



**COOK COUNTY  
RECORDER  
EUGENE "GENE" MOORE  
MAYWOOD OFFICE**

**BOUNDARY ENCROACHMENT AGREEMENT**

**THIS BOUNDARY ENCROACHMENT AGREEMENT** (hereinafter "Agreement") is made and entered into as of this 2<sup>nd</sup> day of December, 1999, by and between **Patrick J. Hannell and Katherine R. Hannell, husband and wife**, with an address of 179 Old Forge Road, Elgin, Illinois 60123 (hereinafter "Hannell") and **AutoZone, Inc., a Nevada corporation**, with an address of Department 8700, 60 Madison Ave., Memphis, TN 38103 (hereinafter "AutoZone").

**WITNESSETH**

**WHEREAS**, Hannell is the fee simple owner of that certain real property situated in the City of Elgin, County of Cook, State of Illinois, said property being more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "Hannell Property"); and

**WHEREAS**, AutoZone has or will acquire fee simple title to an adjoining tract of real property in said City, County and State, said property being more particularly described in Exhibit "B" attached hereto and made a part hereof (hereinafter "AutoZone Property"); and

**WHEREAS**, a fence ("Encroaching Improvement") located along the AutoZone Property eastern boundary line, encroaches from the Hannell Property as shown on that certain ALTA/ACSM Survey prepared by James A. Gibson of McClure Engineering Associates, Inc., dated September 28, 1999, which a revised copy is attached hereto as Exhibit "C" and is incorporated herein by this reference (hereinafter "Survey"); and

**WHEREAS**, AutoZone is willing to permit the Encroaching Improvement to remain on the AutoZone Property at this time, subject to certain terms and conditions.

**AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the foregoing, the covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hannell and AutoZone agree as follows:

1. Hannell acknowledges that the Encroaching Improvement encroaches onto the AutoZone Property. AutoZone and Hannell agree that the common boundary line between the Hannell Property and the AutoZone Property is located as shown on the Survey and the accuracy of said Survey is also hereby acknowledged. AutoZone agrees to permit the Encroaching Improvement to remain on the AutoZone Property in the locations shown on the Survey. Hannell, for themselves, their successors, heirs, and assigns, do hereby agree that neither Hannell, nor any person claiming under Hannell, shall at any time, by any means or ways, have, claim or demand any right or title to said property, or any part thereof.

2. Notwithstanding anything to the contrary contained herein, AutoZone may terminate this Agreement at any time upon thirty (30) days written notice to Hannell. Upon such termination, Hannell shall cooperate and grant AutoZone the right to access the Hannell Property in order to remove the

ND 660 1157 TPD

Encroaching Improvement from the AutoZone Property. AutoZone shall pay or incur any cost or expense for such removal.

3. AutoZone shall not have any responsibility to repair or maintain the Encroaching Improvement and shall not be liable for any damage to the Encroaching Improvement caused by AutoZone or its employees, agents, contractors, lessees, mortgagees, customers, licensees or invitees.

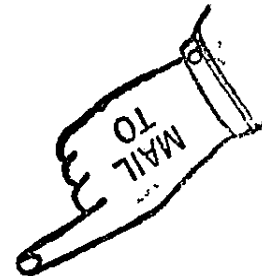
4. Hannell shall indemnify, defend and hold harmless AutoZone, its successors and assigns from and against any liability upon any and all demands, claims, injury to person, loss of life, damage to property, causes of action and all reasonable costs and expenses of any kind or nature incurred in the investigation of the same or caused by or arising out of the existence of the Encroaching Improvement or any use of the AutoZone Property related to the use or maintenance of said Encroaching Improvement by Hannell or their employees, agents, contractors, lessees, mortgagees, customers, licensees or invitees.

5. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Encroaching Improvement to the general public or for any public purposes whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

6. All notices required or permitted to be given herein shall be in writing and shall be (a) mailed by first class certified mail, return receipt requested, postage prepaid, or (b) delivered by receipted overnight courier service, in each case addressed as follows:

If to AutoZone: AutoZone, Inc.  
Property Management  
Department 8700  
60 Madison Ave.  
Memphis, TN 38103

If to Hannell: Patrick J. Hannell and Katherine R. Hannell  
179 Old Forge Road  
Elgin, Illinois 60123



7. All provisions of this Agreement, including the benefits and burdens, shall run with the land and are binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, executors, administrators, assigns and successors.

8. No agreement shall be effective to add, change, modify, waive or discharge this Agreement in whole or in part unless such agreement is in writing and signed by the parties hereto or owner(s) of either property at the time for entering into such agreement. There are no oral or written agreements or representations between the parties affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, representations and understandings, if any, between the parties.

9. No waiver of any default by a party hereto shall be implied from any omission by the other party hereto to take any action in respect to such default if such default continues or is repeated. One or more waivers of any default in the performance of any term, provision or covenant of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant, or any other term, provision or covenant of this Agreement.

10. In no way does this Agreement permit Hannell to cause any encumbrance, judgment or other lien securing indebtedness, to affect the AutoZone Property (hereinafter "Lien"). If Hannell does permit such a Lien, AutoZone may elect to force Hannell to remove such Lien by suit in which event AutoZone shall be entitled to recover its attorneys' fees and court cost from Hannell.

11. The singular number includes the plural and the masculine gender includes the feminine and neuter. If any provision of this Agreement be declared invalid or unenforceable by a legislative, administrative or judicial body of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect and shall be unaffected by same. If any provision herein shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. This Agreement shall not be strictly construed against AutoZone as the draft or writing of AutoZone or because of any presumption in connection with terms favorable to, or dictated by, AutoZone.

12. The parties hereto agree that any party hereto, its successors or assigns, shall have the right to restrain by injunction, any violation or threatened violation of any term, condition or obligation set forth in this Agreement and that each of the terms, conditions and obligations shall be subject to an action for specific performance (except where the payment or money is required by this Agreement), it being agreed by all parties that an action for damages would not be an adequate remedy for breach of this Agreement the land.

13. All rights, remedies and recourses under this Agreement or otherwise are separate and cumulative and may be pursued separately, successively or concurrently, are non-exclusive in the exercise of any one or more of them and shall in no way limit or prejudice any other legal or equitable right, remedy or recourse to which any party may be entitled.

14. 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.

IN WITNESS WHEREOF, this Agreement is executed effective as of the date set forth above.

By: Patrick J. Hannell  
Patrick J. Hannell

AutoZone, Inc., a Nevada corporation

By: Wm. David Gilmore

Printed Name: Wm. David Gilmore

Title: Vice President

By: Katherine R. Hannell  
Katherine R. Hannell

By: Brett D. Easley

Printed Name: Brett D. Easley

Title: Vice President

Date: 12/2/1999

Date: NOV 02 1999

Prepared by and return to: AutoZone, Inc., 60 Madison Avenue, Real Estate Legal Department, Memphis, TN 38103, Attn.: Brian A. Auger

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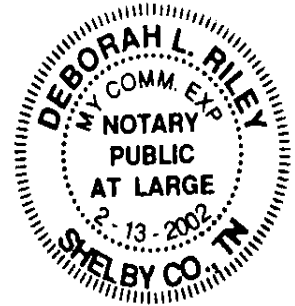
## ACKNOWLEDGEMENTS

STATE OF TENNESSEE )  
 ) SS.:  
COUNTY OF SHELBY )

Personally appeared before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, Wm. David Gilmore and \_\_\_\_\_, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the Vice President and Vice President of AutoZone, Inc, a Nevada corporation, the within named bargainors, and that they as such Vice-President and ~~Executive Vice-President~~, being authorized to do so, executed the foregoing instrument, for the purposes therein contained by signing the name of the corporation by himself as such officer.

WITNESS my hand and seal this 2nd day of November, 1999.

Deborah L. Riley  
\_\_\_\_\_  
Notary Public



My Commission Expires: 2-13-2002

STATE OF ILLINOIS )  
 ) SS.:  
COUNTY OF )

I, Christina R. Kennedy, a Notary Public in and for said State and County do hereby certify that Patrick J. Hannell and Katherine R. Hannell personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free act and voluntary act, for the uses and purposes therein set forth. Given under my hand and official seal this 2nd day of December, 1999.

Christina R. Kennedy  
\_\_\_\_\_  
Notary Public

My commission expires:  
2/23/03

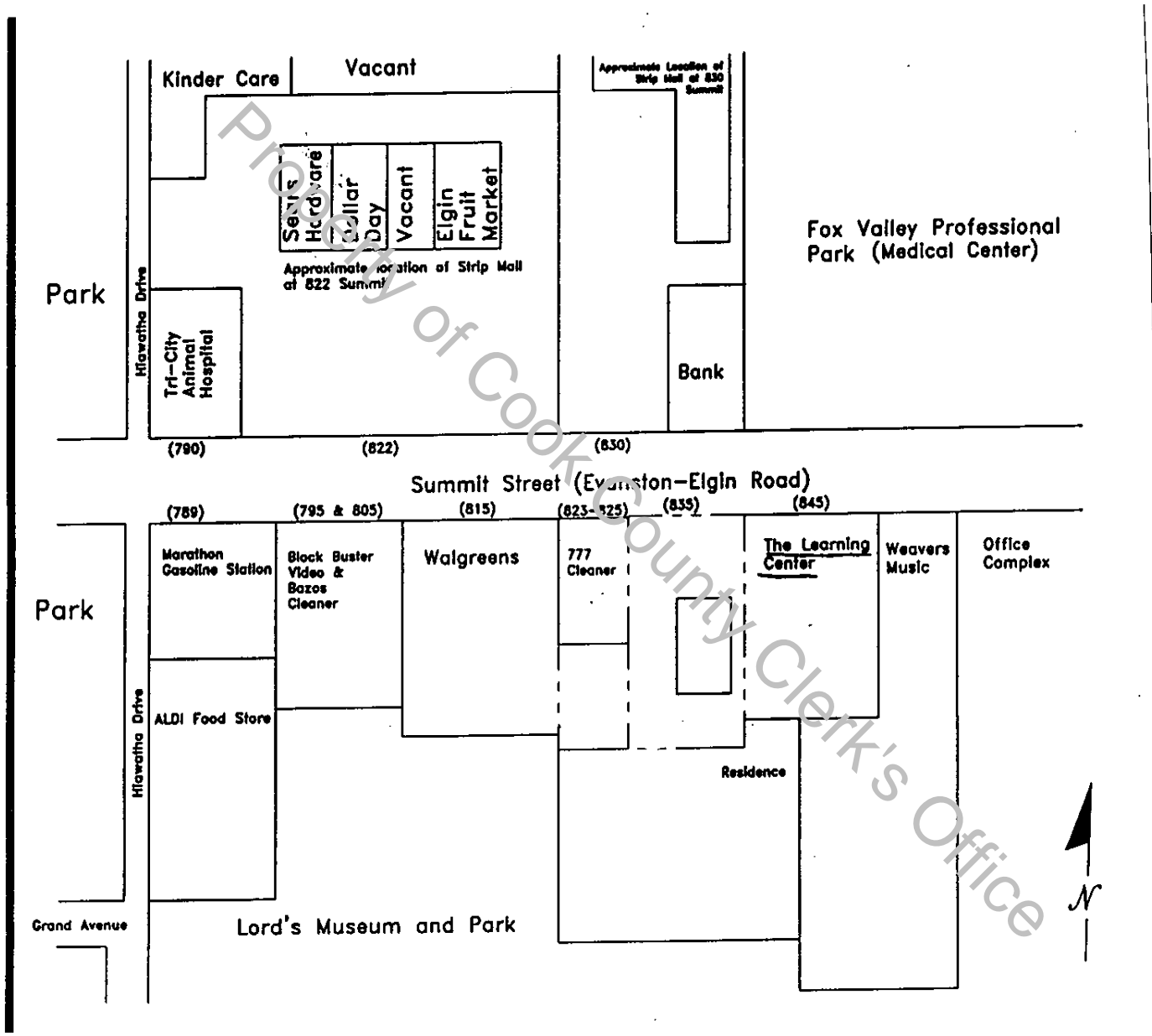


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## EXHIBIT "A"

### Hannell Property

That part of the Southwest Quarter of Section 7, Township 41 North, Range 9 East of the Third Principal Meridian and labeled "The Learning Center" in the below area property map.



PIN: 06-07-302-058

EXHIBIT "B"

AutoZone Property

That part of the Southwest Quarter of Section 7, Township 41 North, Range 9 East of the Third Principal Meridian, described as follows:

Commencing at the Northeast Corner of Lord's Park, being also the Northwest corner of the East Half of the Northwest Quarter of Section 18, Township 41 North, Range 9 East of the Third Principal Meridian; thence South 89 degrees 35 minutes 00 seconds West, a distance of 519.78 feet; thence North 2 degrees 01 minute 59 seconds East, a distance of 286.00 feet to the Point of Beginning; thence North 89 degrees 47 minutes 38 seconds East, a distance of 242.76 feet; thence North 2 degrees 07 minutes 03 seconds East, a distance of 276.00 feet to the South Right-of-Way line of State Route 58; thence North 88 degrees 42 minutes 30 seconds West along said South Right-of-Way line, a distance of 153.06 feet; thence South 2 degrees 01 minute 59 seconds West, a distance of 150.00 feet; thence North 88 degrees 42 minutes 30 seconds West, a distance of 89.94 feet; thence South 2 degrees 01 minute 59 seconds West, a distance of 132.35 feet to the Point of Beginning, containing 54,285 square feet (1.246 Acres) more or less.

PROPERTY of Cook County Clerk's Office

EXHIBIT "C"

Survey

