the Demised Property. In the event that the OFI Items are not delivered to Landlord within Landlord's construction time frames, Landlord and Tenant may mutually agree to provide said items meeting Tenant's specifications by other means. Further, any direct and actual cost(s) associated with the untimely delivery of the OFI Items shall be borne by Tenant.

(f) Upon approval by both parties, the Plans will be initialed and dated by the parties to signify their acceptance thereof (at which time the Plans may be referred to as the "Final Approved Plans"). For purposes of plan approval by Tenant under this Section 3.2, Tenant's approval shall be evidenced by its architect. Thereafter, Landlord shall submit the Final Approved Plans to the governing authority, and it shall be Landlord's obligations to permit and obtain all governmental approvals of the Final Approved Plans. Landlord is to have until

September 30, 2005 (the "Approval Date") to receive all authorizations and permits, including, but not limited to, curb cut, building and renovation permits, signage permits (including, but not limited to, permits for signage), zoning and subdivision interpretations and confirmations, lot splits, lot combination, permits and approvals and all variances, utility permits, authorizations and easements necessary for Tenant's intended use as described herein and in order for Landlord to build the building on the Demised Premises (collectively, the "Approvals").

(g) After obtaining the Approvals, Landlord shall then, at Landlord's sole cost and expense, completely construct the Demised Premises and all other matters provided in the Final Approved Plans in accordance with the Final Approved Plans, applicable laws and any recorded restrictions affecting the Demised Premises. Notwithstanding anything contained herein to the contrary, Tenant shall not be liable for any increased cost of construction necessary to construct the Demised Premises in accordance with the Final Approved Plans, applicable laws and recorded documents, except as may be mutually agreed to by the parties as evidenced by signed change orders. During construction, Landlord shall submit to Tenant monthly updates signed by Landlord's general contractor. Upon completion of construction, the location of the building, improvements, driveways and Parking Areas erected on the Demised Premises and the grade of the Demised Premises shall not differ materially from that depicted on **Exhibit "F"** and shall be in substantial compliance with the Final Approved Plans, applicable laws and recorded documents affecting title to the Demised Premises.

3.3 **DELIVERY:** The Demised Premises shall be delivered to Tenant only after the following conditions are completed to the reasonable satisfaction of Tenant:

(a)(1) The building and other improvements on the Demised Premises are fully completed in substantial compliance with the Final Approved Plans, applicable laws and recorded documents, and Landlord has provided Tenant with keys to the Demised Premises.

(2) Tenant is provided with a final certificate of occupancy for the Demised Premises issued by the appropriate authority in localities where official certificates of occupancy are issued.

(3) Landlord shall, at its own cost and expense, obtain and deliver to Tenant three (3) copies of an "as-built" survey in compliance with ALTA standards (which shall show, among other things, the exact location of the building and Parking Area) certified to Tenant by a duly licensed surveyor together with three (3) sets of "as built" plans of the building,

including, without limitation, architectural and mechanical plans and operating manuals and specifications and drawings of all systems.

(4) Tenant is provided with a ten (10) year written warranty on the roof, a five (5) year written warranty on the air conditioning compressor and a one (1) year written repair or replacement warranty including payments for all labor and Landlord shall furnish Tenant reasonable documentation that Landlord has paid for all labor and materials furnished in connection with the performance of Landlord's work.

(5) Landlord has delivered to Tenant two (2) fully executed original Non-Disturbance and Attornment Agreement(s) as provided in Section 7(c) of this Lease.

(6) The Demised Premises complies with Sections 7(a) and 9 of this Lease (and Landlord has delivered to Tenant all matters required by Section 8).

(7) Landlord has delivered to Tenant a fully executed Short Form Lease as provided for in Section 7(b) of this Lease.

(8) Landlord has delivered to Tenant a completed W-9 form reflecting Landlord's federal tax ID number.

(b) Upon completion of all conditions set forth in subsection (a) above, Landlord shall submit written notice to Tenant that the Demised Premises is ready to be delivered to Tenant and that all of the conditions set forth in subsection (a) above have been completely satisfied in all respects and that the building and improvements on the Demised Premises are completed in accordance with the Final Approved Plans, applicable laws and recorded documents affecting title to the Demised Premises.

(c) Within fifteen (15) days after receipt of Landlord's notice, Tenant may make an inspection to determine whether the building and improvements on the Demised Premises have been completed in substantial accordance with the Final Approved Plans, applicable laws and recorded documents. If Tenant's inspection discloses any item(s) which is (are) not substantially in accordance with the Final Approved Plans, applicable laws or recorded documents, Tenant shall notify Landlord in writing within five (5) business days after the inspection and Landlord shall correct such item(s) before the Demised Premises shall be delivered to Tenant. This process shall continue until Tenant agrees that the Demised Premises and all improvements have been completed to its reasonable satisfaction and in substantial accordance with the Final Approved Plans. Notwithstanding anything contained herein to the contrary, acceptance of the Demised Premises by Tenant shall not be construed as a waiver by Tenant of any defects in the building. Once Tenant agrees that all conditions

have been satisfied, Tenant shall thereafter submit written acknowledgment to Landlord that Tenant agrees that all conditions set forth in subsection (a) above have been completed to Tenant's satisfaction and that Tenant is accepting the Demised Premises.

(d) When Landlord receives Tenant's written acknowledgment of acceptance, the Demised Premises shall be deemed "Accepted and Delivered". At Acceptance and Delivery, Landlord shall deliver to Tenant vacant possession of the Demised Premises in a broom clean condition and the Demised Premises shall be free and clear of any and all mechanic's liens, except those which Landlord may contest, Hazardous Substances, equipment, furniture, trade fixtures, merchandise and other items of personalty (except for items brought onto the Demised Premises by Tenant), debris and trash.

(e) Notwithstanding the above and unless another timeframe is specifically stated herein for a specific item, Landlord shall have until the Completion Date to fully complete all requirements of this Section; otherwise, Tenant shall have the right to exercise its remedies set forth in Section 3.5

3.4 INTENTIONALLY OMITTED

3.5 COMPLETION DATE/RIGHT TO TERMINATE: (a) Landlord shall proceed diligently to (i) construct the improvements in accordance with the Final Approved Plans such that all improvements are fully constructed on or before **March 10, 2006** (the "Completion Date") and (ii) deliver the Demised Premises to Tenant (in accordance with Sections 3.1-3.5) on or before the Completion Date. If Landlord shall fail to substantially complete Tenant's building and/or improvements as required in this Lease by reason of force majeure, this Lease shall remain in full force and effect, and Landlord shall not be liable to Tenant for any resulting loss or damage. To the extent the date of substantial completion of the improvements and delivery of the Demised Premises to Tenant does not occur on or before the Completion Date for reasons other than force majeure delays, then Tenant shall receive a credit against the first accruing payments of annual Rent due hereunder in an amount equal to two (2) days per diem annual Rent for each one (1) day after the Completion Date until the substantial completion actually occurs. Landlord acknowledges that the late delivery of the Demised Premises beyond the Completion Date will cause Tenant to incur costs and lost sales not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to determine. The parties agree that liquidated damages to which

Tenant is entitled hereunder is a reasonable forecast of just compensation for the harm that would be caused by Landlord's failure to complete construction and to deliver the Demised Premises to Tenant by the Completion Date. Notwithstanding the above, Tenant and Landlord may extend the above time frames by a mutual written agreement.

(b) If Landlord has not obtained the Approvals by the Approval Date as provided in Section 3.2(f), then Tenant may terminate this Lease without owing any liability to Landlord by furnishing written notice to Landlord; provided, however, if notice of such termination is not given on or before **October 1, 2005**, Tenant's right to so terminate shall then expire. Tenant acknowledges and agrees that Governmental approval delays can occur that are outside the control of Landlord. Tenant agrees to work in good faith with Landlord to extend the Completion Date should reasonable (less than two months) delays occur.

(c) Intentionally Omitted

(d) Time is of the essence with respect to all terms and provisions of Sections 3.1-3.5. Landlord acknowledges that the terms of Sections 3.1-3.5 are a material inducement for Tenant entering into this Lease.

(e) As used in this Lease, "substantially completed," "substantial completion," or words of similar import, shall mean that Landlord has completed Landlord's work to such an extent that (i) the roof is complete and free from visible leaks, (ii) all equipment to be installed by Landlord under this Lease (such as, without limitation, HVAC and plumbing) is operable and in good working order, (iii) Tenant is able to commence Tenant's improvements and fixturing within the Demised Premises without hindrance resulting from Landlord's activities to complete Landlord's work, (iv) Tenant is able to obtain a Certificate of Occupancy and other Approvals, (v) Tenant is able, at such point, to open its business from the Demised Premises, (vi) the Parking Area and driveways are complete and (vii) all Landlord's work shall be complete subject to only minor punchlist items to be agreed upon by Landlord and Tenant, which shall be completed within thirty (30) days after they have been agreed upon, but in any event, prior to the Commencement Date. To the fullest extent allowed by law, the parties hereby waive any other definitions under the substantial completion doctrine (or such other similar doctrine)..

(f) Landlord covenants and agrees to save, indemnify, defend, and hold Tenant harmless from and against any and all claims, losses, damages, liability and expenses, including, but not limited to, court costs and attorney's fees and all claims by contractors, subcontractors and their employees, and furnishers of labor and materials, arising out of or in

connection with Landlord's work hereunder and entry of the Demised Premises for such purposes and/or from the failure of Landlord to perform the obligations of Landlord hereunder.

If Landlord shall fail to perform any or all of its obligations under Section 3.1-3.5, then Tenant may, upon thirty (30) days' prior written notice to Landlord, elect to (1) perform Landlord's obligations under Sections 3.1-3.5, for and on behalf of Landlord and in the sole name of Landlord and Landlord agrees to sign and/or execute any and all document necessary for said Landlord's work in Landlord's name, at Landlord's sole cost and expense, in which event Tenant's costs of performing Landlord's obligations under Section 3.1-3.5 shall be reimbursed to Tenant by way of Rent and Additional Rent abatement until such time as Tenant has been completely reimbursed (together with interest thereon) or (2) force Landlord to perform its obligations by suit for specific performance, in which event Tenant shall be entitled to recover from Landlord, Tenant's attorneys' fees and court costs. The provisions of this Paragraph shall survive any termination or expiration of the Lease.

3.6 **PYLON SIGN:** To the extent permitted by local governmental authorities, Landlord, in accordance with the Plans and the Final Approved Plans shall construct a pylon sign (or in the alternative, if permitted, a monument sign as described herein) in the area shown on **Exhibit "F"**, having up to the maximum square feet per side of signage allowed by local governmental authority(ies), and Tenant shall have the right to attach its sign panels, at Tenant's cost, to the pylon sign to be constructed by Landlord.

Landlord shall have all utilities and/or conduits connected thereto as such may be necessary for the operation and illumination of said signs (such shall be part of Landlord's work, and such work shall be a condition of Delivery as if such were set forth in Section 3.3 of this Lease).

4. **COMMENCEMENT OF TERM:** The term of this Lease (the "Term") shall (i) be for a period of twenty (20) years, which shall commence (the "Commencement Date") upon the date which is the earlier of the first day of the month following (a) the opening by Tenant of its store in the Demised Premises for business with the public or (b) the expiration of ninety (90) days after Acceptance and Delivery of the Demised Premises (as provided in Section 3.4), and (ii) end on the last day of the month following twenty (20) years after the Commencement Date, unless sooner terminated or extended as provided herein. Subject to this Lease, Tenant may use and enjoy the Demised Premises for the purposes permitted hereby free from payments of Rent (as defined herein) and Additional Rent (as defined in Section 6) from and after the Completion Date until the Commencement Date.

5. **EXTENSION PERIODS:** Landlord hereby grants to Tenant four (4) separate options to extend the Term for four (4) separate consecutive additional periods (the "Extension Periods") of five (5) years each on the same terms and conditions as set forth in this Lease for the Term other than Rent (as defined herein). Each option shall be automatically exercised by Tenant unless Tenant shall give notice to Landlord at least six (6) months prior to the expiration of the Term or any Extension Period then in effect of Tenant's desire to terminate this Lease, and upon such automatic renewal, the Extension Period shall become part of the Term.

6. **RENT:** Tenant shall pay to Landlord via electronically transmitted funds, as rent, throughout years one (1) through ten (10) of the Term the monthly sum, of ten thousand dollars (\$10,000.00), and for years eleven (11) through twenty (20) of the Term, the monthly sum of eleven thousand dollars (\$11,000.00) ("Rent") in advance, on the first day of each calendar month, beginning on the Commencement Date. All payments of Rent and other sums due to Landlord hereunder shall be paid to the order of Landlord, whose Federal Employer Identification Number shall be provided to Tenant within thirty (30) days of the Effective Date or to such other person or entity or at such other place within the continental United States as shall be designated by Landlord, in writing, delivered to Tenant at least ten (10) days prior to the next ensuing Rent payment date. Landlord shall, prior to the Effective Date, complete, sign and deliver to Tenant an IRS Form W-9. Any successor to Landlord shall likewise provide Tenant with such completed IRS Form W-9 as a condition precedent to any Rent or other payment by Tenant.

Landlord and Tenant hereby agree that Rent for any Extension Period, if exercised by Tenant, shall be as follows:

First five (5) year Extension Period	\$12,100.00 per month	\$145,200.00 Annually
Second five (5) year Extension Period	\$13,310.00 per month	\$159,720.00 Annually
Third five (5) year Extension Period	\$14,641.00 per month	\$175,692.00 Annually
Fifth five (5) year Extension Period	\$16,105.00 per month	\$193,260.00 Annually

7. **LANDLORD'S TITLE:** (a) It is recognized and understood that presently Landlord does not have fee simple title to the Demised Premises, but has equitable title to the Demised Premises under that certain purchase contract (the "Contract") with the current owner of the Demised Premises. Landlord warrants the Contract (i) to be a binding and valid obligation and (ii) will permit Landlord to fulfill its obligations to Tenant hereunder. It is a condition to Tenant's obligation under this Lease that Landlord shall obtain good, marketable and insurable fee simple title to the Demised Premises from the current owner prior to **September 30, 2005**. Landlord acknowledges and agrees that performance of the foregoing will be at Landlord's own risk and does not obligate Tenant to lease the Demised Premises or waive any other contingency hereunder. Landlord agrees to provide Tenant written notice of closing on the Demised Premises within ten (10) days of the actual closing; however, failure of Landlord to give notice of closing shall not be an event of default under Lease.

If Landlord is unable to obtain good and marketable title to the Demised Premises by said date, then (i) Tenant may terminate this Lease without liability to Landlord.

Landlord hereby represents and warrants to Tenant that (i) Landlord is not in default under the Contract, (ii) Landlord shall attempt in good faith to procure fee simple title to the Demised Premises under the Contract by said date stated above, (iii) Landlord shall not release the present owners of the Demised Premises from their obligations under the Contract, and (iv) Landlord shall provide Tenant satisfactory evidence of Landlord's fee simple ownership within five (5) days of such ownership and satisfaction of all obligations under the Contract.

In addition, Landlord warrants that Landlord has the authority under the terms of the Contract to allow Tenant right of access to perform surveys and any other test(s) on the Demised Premises, and Landlord hereby represents, warrants and covenants that Tenant has the right to perform said tests on the Demised Premises.

(b) Tenant acknowledges and agrees that Landlord is performing Due Diligence on the Property and does not warrant the title, restrictions, liens, security interest, and encumbrances of any kind that may exist on the property. However, to the best of the Landlord's knowledge, Landlord hereby covenants and represents to Tenant that Landlord has the full right and lawful authority to make this Lease; that the Demised Premises are free and clear of and from all liens, security interest, restrictions, leases and encumbrances of any and every kind and nature whatsoever (except as otherwise set forth in Section 24(c) and on **Exhibit "C"**, which exceptions Landlord represents and warrants do not and shall not involve

or result in any interference with or impairment of Tenant's intended use) and that there are no laws, ordinances, governmental rules, regulations, encroachments, title restrictions, zoning, endangered species or any other matters whatsoever which will materially restrict, limit or prevent Tenant's intended use in the Demised Premises. Notwithstanding anything contained herein to the contrary, if there are any liens, security interests, restrictions, leases, encumbrances, encroachments, laws, ordinances, governmental rules or regulations, title restrictions, zoning, endangered species or any other matters which in fact materially interfere with Tenant's use of the Demised Premises, then Tenant may terminate this Lease without owing any liability to Landlord. Landlord covenants and agrees that so long as Tenant is not in monetary default hereunder, Tenant shall have quiet and peaceful possession and enjoyment of the Demised Premises, the Parking Area (as defined herein), all improvements located thereon and of all easements, rights and appurtenances thereunto belonging.

(c) Landlord and Tenant shall execute a short form lease (the "Short Form Lease"), in such form as reasonably approved by Landlord and Tenant which sets forth, among other things, the Commencement Date and expiration date. After the Commencement Date, Landlord and Tenant shall execute an amended short form lease (the "Amended Short Form Lease"), in such form as reasonably approved by Landlord and Tenant, which sets forth the actual Commencement Date of this Lease (if different from the previously recorded Short Form Lease). Either Landlord or Tenant may record the Short Form Lease and/or the Amended Short Form Lease at any time after the Effective Date. Notwithstanding any other provisions of this Lease, Landlord covenants and agrees (i) not to mortgage the Demised Premises without providing Tenant a "Non-Disturbance and Attornment Agreement" as hereinafter provided, or (ii) otherwise encumber the Demised Premises and not to otherwise alter or permit the alteration of the status of the title to the Demised Premises prior to the recording of the Short Form Lease without Tenant's prior written consent, not to be unreasonably withheld, conditioned or delayed.

(d) Landlord shall also furnish to Tenant duly acknowledged triplicate counterparts of a "Non-Disturbance and Attornment Agreement" in the form attached hereto as **Exhibit "D"** (or such other form as may be reasonably acceptable to the mortgagee and Tenant) executed by any mortgagee or holder of any lien prior to the recordation of the Short Form Lease; otherwise Tenant may terminate this Lease without owing any liability to Landlord. Wherever reference is made to a mortgage or mortgagee in this Lease, such reference shall be deemed to include, without limitation, a deed of trust or the holder of a deed of trust.

(e) If any future mortgagee so requests, this Lease shall be subject and subordinate to a first mortgage covering the Demised Premises and any and all renewals, modifications, consolidations, replacements and extensions thereof; provided that, Landlord and such mortgagee execute and deliver to Tenant duly acknowledged triplicate counterparts of a "Subordination, Non-Disturbance and Attornment Agreement" in the form attached hereto as **Exhibit "E"** (or such other form as may be reasonably acceptable to the mortgagee or Tenant).

(f) Landlord represents and warrants to Tenant that no third party (other than governmental authorities) has any approval rights over the use, construction, operation or modification to the Demised Premises.

8. **DUE DILIGENCE:** (a) **Title Examination and Survey.** Landlord agrees, at its sole cost and expense and within thirty (30) days after the Effective Date, to furnish to Tenant (each of which shall be certified to Tenant) (i) a title report together with underlying documents on the Demised Premises and (ii) an ALTA survey on the Demised Premises, each of which shall be dated not earlier than the Effective Date. If the status of Landlord's title and survey are unacceptable to Tenant, in its discretion, then Tenant may, within thirty (30) days after receipt of the title report (together with the underlying documents) and the survey either terminate this Lease without owing any liability to Landlord by furnishing written notice to Landlord or notify Landlord of Tenant's objections to any exceptions to title and survey thus disclosed to Tenant, in which event, Landlord shall remove and/or eliminate any and all objections to title and survey contained in Tenant's notice within thirty (30) days following the date of Tenant's notice of objection, at Landlord's sole cost and expense. Tenant shall promptly notify Landlord of any other objections by Tenant to exceptions to title and/or survey discovered by Tenant other than by the procedure aforesaid and which did not appear in the original title report and/or survey received by Tenant. If any of the exceptions to title and/or survey objected to by Tenant (all of which shall be removed as aforesaid) are not eliminated within the time limits stated above or in the event Landlord fails to deliver any materials required by Section 8, then within ten (10) days thereafter, Tenant may (a) elect to terminate this Lease without owing any liability to Landlord, (b) extend said timeframes or (c) withdraw its objections and continue this Lease without modification.

(b) **Environmental Tests.** Landlord shall obtain, at Landlord's expense, endangered species reports, and environmental assessments, reports, studies and tests,

including, but not limited to, sampling and testing for Hazardous Substances (as defined herein) certified to Tenant. Tenant shall have thirty (30) days after receipt of all of said test results to notify Landlord, in writing, of any conditions shown by said test results which are unacceptable to Tenant. If the results of any of the foregoing are unacceptable to Tenant, then Tenant may terminate this Lease without owing any liability to Landlord or Tenant may require Landlord to cure said objections, in which event Landlord shall have until forty-five (45) days following the date of Tenant's notice to remove any such conditions contained therein. If Landlord fails to remove and/or cure such conditions within the time limits provided, then within ten (10) days thereafter, Tenant may by written notice to Landlord terminate this Lease without owing any liability to Landlord or extend said timeframes. In the event Tenant terminates this Lease as provided herein, Landlord shall execute any and all reasonable termination documents requested by Tenant and/or Tenant's title company.

9. **POSSESSION UPON COMMENCEMENT OF TERM:** Upon the Commencement Date, (i) the covenants of Landlord set forth in Section 7(a) shall be in full, force and effect and (ii) the Demised Premises shall be unoccupied. At such time, the building and any other improvements erected upon the Demised Premises shall be in full compliance with all applicable laws, rules, ordinances and regulations relating to the use, occupation and construction thereof.

9.1 **DELIVERY OF POSSESSION UPON TERMINATION/ EXPIRATION OF TERM:**
Tenant agrees to deliver to Landlord physical possession of the Demised Premises upon the termination or expiration of this Lease in good condition excepting, however, ordinary wear and tear or damage by fire or any other casualty unless caused solely by the gross negligence or willful misconduct of Tenant.

10. **ASSIGNMENT AND SUBLETTING:** Tenant may assign this Lease or sublet the Demised Premises (in whole or in part) without the consent of Landlord, but notwithstanding any such subletting or assignment, Tenant shall remain primarily liable for the performance of all the terms and conditions of this Lease.

11. **PROTECTIVE COVENANT:** (a) In order to induce Tenant to enter into this Lease, Landlord agrees for itself, its successors and assigns, its officers, directors and

shareholders (holding more than ten percent (10%) of its stock), its parent, affiliated and subsidiary corporations or other entity and any partner or other party affiliated with it, that during the Term of this Lease and any extensions hereof, none of the foregoing shall use, suffer, permit or consent to the use or occupancy of any land within a two (2) mile radius of the Demised Premises as an auto parts store or for the sale of automobile parts, supplies and/or accessories. This restriction shall not apply to any business whose principal business is a drug-store and/or pharmacy, grocery store, department store, variety store, hardware store, home improvement store or any other seller of a broad mix of general merchandise which sells auto (or similar) parts as an incidental part of its general merchandise business; provided that, no business sells automobile carburetors, starters, brakes, alternators, fuel pumps, water pumps or other coolant pumps for off-premises installation.

12. **LANDLORD'S REPAIRS:** Landlord specifically agrees to repair any and all damage caused by settling, expansion or contraction of the building and/or the land underneath the building or Parking Area, except for diminutive settling, expansion or contraction. Landlord, at Landlord's expense, shall maintain, repair and replace the structural elements of the Demised Premises (including the roof) for one (1) year after Tenant's acceptance of possession. Upon delivery of possession of the Demised Premises to Tenant, Landlord shall cause all contractor's and manufacturer's warranties of guaranties relating to the Demised Premises to be assigned to Tenant, or to the extent not assignable, to be issued in Tenant's name.

12.1 **TRASH REMOVAL:** Tenant shall store all Tenant's trash in dumpsters or other covered trash receptacles customary in shopping centers. Tenant's trash receptacle may, at Tenant's option, be located near Tenant's loading areas (and Landlord grants Tenant the right to place its dumpster near Tenant's loading area) and Tenant shall have Tenant's trash removed from the Demised Premises regularly, all at Tenant's cost. Tenant may also maintain garbage cans customary to Tenant's business on the sidewalk located in front of the Demised Premises, provided Tenant shall empty the garbage cans regularly, and the garbage cans shall not be located so as to block or materially impair access across the sidewalk.

13. **TENANT'S REPAIRS, ALTERATIONS AND FIXTURES:** (a) Subject to Landlord's obligations under Section 12, Tenant shall make and pay for all ordinary non-structural repairs to the building located on the Demised Premises arising from Tenant's operation of business

therein not occasioned by fire or other casualty. Subject to any contrary provisions hereof, Tenant may make and shall pay for any renovations, alterations and improvements to the Demised Premises (and the building located thereon) as Tenant deems desirable and Tenant agrees that all such alterations and improvements shall be made in a good and workmanlike manner and in such fashion as not to diminish the value of the building, and that no such alterations shall compromise the structural integrity of the Demised Premises. On surrendering possession of the Demised Premises and the building located thereon to Landlord at the expiration or sooner termination of this Lease or any Extension Period, other than as provided in Section 9.1, Tenant shall not be required to restore the same to the condition existing at the commencement of the Term and Landlord agrees to accept the Demised Premises and the building located thereon with all alterations and improvements made by Tenant.

(b) Subject to applicable building codes and regulations, Tenant may paint the interior and exterior of the building and may also paint, erect or authorize the installation of signs (which Tenant deems necessary to the operation of its business) on the interior and exterior of the building, and inside of the Demised Premises identifying same as Tenant's store. To the extent shown on the Final Approved Plans, Landlord shall provide adequate structural support in or on the canopy for Tenant's sign. If approved by applicable law, Tenant may also erect a monument sign at the adjacent street or streets on the Demised Premises. Tenant may at any time or from time to time remove such signs or change them to reflect new designs. Tenant may use its standard colors and logo in all signage. Landlord shall not and may not install or maintain, or permit anyone other than Tenant to install or maintain, any signs on any part of the Demised Premises or within the air space above the Demised Premises during the Term or any Extension Period of this Lease.

(c) Tenant may install in the building located on the Demised Premises such fixtures (trade or otherwise) and equipment as Tenant deems necessary, advisable or proper, and all of said items shall remain Tenant's property whether or not affixed or attached thereto. Tenant may remove said fixtures and equipment from the Demised Premises at any time and from time to time during the Term or any Extension Period. Landlord shall not mortgage, pledge or encumber said fixtures, equipment or improvements. In no event shall Landlord (including a default under this Lease) have any liens, rights or claims in Tenant's fixtures or equipment. Tenant shall, within thirty (30) days after expiration of the Term or any Extension Period, remove all such fixtures and equipment and repair any damage to the Demised Premises caused by Tenant's removal of any such fixtures or equipment, and if not so

removed, the same shall be deemed abandoned. Tenant shall be allowed access, either underground or aerial as required by the telecommunications supplier and by applicable codes and regulations, to all telecommunications lines and facilities, including the right to install at Tenant's expense on an exterior wall or roof area a digital communications reflector complete with cable attached to the building located on the Demised Premises. Any such installation shall be deemed part of Tenant's fixtures and equipment to be removed as aforesaid upon termination or expiration of this Lease.

14. **LIENS:** Tenant shall make full and prompt payment of all sums necessary to pay for the cost of repairs, alterations, improvements, changes, or other work done by Tenant to the Demised Premises. Tenant shall indemnify, defend and hold Landlord harmless from and against all claims, demands, actions, causes of action, losses, expenses, damages, liabilities and reasonable attorney's fees arising out of or incurred in connection with all construction liens arising out of any such work, which may be asserted, claimed, or charged against Landlord or the Demised Premises. Notwithstanding anything to the contrary in this Lease, the interest of Landlord in the Premises shall not be subject to liens for improvements made by or for Tenant, whether or not the same shall be made or done in accordance with this Lease or other agreement between Landlord and Tenant. In no event shall Landlord or the interest of Landlord in the Demised Premises be liable for, or subjected to, any liens for improvements or work made by or for Tenant. In the event any notice or claim of lien shall be asserted of record against the interest of Landlord in the Demised Premises on account of any improvement or work done by or for Tenant or any person claiming by, through, or under Tenant, or the cost of which is the responsibility of Tenant, Tenant shall have such notice or claim of lien canceled and discharged of record as a claim against the interest of Landlord in the Demised Premises (either by payment and satisfaction or by removal by transfer to bond or deposit as permitted by law) within fifteen (15) days after notice to Tenant by Landlord. Any fees and costs incurred by Landlord resulting from a lien as described in this Section 14 shall be paid by Tenant, including reasonable attorney's fees.

15. **UTILITIES:** Landlord shall provide to the Demised Premises and the building located thereon throughout the Term and any Extension Period such sanitary and storm sewer facilities and such utilities (including, without limitation, water, electric power and gas) as Tenant may require and in accordance with the Plans and the Final Approved Plans. Tenant

agrees to pay for all such utilities furnished to the Demised Premises and which are consumed by Tenant, during the Term and any Extension Period. Landlord shall pay for all utility hook-up, capital recovery and other fees or connection charges for utility service. All utilities shall be separately metered.

16. **ESTOPPEL CERTIFICATES:** Landlord and Tenant shall, from time to time upon twenty (20) days' request by the other (but not to exceed more than three (3) times in any given calendar year), execute, acknowledge and deliver a statement, dated currently, certifying that this Lease is unmodified and in full, force and effect (or, if there have been modifications, that this Lease is in full effect as modified, and identifying such modifications) and the dates to which the Rent and Additional Rent have been paid, and that no default exists in the observance of this Lease and no event of default has occurred and is continuing, or specifying each such default or event of default of which Landlord or Tenant may have knowledge, it being intended that any such statement may be relied upon by Landlord's or Tenant's Mortgagees, any prospective purchaser of the interest of Landlord or Tenant in their respective premises described herein or any assignee or sublessee of Tenant.

17. **INSURANCE:** Throughout the Term Tenant shall maintain commercial general liability insurance for injury to person (including death) or damage to property occurring within the building arising out of the use and occupancy thereof by Tenant, its licensees, employees, invitees, agents and customers. Such insurance shall be with minimum single limits of Two Million Dollars (\$2,000,000.00) for personal injury, death or property damage, and Landlord shall be named as additional insured under the policy. Said insurance may be in the form of a general coverage or floater policy covering these and other premises, provided that Landlord is named an additional insured in said policy. After the Commencement Date and upon written request of Landlord, Tenant shall deliver to Landlord a certificate of such insurance naming Landlord as an additional insured and an agreement by the insurer that said policy may not be canceled without ten (10) days prior written notice delivered to Landlord.

18. **DAMAGE BY CASUALTY:** If the Building or other Improvements on the Demised Premises are damaged or destroyed by fire, the elements, subsidence of sublateral or subjacent support or other casualty (any of the foregoing, a "Casualty"), Landlord shall (i) begin repairs within thirty (30) days after the Casualty occurs, and (ii) restore the damaged or destroyed Improvements to their condition just prior to the damage within ninety (90) days after

the Casualty occurs, or Tenant may cancel and terminate this Lease without owing any liability to Landlord. If Tenant is not actually open for business during all or any part of the period ("Restoration Period") from the date of such Casualty until the date the Demised Premises is redelivered to Tenant in accordance with the terms of this Lease, all Rent or other sums payable hereunder shall abate for such period as Tenant is not open for business without causing default by Tenant. If Tenant is open for business during the Restoration Period, the Rent and other sums payable hereunder shall abate in proportion to the usable space; provided, however; that if Landlord does not proceed diligently with restoration of the Demised Premises, all Rent and other sums payable hereunder shall abate without causing default by Tenant.

If any Casualty shall occur during the last year of the Term, and the cost of restoration or repair of the affected Improvements would exceed fifty percent (50%) of the replacement value of all Improvements located on the Demised Premises, then either party may terminate this Lease without owing any liability to the other by written notice to the other party within thirty (30) days after the date of such Casualty. If Landlord terminates this Lease as provided above, Tenant may, within thirty (30) days after receipt of notice thereof, extend the Term to include the next Extension Period then available, whereupon Landlord's termination shall be null and void in all respects, and Landlord shall restore said Improvements in accordance with the terms of this Section; provided that, Tenant shall not have the right to void a termination by Landlord during the last Extension Period. If this Lease is terminated as provided in this Section, both parties shall be relieved of any further liabilities hereunder except for obligations accrued at the date of such Casualty, and any sums prepaid by Tenant shall be apportioned and appropriately refunded to Tenant.

18.1 **LANDLORD'S INSURANCE:** Landlord shall maintain all risk insurance on the Building. Tenant shall within thirty (30) days after receipt of an annual billing from Landlord, supported by Landlord's invoices, reimburse Landlord, as Additional Rent, for the cost of such insurance premiums. Upon request by Tenant, Landlord shall deliver Tenant proof of property insurance coverage with standard all-risk perils.

19. **WAIVER OF SUBROGATION AND HOLD HARMLESS:** Landlord and Tenant shall obtain from their respective insurers endorsements whereby the insurers agree to waive any

right of subrogation against Landlord or Tenant, as the case may be, in connection with fire or other risks or casualties covered by said insurance. Landlord agrees that it shall make no claim nor authorize any claim to be made against Tenant, its employees, servants or agents in connection with or as a result of fire, explosion or any other casualty damaging the improvements on the Demised Premises. Tenant agrees that it shall make no claim nor authorize any claim to be made against Landlord, its employees, servants or agents in connection with or as a result of fire, explosion, or other casualty damaging the contents or fixtures installed in the building on the Demised Premises.

20. **EMINENT DOMAIN:** (a) If (i) all or part of the Demised Premises, the building located thereon, or (ii) so much of any rights in the Demised Premises or the building located thereon shall be taken or appropriated under any right of eminent domain or under any other legal right whereby the taking authority is obligated to compensate Landlord therefor so that there does not remain (a) ninety percent (90%) of the Parking Area as shown on **Exhibit "F"** or other common areas or easements granted to Tenant hereunder, (b) premises suitable in the sole opinion of Tenant for the operation of its business, (c) direct access at grade level to all abutting streets, or (d) such taking involves a taking of the building on the Demised Premises, then Tenant may terminate and cancel this Lease without owing any liability to Landlord as of the date on which the condemning authority takes physical possession upon giving to Landlord written notice of such election. Landlord agrees immediately within ten (10) days after any notice of intended or actual taking or appropriation to give Tenant written notice thereof, providing to Tenant full details of such taking or appropriation, including, without limitation copies of all condemnation plans or surveys submitted by the condemning authority, a statement of the nature of the project to be conducted by the condemning authority, and such other information as might be necessary to enable Tenant to determine its future course of conduct.

(b) If this Lease shall be terminated and canceled as a result of any taking or appropriation, Tenant shall be released from any further liability and Rent and other sums for the last month of Tenant's occupancy shall be prorated and Landlord shall immediately refund to Tenant any sums paid in advance. If at the time of such taking or appropriation Tenant shall not have fully amortized expenditures which it might have made on account of any improvements or alterations made or erected on the Demised Premises, the amount thereof shall be payable to Tenant out of any award.

(c) Tenant reserves unto itself the right to prosecute Tenant's claim for an award for damages based on the value of Tenant's improvements and Tenant's fixtures and other personal property erected or installed on the Demised Premises and damages Tenant may sustain to the interest in the business operated by Tenant on the Demised Premises, including, but not limited to, goodwill, patronage, and the removal, relocation, and replacement costs and expenses caused by such appropriation or taking, and Tenant may file such claims as are permitted by law for business dislocation damages, moving expense, or other damages caused by such taking or appropriation provided that same does not reduce Landlord's award of damages. Tenant's right to receive compensation or damages for its fixtures or its personal property shall not be affected in any manner by this Lease provided that same does not reduce Landlord's award of damages.

(d) If this Lease is not terminated and canceled because of any such taking or appropriation, Landlord shall use due diligence to begin to restore the improvements to the Demised Premises to a condition as nearly comparable as practicable to the condition existing just before such taking or appropriation, no later than ninety (90) days after such taking or appropriation. If Landlord fails to commence such repairs within said ninety (90) days, Tenant may elect to terminate this Lease by notice of such termination given to Landlord upon the expiration of such 90-day period. If, after commencing such repairs, Landlord fails to use reasonably diligent efforts to complete such repairs, Tenant shall give Landlord notice of such failure, and Landlord shall thereafter have fifteen (15) days in which to undertake such reasonably diligent efforts. If Landlord thereafter fails to undertake such efforts, Tenant may elect to terminate this Lease by notice of such termination to Landlord upon the expiration of such 15-day cure period.

21. **PERMITS AND LICENSES:** (a) Tenant is to have until the expiration of ninety (90) days following the Plan Approval Date to receive all authorizations and permits, including, but not limited to, fixture permits, signage permits (including, but not limited to, permits for building and pylon signage), utility permits (to the extent not required to be performed by Landlord under the terms of this Lease), authorizations and easements necessary for Tenant's intended use (collectively, the "Approvals"). This timeframe is separate from Landlord's timeframe to obtain Landlord's permits. Landlord shall, upon request of Tenant, execute any and all documentation in support of such application for said Approvals. Notwithstanding the above or anything contained herein to the contrary, if Tenant has not received or is denied or refused

any such Approvals necessary to assure that Tenant's intended use of the Demised Premises will not be physically or financially impaired, as determined in Tenant's sole discretion, prior to such date, or if the necessary Approvals are granted subject to any conditions that Tenant deems will physically or financially impair Tenant's intended use of the Demised Premises prior to such date, or if adequate utilities and related facilities, including, without limitation, water, stormwater/sewage disposal, telephone service and energy sources, to service the Demised Premises and any improvements thereto for Tenant's intended use or easements therefor are not available to the satisfaction of Tenant, then Tenant may terminate this Lease without owing any liability to Landlord by furnishing written notice to Landlord, or Tenant may elect to continue this Lease in effect and commence Rent on the Commencement Date

(b) Landlord and Tenant agree that if any city, county, state, federal or municipal body or any other authority having such powers shall initiate a re-zoning and/or condemnation of the Demised Premises or any part thereof prior to the Commencement Date, Tenant may terminate this Lease without owing any liability to Landlord by written notice to Landlord. Landlord hereby represents and warrants that Landlord is not aware nor has Landlord received any notification of any such proposed rezoning or condemnation, and that Landlord will promptly furnish Tenant copies of all such notices received by Landlord. If Tenant shall discover any other proposed governmental action (such as but not limited to any proposed changes to the street right of ways located adjacent to the Demised Premises or to the road network in the vicinity of the Demised Premises) prior to the Commencement Date which would, in Tenant's opinion, impair Tenant's use of the Demised Premises for the purposes described in this Lease, then Tenant may terminate this Lease without owing any liability to Landlord by written notice to Landlord.

(c) If subdivision, lot splitting, lot combination or replatting of the Demised Premises is required by any applicable governmental authority as part of the Approval process, then Landlord shall on or before the Completion Date perform the subdivision or replatting at Landlord's sole cost and expense. If, as a condition of the permitting or Approvals process, the said governmental authority requires the dedication of a portion of the Demised Premises or the imposition of any easements or restrictions that would interfere with the intended use and development of the Demised Premises, in Tenant's sole opinion and discretion, then Tenant may terminate this Lease without owing any liability to Landlord upon written notice to Landlord.

22. **INTENTIONALLY OMITTED**

23. **INTENTIONALLY OMITTED**

24. **INTENTIONALLY OMITTED:**

25. **USE OF PREMISES BEFORE TERM COMMENCES:** Tenant may enter the Demised Premises and the building located thereon at any time prior to the Commencement Date and make improvements permitted by this Lease and install therein fixtures and equipment and receive and store therein merchandise and other property at Tenant's own risk, free from Rent, provided that such entry does not interfere unreasonably with the work being done in or to the building by Landlord. Such entry shall not be construed as Acceptance and Delivery thereof (as provided in Section 22 herein) under the terms and provisions of this Lease.

26. **TRANSFER OF TITLE:** If there shall be any change in or transfer of title in or to the Demised Premises or any part thereof, Tenant shall continue to make all payments to Landlord, without owing any liability to any other party whatsoever, unless notified in writing by Landlord of such change in title which shall accompany satisfactory proof and given at least ten (10) days before the next such payment is due. Thereafter, Tenant shall submit such payment to the party properly entitled to receive it, without owing any liability to any other party. Landlord agrees to deliver to Tenant an agreement signed by any party or parties who may purchase or succeed to all or any part of Landlord's interest in the Demised Premises, which agreement shall formally recognize the obligations of such party or parties as purchasers from and successors to Landlord and the assumption by such party or parties of all of Landlord's obligations, responsibilities and duties hereunder. Further, upon sale or other transfer of title to the Demised Premises and assignment of this Lease, Landlord shall be released from and its successor shall assume and become responsible for all further obligations hereunder.

27. **TENANT'S DEFAULT:** (a) If Tenant shall default in payment of Rent, when due, Landlord shall forward written notice, pursuant to Section 30, of such default to Tenant, and

the failure of Tenant to cure such default within fifteen (15) days after the date of receipt of such notice shall, at the option of Landlord, cause the termination of this Lease..

(b) If Tenant shall default in the performance of any other terms or provisions of this Lease, and if Landlord shall give to Tenant written notice, pursuant to [Section 30], of such default, and if Tenant shall fail to cure such default within ninety (90) days after receipt of such notice, or if the default is of such a character as to require more than ninety (90) days to cure, then, if Tenant shall fail to use reasonable diligence in curing such default, Landlord may cure such default for the account of and at the cost and expense of Tenant, and the reasonable sums so expended by Landlord shall be deemed to be Additional Rent and on demand shall be paid by Tenant on the day when Rent shall next become due and payable. Notwithstanding anything contained in this Lease to the contrary, in no event, however, shall any default under the terms of this Section 27(b) (i) be the basis of a forfeiture of this Lease or otherwise result in the eviction of Tenant or the termination of this Lease, or (ii) allow Landlord to accelerate any Rent due under this Lease.

28. **LANDLORD'S DEFAULT; TENANT REMEDIES:** If Landlord fails to pay any installment of taxes or assessments or any interest, principal, costs or other charges upon any mortgage or mortgages or other liens and encumbrances affecting the Demised Premises or the Improvements thereon and/or the Entire Premises when any of the same become due, or if Landlord fails to make any repairs or do or complete any work required of it under any of the provisions of this Lease (including without limitation Landlord's Work), or if Landlord fails to perform any covenant or agreement affecting the Demised Premises and/or the Entire Premises or contained in this Lease on the part of Landlord to be performed, then Tenant, after the continuance of any such failure or default for thirty (30) days after written notice thereof is given by Tenant to Landlord, may elect to pay said taxes, assessments, interest, principal, costs and other charges or cure such defaults on behalf of and at the expense of Landlord and do all necessary work and make all necessary payments in connection therewith. This shall include, without limitation, the payment of any legal fees, costs and charges of or in connection with any legal or equitable action which may be brought, and Tenant may further take such other proceedings at law or in equity as Tenant deems necessary, notwithstanding any other remedy provided herein. Notwithstanding anything contained herein to the contrary, in the event of such election by Tenant, Landlord agrees to immediately pay to Tenant any

amount so paid by Tenant upon demand, and agrees that Tenant may withhold any and all Rent and Additional Rent due and becoming due after the expiration of the aforesaid notice period to Landlord pursuant to the provisions of this Lease and may apply the same to the payment of such indebtedness of Landlord until such indebtedness is fully paid or until Landlord's default is cured. In addition to the foregoing, Tenant may proceed in equity to enjoin any breach by Landlord or by any other party of any provision of this Lease. Nothing contained herein shall preclude Tenant from proceeding to collect the amount so paid by it, as aforesaid, without waiting for rental offsets to accrue. In addition, nothing shall require Tenant to wait for the above timeframes in order to cure a default of Landlord in an emergency situation. If at the expiration of the Term of this Lease there shall be any sums owing by Landlord to Tenant, this Lease may at the election of Tenant be extended and continued in full force and effect until the last day of the month following the date when the indebtedness of Landlord to Tenant shall have been fully paid. If any alleged default is of such a nature that it cannot be completely remedied or cured within the thirty (30) day period provided above, and the nature of such default does not materially interfere with Tenant's Intended Use of the Demised Premises, then notwithstanding the provisions of this Section to the contrary, Tenant shall not have a right to enforce any of the remedies herein set forth if Landlord shall commence curing such default within such thirty (30) day period and shall proceed with reasonable diligence in good faith to complete the curing thereof.

Notwithstanding any provision of this Lease to the contrary, in the event of a Landlord default under this Lease that materially interferes with Tenant's Intended Use of the Demised Premises, Tenant may terminate this Lease and all Tenant's liability and obligations hereunder if Landlord fails to cure such default within thirty (30) days after written notice thereof is given by Tenant to Landlord.

29. **HAZARDOUS SUBSTANCES:** (a) As used herein, the term "Hazardous Substances" shall mean, without limitation, any substance that is biologically or chemically active or any hazardous, toxic, or dangerous waste, substance (including, but not limited to, lead-based paint, asbestos or petroleum derivative substances), or material defined as such in (or for purposes of) (i) any state, federal or local environmental laws, interpretive letters, regulations, decrees or ordinances, (ii) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (iii) the Resource Conservation and Recovery Act, (iv) any of the so-called state or local "Super Fund", "Super Lien" or "Cleanup Lien" laws or (v) any other federal, state or local statute, law, ordinance, code, rule, interpretive letter, regulation, order or decree

regulating, relating to or imposing liability or standards of conduct concerning any such substances or materials or any amendments or successor statutes with respect to any of the foregoing.

(b) During the Term of this Lease, Tenant represents and warrants that, except for items commonly sold or utilized in Tenant's other auto parts and supply stores and stored and handled in accordance with law, no other Hazardous Substances will be stored on the Demised Premises and no Hazardous Substances will be discharged on the Demised Premises by Tenant, and Tenant shall not cause or permit to occur any violation of governmental regulations related to environmental conditions on, under, or about the Demised Premises or arising from Tenant's use or occupancy of the Demised Premises, including, but not limited to, soil and ground water conditions. Tenant shall, at Tenant's own expense, comply with all governmental regulations regulating Tenant's use, generation, storage, transportation, or disposal of Hazardous Substances, and shall comply with each of the following:

(i) Tenant shall, at Tenant's own expense, make all submissions to, provide all information required by, and comply with all requirements of governmental authorities pursuant to governmental regulations.

(ii) Should any governmental authority demand that a clean-up plan be prepared and that a clean-up be undertaken because of any deposit, spill, discharge, or other release of Hazardous Substances caused by Tenant or Tenant's officers, agents, employees, or contractors that occurs during the Term of this Lease at, from, or about the Demised Premises, then Tenant shall, at Tenant's own expense, provide, submit, and implement the required plans and all related bonds and other financial assurances.

(iii) Tenant shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances that is reasonably requested by Landlord. If Tenant fails to fulfill any duty imposed under this Section 29 within a reasonable time, Landlord may do so at Tenant's expense. In such case, Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to determine Tenant's compliance with governmental regulations, and Tenant shall execute all such documents promptly upon Landlord's request. No such action by Landlord and no attempt made by Landlord to mitigate damages under any governmental regulations shall constitute a waiver of any of Tenant's obligations under this Section 29.

(iv) Tenant shall indemnify and hold Landlord harmless from and against all liability, loss, damage, cost and expense, including reasonable attorney's fees, Landlord may sustain or incur by reason of: (1) any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the Term of this Lease at or from the Demised Premises or as a result of Tenant's use or occupancy of the Demised Premises; (2) Tenant's failure to provide

all information, make all submissions, and take all steps required by all governmental authorities under governmental regulations; or (3) Tenant's failure to comply with Tenant's obligations under this Section 29. Tenant's obligations and liabilities under this Section 29 shall survive the expiration or termination of this Lease.

(c) Landlord shall indemnify, defend and hold Tenant harmless from and against any and all costs, expenses, and damages, including, but not limited to, reasonable attorneys' fees and costs of remediation arising out of any claim for loss or damage to property, injuries to or death of persons, any contamination of or adverse effects on the environment or any violation of any environmental or other law caused by or resulting from any hazardous waste, Hazardous Substance or any leakage or contamination from underground tanks on or under the Demised Premises and not resulting from Tenant's operations in the Demised Premises. This indemnification precedes, is concurrent with, and survives this Lease. Notwithstanding anything contained herein to the contrary, Landlord hereby agrees that under no circumstances whatsoever, by statute or otherwise, shall Tenant be held liable as an owner of any Hazardous Substance.

(d) Furthermore, Landlord represents and warrants to Tenant that Landlord has no actual or constructive knowledge of: (1) the presence of any Hazardous Substances on, under or within the Demised Premises; (2) any spills, releases, discharges or disposals of Hazardous Substances that have occurred or are presently occurring on or onto the Demised Premises; (3) any spills or disposal of Hazardous Substances that have occurred or are occurring adjacent to the Demised Premises as a result of any construction on or operation and use of the Demised Premises or adjacent property; (4) any failure to comply with all applicable local, state and federal environmental laws, regulations, ordinances, and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Substances on the Demised Premises, or adjacent property; or (5) the presence of any underground storage tanks, monitoring wells, water wells or septic tanks now or in the past on the Demised Premises.

30. **NOTICE:** All notices or demands required or permitted to be given or served pursuant to this Lease shall be deemed to have been given or served only if in writing, postage pre-paid and shall be sent by U.S. Certified Mail, Return Receipt Requested or via overnight (or 2d day) delivery service requiring a signature upon delivery (such as Fed Ex) to:

TENANT (if by Certified Mail):

AutoZone, Inc.

TENANT (if by Federal Express):

AutoZone, Inc.

Property Management
Dept. 8700
P.O. Box 2198
Memphis, Tennessee 38101-2198

Property Management
Dept. 8700
123 South Front Street
Memphis, Tennessee 38103

LANDLORD:

NCP Colorado, LLC
Attn: Rod Desroches
5847 San Felipe, Suite 1000
Houston, Texas 77057

Such addresses may be changed from time to time by either party by serving notice as above provided. Prior to the Commencement Date, all notices to Tenant shall be sent to AutoZone, Inc., Dept. 8341, 123 S. Front Street (or PO Box 2198), 3rd Floor, Memphis, Tennessee 38103 (or 38101-2198) Attention: Wayne Young.

31. **REAL ESTATE TAXES:** All real estate and personal property taxes and assessments levied or assessed by applicable governmental authorities and assessed solely against the Demised Premises which accrue during the Term or any Extension Period shall be paid by Tenant prior to delinquency. Any assessments which are payable in installments may be paid in installments or in a lump sum at Tenant's option. Notwithstanding the foregoing, (a) if any installments of assessments against the Demised Premises are due for any period(s) before or after the Term of the Lease, then the Landlord shall pay the said installments of assessments, and (b) if any assessments are made in order to furnish any improvement, maintenance, repair or replacement that is Landlord's obligation under this Lease, then Landlord, and not Tenant, shall pay the same. In order to induce Tenant to agree to pay said assessments, Landlord shall pay all assessments which are assessed prior to the Commencement Date. Tenant shall also pay all sales, use, and excise taxes levied, assessed, or payable on all amounts payable under this Lease (which taxes shall be paid to Landlord along with each monthly installment or advance payment of Rent), or on, or on account of, the leasing of the Demised Premises to Tenant and Landlord shall promptly pay all such taxes when due to applicable governmental authorities. Notwithstanding anything contained herein to the contrary, all taxes and assessments for any partial tax years within the Term or any Extension Period shall be prorated between the parties so that Tenant shall be obligated to pay only that portion for the period accruing after the Commencement Date and prior to any termination or expiration of this Lease, and Tenant shall have no obligation with respect to

taxes or assessments occurring or accruing prior to the Commencement Date or after the expiration or termination of this Lease.

If the Demised Premises are assessed as part of a larger parcel, Landlord shall pay all taxes on the larger tax parcel prior to delinquency, and Tenant shall reimburse Landlord for Tenant's equitable share of such taxes within thirty (30) days of receipt of billing therefor together with copies of the paid tax receipts and a copy of the tax map showing the tax parcel in which the Demised Premises is included. Tenant's said equitable share shall include all taxes due based upon the assessed value of the improvements to the Demised Premises, and an equitable percentage of the taxes due based on the value of the land included in the larger parcel, which Tenant's said equitable percentage of land value being determined by dividing the area of the Demised Premises by the area of the larger parcel. Landlord and Tenant shall cooperate in reasonable attempts to have the Demised Premises assessed as a separate tax parcel, at Landlord's sole cost and expense.

Nothing contained herein shall require Tenant to pay any corporation, franchise, gross receipt, income, estate, gift and inheritance taxes or charges imposed on Rent or other similar taxes, charges or impositions which may be levied or assessed against Landlord, any fee owner or their respective successors in title.

Tenant shall have the right, at its sole cost, to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement of or otherwise contesting the validity or amount of real estate taxes assessed or levied upon the Demised Premises and the building and improvements located thereon. If required by law, Tenant may take such action in the name of Landlord who shall fully cooperate with Tenant to the extent reasonably required by Tenant.

Landlord shall not seek or join in any request for a special assessment or an assessment, benefit or improvement district resulting in a special assessment or an assessment or benefit district affecting Tenant or the Demised Premises without either (a) the prior written consent of Tenant or (b) Landlord's written agreement (in form satisfactory to Tenant) that Landlord, and not Tenant, shall be responsible for payment of such special assessments or other assessments applicable to Tenant or the Demised Premises. Without in any way diminishing the prohibition above, if Landlord, unless otherwise required by law, directly or indirectly causes Tenant and/or the Demised Premises to become, or consents to the Demised Premises becoming, a part of any assessment or benefit district, Landlord shall, unless Tenant consents to such district in Tenant's discretion, reimburse Tenant for any and all

taxes and special assessments levied or assessed against Tenant and/or the Demised Premises by reason thereof within thirty (30) days after Tenant's demand therefor.

32. **USE:** Tenant may use the Demised Premises for any lawful purpose. If permitted by applicable law, Tenant shall have the right to (i) install vending machines selling snacks and/or cold drinks and (ii) conduct seasonal sales on the sidewalks adjoining Tenant's building on the Demised Premises. Tenant shall indemnify and hold Landlord harmless of and from all liability, loss, damage, cost, expense (including, but not limited to, reasonable attorney's fees and expenses), fines and penalties imposed by law which Landlord may sustain or incur arising by reason of the violation by Tenant of any laws, rules, ordinances or regulations relating to the conduct of business in the Demised Premises issued by any governmental authority having jurisdiction over the Demised Premises. Landlord grants Tenant the right to merchandise any products normally sold in Tenant's other auto parts, supply and accessories stores without restriction.

Tenant may operate its business on the Demised Premises, subject to the terms of this Lease, as Tenant deems best, and there shall be no restrictions upon Tenant or upon the operation of its business. Tenant may discontinue the operation of its business at any time or from time to time during the Term but shall remain liable for the performance of the terms and conditions of this Lease.

33. **GENERAL PROVISIONS:** (a) Landlord shall pay any and all fees and commissions for bringing about the execution and delivery of this Lease and shall indemnify, defend and hold Tenant harmless from and against any and all claims for such fees and commissions by any broker or agent with whom Landlord has dealt.

(b) Upon request of Tenant, Landlord shall promptly furnish to Tenant Landlord's tax identification number(s) so that Tenant may report the payments made by Tenant to Landlord under this Lease as required by applicable governmental authorities.

(c) This Lease (and the documents referred to herein) constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes any and all prior and contemporaneous agreements, representations and understandings, oral or otherwise, between or among the parties with respect to the matters contained herein.

(d) This Lease shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, legatees, distributees, legal representatives, successors and assigns.

(e) This Lease shall not be modified, amended or supplemented, in whole or part, without the prior written consent of all parties hereto. Each and every waiver of any covenant, representation, warranty or any other provision hereof must be in writing and signed by each party whose interests are adversely affected by such waiver. No waiver granted in any one instance shall be construed as a continuing waiver applicable in any other instance.

(f) If any legal action or other proceeding is brought for the enforcement hereof, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions hereof, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

(g) The parties hereby agree that each party and its attorneys have reviewed and revised this Lease and that the normal rule of construction, to the effect that any ambiguities are resolved against the drafting party, shall not be employed in the interpretation of this Lease and no other rule of strict construction shall be used against any party. All exhibits and schedules attached or to be attached hereto, and all other agreements and instruments referred to herein, are hereby incorporated herein by reference, as fully as if copied herein verbatim.

(h) This Lease shall be governed by the internal laws of the State of Colorado without regard to and excluding its principles of conflicts of laws.

(i) The parties further agree that upon request, they shall do such further acts and deeds, and shall execute, acknowledge, deliver and record such other documents and instruments, as may be reasonably necessary from time to time to evidence, confirm or carry out the intent and purposes of this Lease.

(j) Unless the context in which used clearly requires another construction, throughout this Lease, the masculine gender shall be deemed to include the neuter or feminine or both, the neuter gender shall include the masculine or both, and the singular of terms shall include the plural and vice versa. The section headings are for convenience only and shall not affect the construction hereof.

(k) If any one or more of the provisions hereof shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity or enforceability of any other provision hereof, which shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties intend that if any provision hereof is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

(l) Time is of the essence in the performance of each parties' respective obligations.

(m) This Lease may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one in the same instrument, and it shall not be necessary that any single counterpart bear the signatures of all parties.

(n) Unless expressly stated to be exclusive, no remedy conferred herein shall be deemed to be exclusive of any other remedy conferred herein or any other remedy now or hereafter available at law or equity. All remedies conferred herein, and all remedies now or hereafter available at law or equity, shall be deemed to be cumulative and not alternative, and may be enforced concurrently or successively.

(o) All provisions of this Lease shall be construed as covenants and agreements where used in each separate provision hereof and shall bind and enure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.

(p) If more than one person or entity is named as Landlord in this Lease and executed the same as Landlord, then the word "Landlord" whenever used herein shall refer to all such persons or entities, and the liability of such persons or entities for compliance with or for the performance of all terms, conditions, covenants and provisions hereof shall be joint and several.

(q) All periods of time shall include Saturdays, Sundays and legal holidays; provided that, if the last day to perform any act or give notice falls on a Saturday, Sunday or legal holiday, then such act or notice shall be timely performed if given on the next succeeding business day.

(r) Any holding over by Tenant of the Demised Premises after the expiration or termination of this Lease shall operate and be construed as a tenancy at sufferance, and

Tenant shall pay to Landlord 125% of the monthly Rent payable during the final year of the Term or Extension Period, as the case may be.

(s) Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, and no provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

(t) The words "hereof", "herein", "hereunder", and other words of similar import refer to this Lease as a whole and not to any specific article, section or subsection hereof. All exhibits and schedules attached or to be attached hereto, and all other agreements and instruments referred to herein, are hereby incorporated by reference into this Lease, as fully as if copied herein verbatim. The word "party" or "parties" means only those persons or entities who are signatories to this Lease. The terms "include," "includes," "including," or words of like import, shall be construed as being without limitation to the matters or items thereafter specified, notwithstanding any rule of construction to the contrary, unless an intention to be so limited is clearly expressed. Unless expressly otherwise provided herein, the terms "and" and "or" as used in this Lease means one or other or both, or any one or ones or all, of the items, entities or persons in connection with which the words are used.

(u) THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, ARISING FROM OR RELATING TO THE SUBJECT MATTER HEREOF. THE PARTIES HERETO WAIVE ANY RIGHT TO ANY PUNITIVE DAMAGES, AND EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO SUCH DAMAGES.

34. **LANDLORD'S REPRESENTATIONS:** Landlord hereby covenants, warrants and represents to Tenant that:

(a) Landlord has the sole right, legal power and authority to enter into this Lease.

(b) All requisite individual, corporate, limited liability company or partnership actions or any other required action have been taken and satisfied by Landlord to authorize the execution and performance of this Lease. No other proceedings or actions on the part of Landlord are necessary to authorize this Lease or to carry out the transactions contemplated hereby. This Lease constitutes the legal, valid and binding obligation of Landlord enforceable against Landlord in accordance with its terms.

(c) The individual(s) executing this Lease, on behalf of Landlord, has (or have) the full right, legal power and actual authority to bind Landlord to the terms and conditions hereof.

(d) Neither the execution nor the provisions of this Lease violates or breaches or shall violate or breach any term or provision of any agreement, written or oral, between Landlord and any third party, and that if legal proceedings are instituted by any party to prohibit the use, operation or enjoyment of the Demised Premises, or any part thereof, as provided in this Lease, Landlord shall assume the defense of any such legal proceedings and shall indemnify Tenant from and against any and all claims arising from or out of any such legal proceedings and/or the total or partial loss of the use, operation or enjoyment of the Demised Premises, or any part thereof, as provided in this Lease.

(e) Landlord is a corporation/limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and is duly qualified and in good standing under the laws of the jurisdiction where the Demised Premises is located.

35. RIGHT OF FIRST REFUSAL TO PURCHASE: Tenant shall have the right of first refusal to purchase the Demised Premises as set forth below. If at any time during this Lease, Landlord shall receive a bona fide offer from a third party for the purchase of the Demised Premises, which offer Landlord shall desire to accept, Landlord shall promptly deliver to Tenant a copy of the offer, and Tenant may, within thirty (30) days thereafter, elect to purchase the Demised Premises on the same terms and conditions as set forth in the offer.

Tenant's right of first refusal shall remain applicable to all offers to purchase the Demised Premises. If Landlord shall sell the Demised Premises after a failure of Tenant to exercise its rights of first refusal, such sale shall be subject to this Lease, and the right of first refusal shall continue and shall be applicable to subsequent sales of the Demised Premises. If any acceptable third party offer to Landlord shall include another tenant's premises, Tenant's right of first refusal shall at Tenant's option, be either (a) applicable to the entire premises covered by such offer; or (b) applicable to the Demised Premises only, at a purchase price which shall be that part of the price offered by the third party which the value of the property shall bear to the value of all property included in the third party offer so long as said division of the property sale does not preclude the third party offeror from purchasing the remaining property. If the Demised Premises shall be conveyed to Tenant under this right of first refusal, any prepaid Rent shall be apportioned and applied to the amount of the purchase price.

If any acceptable third party offer shall be for part of the Demised Premises, Tenant may choose any of the following options: (i) Tenant's right of first refusal shall be applicable thereto; (ii) Tenant may purchase the entire Demised Premises at a purchase price computed by applying to the entire Demised Premises the rate applicable to the part of the Demised Premises included in the third party offer; or (iii) Tenant may abstain from exercising its right of first refusal, in which event Landlord's conveyance of part of the Demised Premises shall have no effect on either this Lease or Tenant's right of first refusal, and shall be subject to this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD:
NCP Colorado, LLC,
a Texas limited liability company

By: Mark Q. Gray

Its: Managing Partner

By: _____
By: _____

Its: _____
Its: _____

TENANT:
AutoZone Development
Corporation, a Nevada corporation

By: [Signature]

Its: Vice President

By: [Signature]
Its: Senior Vice President

APPROVED / VERIFIED
[Signature]

EXHIBIT "A"

The Demised Premises:

The Parcel of land shown outlined as the "Demised Premises", on Exhibit "B", annexed hereto upon which is to be located a store building having a frontage of ____ feet and a depth of approximately ____ feet, and an overall area of approximately 7,370 sq. ft., all being a part of the property hereinafter described.

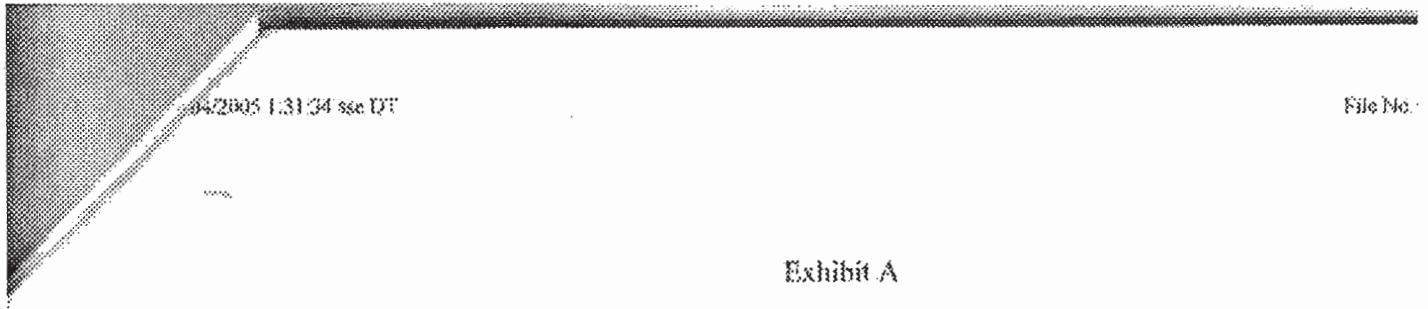
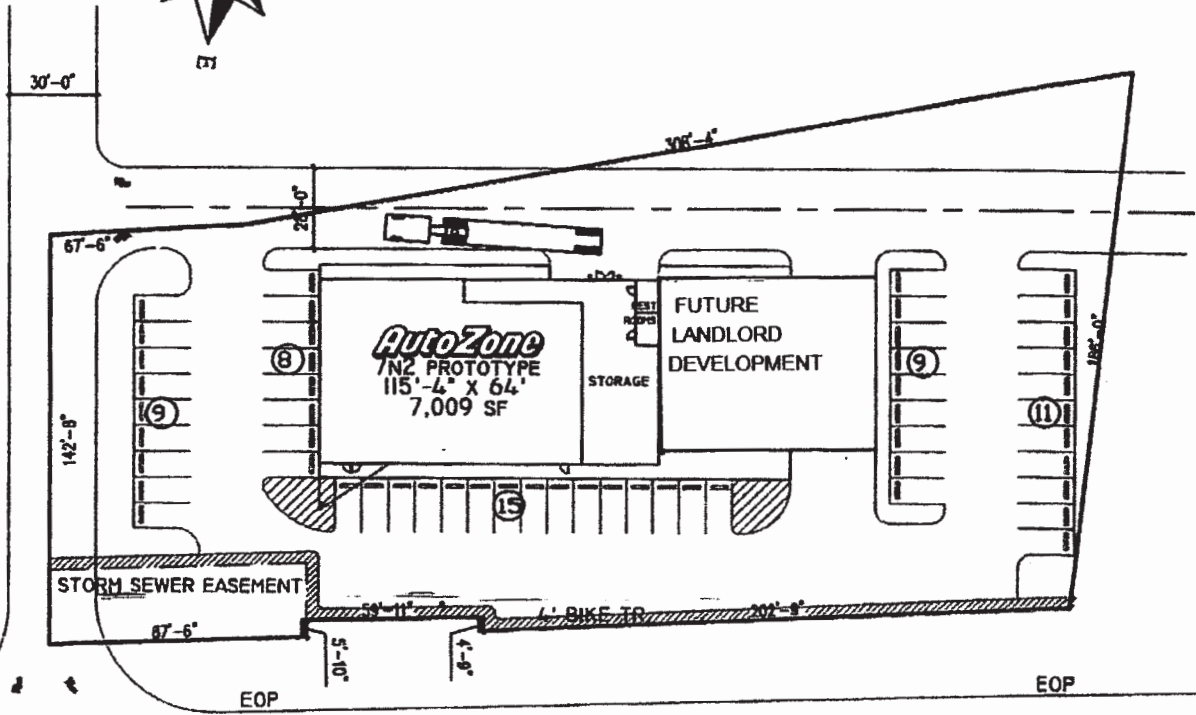
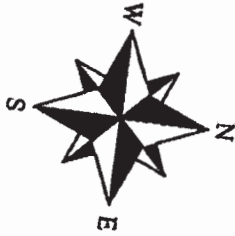


Exhibit A

Lot 3, Woodland Park Plaza, Filing No. 2,
County of Teller,
State of Colorado.

PRELIMINARY
 PENDING S.I.R.
 PENDING SURVEY



US HIGHWAY 24

MEDIAN

WOODLAND PARK SITE PLAN

1"=60'-0"



GRAPHICAL SCALE

LOT SIZE: 57,150 SF
 1.132 ACRES
 SETBACKS: FRONT-
 REAR-
 SIDES-

PARKING- 1/200 SF
 SPACES REQUIRED 48
 SPACES PROVIDED 52
 SPACE SIZE 9' x 19'
 PAVING AREA 29,700 SF

LOCATION AUTOZONE & SHOP WOODLAND PARK, CO.		DATE MAY 4, 2005
DRAWING NAME SITE PLAN	FOR THE HUTTON COMPANY, INC.	
SCALE 1"=60'	DRAWN BY: Mike Hodges	
CONTACT INFO JENNIFER GREER 423-756-9267 EXT 205		

INITIAL

EXHIBIT "C"
Title Exceptions

EXHIBIT "D"

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of _____, 200__, by and among _____ ("Lender"), _____, a _____ corporation ("Landlord") and AutoZone Development Corporation, a Nevada corporation, ("Tenant").

WHEREAS, Lender is the holder of a certain promissory note secured by a deed of trust or mortgage recorded _____ in _____, _____ in the property described herein (together with all future advances, modifications, extensions, amendments and renewals thereof, collectively, the "Mortgage"); and

WHEREAS, Tenant is the Tenant under that certain Building Lease (together with all amendments, extensions and modifications thereof, collectively, the "Lease") dated as of _____, 200__, with Landlord, pertaining to certain real property more fully described in **Exhibit "A"**, attached hereto and incorporated herein by reference, and the improvements thereto (the "Premises") and shown on Exhibit "B" to the Lease.

NOW, THEREFORE, in consideration of the agreements, promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. All capitalized terms which are used but not otherwise defined herein shall have the same meanings ascribed to them in the Lease. All terms of the Lease are hereby incorporated herein by reference.

2. Tenant's agreement is upon and subject to the express conditions that:

a. So long as Tenant continues to pay the Rent as provided for in the Lease and otherwise complies with all the terms and provisions thereof, Lender shall not disturb the rights of possession of Tenant in and to the premises as set forth in the Lease or any other premises as set forth in the Lease, notwithstanding any foreclosure or proceedings in lieu thereof affecting the premises and whether or not Tenant is made a party thereto; and

b. If all or any part of the premises is damaged or destroyed by casualty or by the exercise of any right of eminent domain, the proceeds of any insurance or condemnation award relating thereto shall be made available for the purpose of repair or restoration thereof as provided for in the Lease; and

c. Upon passing of title to the premises or any part thereof to the Lender or to any other party in any foreclosure or proceedings in lieu thereof, the party acquiring such title shall thereupon during the period of such party's ownership, by virtue of such acquisition of title and continued ownership and without the execution of any further instruments or documents be deemed to be Landlord for all purposes of the Lease during the period of such ownership and be deemed to have assumed the full and complete performance of all the obligations of Landlord as set forth in the Lease which accrue during the period of such ownership; and

d. If Lender shall take possession to the premises, without acquiring title thereto, but in such a manner as to be entitled to receive rents therefrom, Lender shall, in addition, be deemed to have assumed all the obligations of Landlord set forth in the Lease accruing during such period of possession.

3. Lender, by its acceptance of this Agreement, agrees that in the event Lender or any other party takes possession of the premises as note-holder-in-possession, by foreclosure of the Deed of Trust or Mortgage, or by acquisition of title in lieu of foreclosure, Lender or such other party shall not affect or disturb Tenant's right to possession of the premises or Tenant's other rights under the Lease in the exercise of Lender's or such other party's rights so long as Tenant is not then in default under any of the terms, covenants, or conditions of the Lease beyond the curative periods applicable thereto as provided in the Lease. In the event that Lender or any other party succeeds to the interest of Landlord under the Lease by foreclosure or by acquisition of title to the premises in lieu of foreclosure, or any other action taken under the Deed of Trust or Mortgage by Lender, or in the event that Lender or any other party exercises the rights granted to it by any assignment, Tenant hereby agrees to be bound to Lender or such other party under all of the terms, covenants and conditions of the Lease; and, Tenant agrees that it shall attorn to, and be liable to and recognize Lender or such other party as Tenant's new landlord for the balance of the term of the Lease upon and subject to all the terms and conditions thereof, and the Lease and the rights of Tenant thereunder shall continue in full force and effect as a direct lease between Tenant and Lender or such other party upon all the terms, covenants, and agreements set out in the Lease, and Tenant shall thereafter make the rental payments set out in the Lease as instructed by written notice of Lender or such other party, forwarded to Tenant by certified mail, return receipt requested or registered mail, postage prepaid, at least ten (10) days prior to the date when the next payment of Rent or other sum payable under the Lease is due. Such attornment shall be effective and

self-operative without the execution of any further instrument by Lender or such other party and Tenant immediately upon the succession by Lender or such other party to the interest of Landlord under the Lease, and the respective rights and obligations of Tenant and Lender or such other party upon such attornment, to the extent of the then remaining balance of the term of the Lease and any extension of renewal permitted thereby, shall be and are the same as are now set forth in the Lease or as it may have been modified with Lender's consent.

This Agreement shall be binding on and inure to the benefit of Tenant, Lender and their respective successors and assigns.

Landlord joins in this Agreement for the purpose of consenting to the provisions hereof and agrees to be bound hereby.

IN WITNESS WHEREOF, Tenant, Landlord and Lender have caused this Agreement to be executed as of first date stated above.

LANDLORD:

Nevada corporation

By: _____

Its: _____

TENANT:

AutoZone Development Corporation, a

By: _____

Its: _____

By: _____

Its: _____

Approved for Execution

LENDER:

By: _____

Its: _____

EXHIBIT "E"

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is dated as of _____, 200__, by and among _____, a _____, ("Lender"), its successors and assigns (including, but not limited to, the holder of the promissory note and Mortgage (as defined herein)), _____, a _____ corporation ("Landlord") and AutoZone Development Corporation, a Nevada corporation, ("Tenant").

WHEREAS, Tenant is the Tenant under a certain Building Lease dated as of _____, 200__, with Landlord (together, with all extensions, modifications and renewals thereof, collectively, the "Lease"), pertaining to certain real property more fully described in **Exhibit "A"**, attached hereto and incorporated herein by reference, and the improvements thereto (the "Demised Premises").

As an inducement to Lender to make a first Mortgage loan (the "Loan") in the original principal amount of \$_____ and interest secured by the Demised Premises and certain personal property, evidenced or to be evidenced by promissory note secured by the Mortgage, and for other good and valuable consideration, the receipt of which are hereby acknowledged, Tenant hereby warrants and represents to Lender and agrees with Lender as of the date hereof, as follows:

1. All capitalized terms which are used but not otherwise defined herein shall have the same meanings ascribed to them in the Lease. All terms of the Lease are hereby incorporated herein by reference.

2. The aforesaid Lease and any and all extensions, modifications, and renewals thereof and all of Tenant's rights and interest thereunder (hereinafter collectively called the "Lease"), are hereby subjected and subordinated to, and are declared to be subjected and subordinated to that certain Deed of Trust from Landlord to Lender, and all extensions, modifications and renewals thereof or of the indebtedness secured thereby, given as security for the Loan and recorded in the _____ in the _____ of the County of _____, _____, and pertaining to the Demised Premises (such Deed of Trust or Mortgage and all extensions, modifications and

renewals thereof are referred to herein collectively as the "Deed of Trust"), to the same extent as if the Deed of Trust documents had been executed, delivered and recorded prior to the execution of the Lease; provided, however, the Deed of Trust shall not increase or add to any obligations of Tenant under the Lease or terminate or diminish any rights of Tenant under the Lease.

2. Tenant's subordination is upon and subject to the express conditions that:

a. So long as Tenant continues to pay the rent as provided for in the Lease and otherwise complies with all the terms and provisions thereof, Lender shall not disturb the rights of possession of Tenant in and to the Demised Premises or other premises as set forth in the Lease, notwithstanding any foreclosures or proceedings in lieu thereof affecting the Demised Premises and/or such other premises and whether or not Tenant is made a party thereto; and

b. If the Demised Premises or other such premises or any part thereof is damaged or destroyed by casualty or by the exercise of any right of eminent domain, the proceeds of any insurance or condemnation award relating thereto shall be made available for the purpose of repair or restoration thereof as provided for in the Lease; and

c. Upon passing of title to the Demised Premises and/or such other premises to the Lender or to any other party in any foreclosure or proceedings in lieu thereof, the party acquiring such title shall thereupon during the period of such party's ownership, by virtue of such acquisition of title and continued ownership and without the execution of any further instruments or documents, be deemed to be the Landlord for all purposes of the Lease during the period of such ownership and be deemed to have assumed the full and complete performance of all the obligations of Landlord as set forth in the Lease which accrue during the period of such ownership; and

d. If Lender shall take possession to the Demised Premises and/or such other premises, without acquiring title thereto, but in such a manner as to be entitled to receive rents therefrom, Lender shall, in addition, be deemed to have assumed all the obligations of Landlord set forth in the Lease accruing during such period of possession.

3. Lender, by its acceptance of this Agreement, agrees that in the event Lender or any other party takes possession of the Demised Premises and/or other such premises as note-holder-in-possession, by foreclosure of the Deed of Trust or by acquisition of title in lieu of

foreclosure, that Lender or such other party shall not affect or disturb Tenant's right to possession or Tenant's other rights under the Lease in the exercise of Lender's or such other party's rights so long as Tenant is not then in default under any of the terms, covenants, or conditions of the Lease beyond the curative periods applicable thereto under the Lease. In the event that Lender or any other party succeeds to the interest of Landlord under the Lease by foreclosure or by acquisition of title to the Demised Premises and/or other premises in lieu of foreclosure, or any other action taken under the Deed of Trust by Lender or any other party, or in the event that Lender or any other party exercises the rights granted to it by any assignment, Tenant hereby agrees to be bound to Lender or such other party under all of the terms, covenants and conditions of the Lease, and Tenant agrees that it shall attorn to, and be liable to and recognize Lender or such other party as Tenant's new landlord for the balance of the term of the Lease upon and subject to all the terms and conditions thereof, and the Lease and the rights of Tenant thereunder shall continue in full force and effect as a direct lease between Tenant and Lender or such other party upon all the terms, covenants, and agreements set out in the Lease, and the rights of Tenant thereunder shall not be terminated or disturbed except in accordance with the terms and provisions of the Lease, and Tenant shall thereafter make the rental payments set out in the Lease as instructed by written notice of Lender or such other party, forwarded to Tenant by certified mail, return receipt requested or registered mail, postage prepaid, at least ten (10) days prior to the date when the next payment of Rent or other sum payable to Landlord under the Lease is due. Such attornment shall be effective and self-operative without the execution of any further instrument by Lender and Tenant immediately upon the succession by Lender or such other party to the interest of Landlord under the Lease; and the respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any extension of renewal permitted thereby, shall be and are the same as are now set forth in the Lease or as it may have been modified with Lender's consent.

This Agreement shall be binding on and inure to the benefit of Tenant, Lender and their respective successors and assigns, including but not limited to the purchasers at or in lieu of a foreclosure under the Deed of Trust.

Landlord joins in this Agreement for the purpose of consenting to the provisions hereof and agrees to be bound hereby.

IN WITNESS WHEREOF, Tenant, Landlord and Lender have caused this Agreement to be executed as of the date first above written.

LANDLORD:

By: _____

Its: _____

TENANT: AutoZone Development, a Nevada corporation

By: _____

Its: _____

By: _____

Its: _____

LENDER:

By: _____

Its: _____

STORE / ALPHA# J499

MASONRY BUILDING OFI PACKAGES
(quantities may be modified as necessary)
7N2 PROTOTYPE

EXHIBIT H
DATE 3-20-05

VENDOR	DESCRIPTION	ITEM #	QTY.	PKG TOTAL	
BEST LOCKS	Turn knob cylinder with Adam's Rite Cam	1E6A4-C181-626	2		
	Keyed store front door cylinder with Adam's Rite Cam	1E76-C181-626	2		
	Deadbolt with key outside, thumb turn in side	83T7K-S1-626	1		
	Control Key	CONTROL KEY	1		
					<u>\$198.43</u>
CARRIER (HVAC)	Curb for 4 to 6-1/4 ton units	1002816	0		
	Curb for 7-1/2 to 12-1/2 ton units	1002817	2		
	Duct package with grilles for 4 to 6-1/4 ton units	1002987	0		
	Duct package with grilles for 7-1/2 to 10 ton units	1002988	2		
	Carrier thermostat with remote sensor	33CS250RAZ	2		
	5 ton gas heat (high)	48HJE006-5AZCA	0		
	10 ton gas heat (high)	48HJE012-5AZCA	2		
	25% manual damper for 4 ton to 6-1/4 ton units	CRMANDPR001A01	1		
	25% manual damper for 7-1/2 to 12-1/2 ton units	CRMANDPR002A01	1		
	Smoke detector	P270-2000I	2		
	Sampling tube for smoke detector	P271-ST-3	2		
	Venstar	LCP400	1		
	Firestat	TC10151A3C	2		
					<u>\$13,212.70</u>
	GRAYBAR (Electrical)	Bathroom exhaust fan (Broan)	503	2	
TYPE C - Lamp for bathroom fixture		60A48PK120	4		
TYPE A - 8' T-8 2-lamp strips (Lithonia)		C 2 96T8 120 OSIS	122		
TYPE E - 2-head emergency light pack (Lithonia)		ELM2	11		
7.1 kw tankless hotwater heater (Eemax)		EX95	1		
TYPE A - T-8 lamp for strips (Sylvania)		F096835XP	216		
TYPE B - 175W M.H. recessed soffit fixture (Lithonia)		AH175M8ARCGL120LPI	4		
TYPE S - 400W metal halide shoebox fixture (Lithonia)		KAD400MR4TBSPD09	8		
TYPE D - 175W wallpack (Stanco)		LPMC175MAL-8	4		
Type "F" exit light LED white HSG (Lithonia)		LQMSW3R120/277ELN	3		
TYPE C - Bathroom light (Progress)		P3015-30	2		
Interior power pole (Hubbell)		P18002211XXXXOWM14	2		
Panels A, B & C for 7N2		SQUARE D GEAR - 7N2	1		
25' site light pole (Lithonia)		SSS255CDM28PLDDB	4		
Motion light controller for bathroom (Hubbell)		WS1201	0		
1-1/4" conduit hub (Square D)		B125	1		
2" conduit hub (Square D)		B200	2		
9' Single Circuit Quick Connect		DC120DU09M10	0		
9' Two Circuit Quick Connect		DC120EU09M10	0		
Bussman general purpose 110A fuse		NON-110	3		
Bussman general purpose 200A fuse		NON-200	3		
Bussman general purpose 70A fuse		NON-70	3		
					<u>\$10,560.26</u>
-SMI JOIST		7N2 Roof Framing & Joist	7N2 STRUCTURAL	1	
					<u>\$35,866.08</u>
SIGNS NOW		"Coming Soon" Sign Pounce Pattern	COMING SOON/PKG 36W/O Shadow	1 1	
					<u>\$161.69</u>
SIGNAGE		Pylon Sign	4x17CP24	0	
	Building Sign	42CLOUD8STRIPES	0		
				<u>\$0.00</u>	
ARCHITECTURAL FEES (VERIFY WITH Pre-Construction)				<u>\$5,000.00</u>	
OFI PACKAGE COST:				\$64,989.15	
MARKUP:				0% <u>0.00</u>	
TOTAL:				<u>\$64,989.15</u>	

NOTE: PROTOTYPICAL AVERAGE WAS USED FOR CARRIER, SMI JOIST AND SIGNAGE, AND MAY BE SUBJECT TO CHANGE.
FREIGHT AND TAXES ARE ESTIMATED AND MAY VARY.

Reviewed by
M. Stephens/R. Stewart

INITIAL

