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Doc#: 0834718085 Fee: \$46.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/12/2008 04:51 PM Pg: 1 of 6

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

BY AND BETWEEN

U.S. BANK NATIONAL BANKING ASSOCIATION,

METRO COMMONS LLC

and

GAMESTOP, INC.

Property of Cook County Clerk's Office

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT (this "Agreement") made as of the 20 day of October, 2008, between **GameStop, Inc.**, a Minnesota corporation, Its Successors and/or Assigns, having an address at 625 Westport Parkway, Grapevine, TX 76051 ("Tenant"), and **Metro Commons, LLC**, an Illinois limited liability company, its successors and/or assigns having an address at 1141 East Main street Suite 100 East Dundee, Illinois 60118 ("Landlord") and **U.S. Bank National Association**, its successors and/or assigns having an address at 209 South La Salle Street Suite 410 Chicago, Illinois 60604 Attn: Emad Murrar ("Mortgagee").

### WITNESSETH:

WHEREAS, Mortgagee will be the holder of a certain Mortgage, Deed of Trust or Deed ("Mortgage"), executed and delivered by **Metro Commons, LLC**, its successors and/or assigns ("Landlord"), and which Mortgage will convey and constitute a lien on a certain estate and interest in and to the premises more particularly described in the Mortgage (the "Mortgaged Premises"); and

WHEREAS, Tenant has entered into a certain lease dated **March 14, 2008** and (said lease as heretofore amended and supplemented is hereinafter called the "Lease"), with Landlord demising space (the "Premises") in the Mortgaged Premises known as **Hillside Town Center**

WHEREAS, Mortgagee has agreed to recognize the status of Tenant under the Lease and Tenant has agreed to attorn to Mortgagee, upon and subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. The Lease and any extensions, renewals, replacements or modifications made after the date hereof, and all of the right, title and interest of Tenant in and to the Premises are and shall be subject and subordinate to the Mortgage and to all of the terms, covenants and conditions contained therein, and to any renewals, modifications, replacements, considerations and extensions thereof.

2. Provided that there is then no continuing default under the Lease and no event has occurred and no condition exists which entitle Landlord to terminate the Lease under its terms or would cause without any further action by Landlord, the termination of the Lease, or would entitle Landlord to dispossess Tenant from the Premises, Mortgagee agrees that (a) in the event of foreclosure of the Mortgage, Tenant shall not be named as a party in any action or proceeding to enforce the Mortgage, (b) in the event Mortgagee comes into possession or acquires title to the Premises as a result of the enforcement or foreclosure of the Mortgage, or as a result of any other means, Mortgagee agrees that Tenant shall not be disturbed in its possession or occupancy of the Premises and (c) Mortgagee will recognize the Lease and Tenant's rights thereunder.

3. Upon any foreclosure of the Mortgage or other acquisition of the Premises, Tenant shall attorn to Mortgagee or any other party acquiring said property or so succeeding to Landlord's rights and shall recognize Mortgagee as its landlord under the Lease and Tenant shall promptly execute and deliver any instrument that Mortgagee may reasonably request in writing to evidence further said attornment.

4. Upon such foreclosure of the Mortgage or other acquisition of the Mortgaged Premises and attornment, the Lease shall continue as a direct lease between the Mortgagee and

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Tenant upon all terms, covenants and conditions thereof as are then applicable except that the Mortgagee shall not be (a) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord or (b) liable for the return of any security deposit which Tenant might have paid to any prior landlord, unless Mortgagee shall have actually received such deposit.

5. Tenant acknowledges that Landlord may have agreed under the Mortgage and other loan documents that rentals payable under the Lease shall be paid directly by Tenant to Mortgagee upon an event of default on the part of Landlord under the Mortgage. After receipt of notice from Mortgagee to Tenant, at the address set forth above or such other address as to which Mortgagee has been notified in writing, that rentals under the Lease should be paid to Mortgagee, together with evidence reasonably satisfactory to Tenant supporting said claim, Tenant shall pay to the Mortgagee, or at the direction of Mortgagee, all monies due or to become due to Landlord under the Lease. Tenant shall have no responsibility to ascertain whether such demand by Mortgagee is permitted under the Mortgage, or to inquire into the existence of an event of default. Landlord hereby waives any right, claim, or demand it may now or hereafter have against Tenant by reason of such payment to Mortgagee, and shall discharge the obligations of Tenant to make such payment to Landlord.

6. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein, (a) the term "Tenant" shall include any subtenant, successors and/or assigns of Tenant named herein; (b) the words "foreclosure" and "foreclosure sale" shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure; and (c) the word "Mortgagee" shall include the Mortgagee herein specifically named and any of its successors and assigns, and shall include anyone or any entity who shall have succeeded to Landlord's interest in the Premises by, through or under foreclosure of the Mortgage or as a result of any other means.

7. Anything herein or in the Lease to the contrary notwithstanding, in the event that Mortgagee shall acquire title to the Premises, Mortgagee shall have no obligation, nor incur any liability, beyond Mortgagee's then interest, if any, in the Premises and Tenant shall look exclusively to such interest of Mortgagee, if any, in the Premises for the payment and discharge of any obligations imposed upon Mortgagee hereunder or under the Lease and Mortgagee is hereby released or relieved of any other Liability hereunder and under the Lease. Tenant agrees that with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee in the Premises and Tenant will not collect or attempt to collect any such judgment (i) from any officer, director, shareholder, partner, employee, agent or representative of Mortgagee or (ii) out of any assets of Mortgagee other than Mortgagee's estate or interest in the Premises or the proceeds from the sale thereof.

8. Wherever used herein, the singular shall include both the singular and the plural and the use of any gender shall apply to all genders.

9. This Agreement shall be governed by and construed in accordance with the laws of the State where the Premises is located, applicable to similar agreements made and to be performed entirely within said State. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

10. This Agreement shall not be modified or amended except in writing signed by all parties hereto.

11. All notices and other communications provided for hereunder shall be in writing and mailed (registered or certified mail, return receipt requested, postage prepaid), hand delivered sent by nationally recognized overnight courier (prepaid), if to Mortgagee, at its address above stated, Attention: National Portfolio Manager-Real Estate and if to Landlord, at its address above stated and if to Tenant, at its address above stated, Attention: Legal Department, or at

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such other address as may from time to time be given by such person in a written notice to the others. All such notices and such communications shall be effective when received at the address specified as aforesaid.

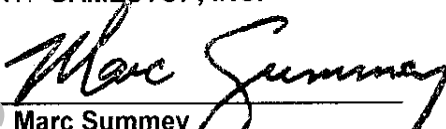
12. Each entity executing and delivering this Agreement represents and warrants to the other(s) that the individuals executing this Agreement on behalf of such entity are duly empowered and authorized to do so on behalf of such entity.

13. If a fully executed Agreement is not returned to Tenant within sixty (60) days of the earliest date notarized, this Agreement shall be null and void.

14. All of the foregoing representations are based upon Tenant's present, actual knowledge. No provision of this document shall be deemed to modify, diminish or expand any rights or obligations as stated in the Lease. In the event that a term in this document conflicts or appears to conflict with the terms of the Lease, then the terms of the Lease shall control the respective rights and obligations between the Landlord and Tenant. This document shall not be used to supplant any due diligence requirement.

IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.


TENANT: GAMESTOP, INC.

By:   
Name: Marc Summey  
Title: Senior Vice President of Real Estate

MORTGAGEE:

By:   
Name: EMAD M. ELGER  
Title: VP

LANDLORD:

By:   
Name: Daniel L. Shepard  
Title: EVP

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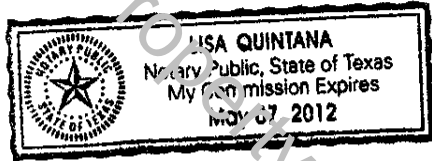
Notary of Tenant)

STATE OF TEXAS

) ss:

COUNTY OF TARRANT

BE IT REMEMBERED, that on this **22nd** day of **August, 2008**, before me the subscriber named below, personally appeared **Marc Summey**, who I am satisfied is the person who signed the within instrument as **Senior Vice President of Real Estate** for **Gamestop, Inc., a Minnesota corporation**, that the within instrument made by said corporation was signed and delivered by him/her as such officer and is the voluntary act and deed of the corporation, made by virtue of authority from its Board of Directors.



*[Signature]*  
Notary Public

(Notary of Mortgagee)

STATE OF Illinois

) ss:

COUNTY OF Cook

BE IT REMEMBERED, that on this 20th day of October, 2008, before me the subscriber named below, personally appeared Erin Munn, who I am satisfied is the person who signed the within instrument as Vice President of US Bank National Association, a national banking bank, and he/she thereupon acknowledged that the within instrument made by said bank was signed and delivered by him/her as such officer and is the voluntary act and deed of the corporation, made by virtue of authority from its Board of Directors.

*[Signature]*  
Notary Public

(Notary of Landlord)

STATE OF Illinois

) ss:

COUNTY OF Kane



BE IT REMEMBERED, that on this 28th day of August, 2008, before me the subscriber named below, personally appeared Daniel L. Shepard who I am satisfied is the person who signed the within instrument as Executive V.P. of Metro Commers, LLC, a corporation of the State of Illinois, that the within instrument made by said corporation was signed and delivered by him/her as such officer and is the voluntary act and deed of the corporation, made by virtue of authority from its Board of Directors.

*[Signature]*  
Notary Public



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## EXHIBIT A

Lots 1 through 10 in Metro Commons, being a subdivision of part of the Southeast ¼ of Section 17, Township 39 North Range 12 East of the Third Principal Meridian in Cook County, Illinois.

PIN: 15-17-404-047

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