



Doc#: 1029433004 Fee: \$46.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 10/21/2010 08:58 AM Pg: 1 of 6

Wheaton
1 all
88132191
210028812 jebber

Property Address:
5815 South LaGrange Road
PIN No. 18-16-210-023-0000
021

This instrument prepared by:
Art Lopatka, Jr., Fsq

Return recorded document to:
Holly Reschke
Midas Realty Corporation
1300 North Arlington Heights Road
Itasca, Illinois 60143

SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

This agreement ("Agreement") is made as of July 30, 2010, between Wheaton Bank & Trust Company, having its principal office at 211 South Wheaton Avenue, Wheaton, Illinois 60187 ("Lienholder") and Midas Realty Corporation, a Delaware corporation, having its principal offices at 1300 North Arlington Heights Road, Itasca, Illinois 60143 ("Midas").

WITNESSETH

WHEREAS, Midas and ATG Trust Company, as Trustee u/t/a dated July 6, 1987, and known as Trust Number 87-101 ("Lessor"), are parties to that certain Optional Lease Agreement, dated February 17, 2006 ("Optional Lease Agreement"), pursuant to which Lessor granted Midas the right and option to lease, on the terms and conditions set forth therein, those certain premises legally described on Exhibit A attached hereto and made a part hereof and located at 5815 South LaGrange Road, Countryside, Cook County, Illinois, together with the automotive repair facility located thereon and any and all appurtenances thereto ("Premises"); and

WHEREAS, Midas and Lessor are parties to that certain Memorandum of Optional Lease Agreement, dated February 17, 2006 ("Memorandum"), which Memorandum was recorded in the Office of the Recorder of Deeds in and for the County of Cook, State of Illinois, on April 13, 2006, as Document No. 0610350058; and

WHEREAS, a copy of the Optional Lease Agreement has been delivered to Lienholder, the receipt of which is hereby acknowledged; and

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BOX 333-CTV

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WHEREAS, Lienholder is the holder of that certain mortgage on the Premises given by Lessor and recorded in the Office of the Recorder of Deeds in and for the County of Cook, State of Illinois, on August 4, 2010, 2010, as Document No. 1021612082 ("Lien");

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto intending to be legally bound hereby agree as follows:

1. Lienholder hereby (a) consents to and approves the Optional Lease Agreement and the terms and provisions thereof and (b) covenants and agrees that the exercise by Midas of any of the rights, options and remedies therein contained shall not constitute a default under the Lien.

2. Midas covenants and agrees with Lienholder that Midas's rights under the Optional Lease Agreement are hereby made and shall continue hereafter to be subject and subordinate to the lien of Lienholder and to all modifications and extensions thereof with the same force and effect as if the Lien had been executed and delivered prior to the execution and delivery of the Memorandum and without regard to the order of priority of recording the Lien and the Memorandum, subject, however, to the provisions of this Agreement.

3. Lienholder agrees that so long as Midas has not received written notice of a default in the performance of its obligations under the Optional Lease Agreement:

(a) Midas shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Lien or to enforce any rights under the Lien or the bond or note or other obligations secured thereby;

(b) Midas's rights under the Optional Lease Agreement, including its right to possession of the Premises, shall not be disturbed, affected or impaired by (i) any suit, action or proceeding upon the Lien or the bond or note or other obligation secured thereby or for the foreclosure of the Lien or the enforcement of any rights under the Lien or any other documents held by Lienholder or any subsequent holder of the Lien; (ii) any judicial sale or execution or other sale of the Premises; (iii) any deed given in lieu of foreclosure of the Lien; (iv) the exercise of any other rights given to Lienholder or any subsequent holder of the Lien or other documents as a matter of law; or (v) any default under the Lien or the bond or note or other obligation secured thereby; and

(c) All condemnation awards and insurance proceeds paid or payable with respect to the Premises and received by Lienholder shall be applied and paid for the restoration and/or repair of the Premises, except in the case of a condemnation which results in the termination of the Optional Lease Agreement.

4. If Lienholder or any subsequent holder of the Lien shall become the owner of the Premises by reason of foreclosure of the Lien or otherwise, or if the Premises shall be sold as a result of any action or proceeding to foreclose the Lien, or as a result of a transfer of ownership by deed given in lieu of foreclosure, the Optional Lease Agreement shall continue in full force and effect, without necessity for executing any new agreement, as a direct agreement between Midas and the then owner of the Premises, as "Lessor", upon all the same terms, covenants and provisions contained in the Optional Lease Agreement and in such event:

(a) Midas shall be bound to such new owner under all the terms, covenants and provisions of the Optional Lease Agreement and Midas hereby agrees to attorn to such new owner and to recognize such new owner as "Lessor" under the Optional Lease Agreement upon receipt of written notice from such new owner; and

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(b) Such new owner shall assume the obligations of the Lessor to Midas under all of the terms, covenants and provisions of the Optional Lease Agreement which such new owner hereby agrees to perform and Midas shall, from and after the date such new owner succeeds to the interest of "Lessor" under the Optional Lease Agreement, have the same remedies against such new owner for the breach of any covenant contained in the Optional Lease Agreement that Midas might have had under the Optional Lease Agreement against Lessor if such new owner had not succeeded to the interest of Lessor; provided, however, such new owner (including Lienholder) shall not be:

(A) liable for any act or omission of, or any claims against, any prior Lessor, except for any such acts, omissions or claims of which Midas has notified such new owner; provided, however, if any such act, omission or claim is of a continuing nature, then such new owner shall be liable for any such act, omission or claim while such act, omission or claim continues from and after the date on which such new owner becomes the owner of the Premises;

(B) subject to any offsets or defenses which Midas might have against any prior Lessor, except for any such offsets or defenses of which Midas has previously notified such new owner;

(C) bound by any rent which Midas paid for more than the current month;

(D) bound by any amendment or modification of the Optional Lease Agreement made without such owner's consent;

(E) liable for any sum that any prior Lessor owed to Midas including, without limitation, security deposit, unless the amount owed was actually delivered to such new owner;

(F) liable for any construction obligation of any prior Lessor; or

(G) liable for damages for any breach of a representation or warranty of any prior Lessor; provided, however, Midas shall still have any rights and remedies (excluding damages) relating to such breach provided for in the Optional Lease Agreement or under law or equity.

5. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Lienholder, at its address in the introductory paragraph of this Agreement, attention: _____, and (b) if to Midas, at the address in the introductory paragraph of this Agreement, attention Vice President, with a copy to the attention of General Counsel, or to such other address as either party notifies the other party in writing.

6. This Agreement and the covenants and conditions thereof shall (a) be binding upon and/or inure to the benefit of the successors and assigns of the parties hereto, including, without limitation, any subsequent holder of the Lien and (b) be and remain covenants running with the land.

7. This Agreement contains the entire agreement between the parties hereto and cannot be changed, modified, waived or canceled without the prior written consent of the parties thereto. This Agreement shall be effective only upon execution by both parties hereto.


8. This Agreement shall be governed and construed in accordance with laws of the State of which the Premises are located.


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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

MIDAS REALTY CORPORATION


WHEATON BANK & TRUST COMPANY


By: 
Peter D. Cooke, Vice President

By: 
Name: SECRET
Title: AVP

ATTEST:


ATTEST:

By: 
Kerilyn M. Johnson, Assistant Secretary

By: 
Name: RUTH A. CARLSON
Title: SVP

Exoneration provision restricting any liability of ATG Trust Company either attached on the reverse side hereof or attached hereto, is incorporated herein.

ATG TRUST COMPANY AS TRUSTEE u/t/a DATED JULY 6, 1987 AND KNOWN AS TRUST NUMBER 87-101 and not personally or individually

By: 
Name: PEGGY PETERS
Title: Vice President

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against ATG Trust Company or any of the beneficiaries under said Trust Agreement, on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee, whether or not in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

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STATE OF ILLINOIS)
) ss
COUNTY OF DUPAGE)

Before me appeared Peter D. Cooke, known to me to be the Vice President of Midas Realty Corporation and acknowledged that he executed the foregoing instrument on behalf of said corporation pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND SEAL this 25th day of August, 2010.

By: Elaine M. Hallas
Notary Public

My commission expires:



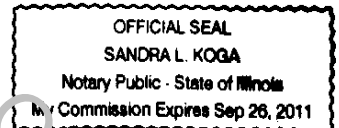
STATE OF Illinois)
) ss
COUNTY OF DuPage)

Before me appeared Steve Howard, personally known to me to be the Assistant Vice President of Wheaton Bank & Trust Company, and acknowledged that he/she signed the foregoing instrument on behalf of said Bank/Company, as his/her free and voluntary act and as the free and voluntary act of said Bank/Company for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND SEAL this 27th day of August, 2010.

By: Sandra L. Koga
Notary Public

My commission expires:



STATE OF Illinois)
) ss
COUNTY OF Lake)

Before me appeared PEGGY PETERS, personally known to me to be the Vice President of ATG Trust Company, and acknowledged that he/she signed the foregoing instrument on behalf of said ATG Trust Company, as his/her free and voluntary act and as the free and voluntary act of said ATG Trust Company for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND SEAL this 30th day of August, 2010.

By: Karen Springer Crider
Notary Public

My commission expires:



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STREET ADDRESS: 5815 SOUTH LAGRANGE
CITY : COURTYSIDE COUNTY: COOK
TAX NUMBER 18-16-210-~~023~~-0000
021

Legal Description:

THE NORTH 90.59 FEET OF LOT 55 (EXCEPT THE EAST 79 FEET THEREOF) IN STOUFFER'S SUBDIVISION OF THE SOUTH ½ OF THE NORTHEAST ¼ (EXCEPT THE EAST 384.78 FEET OF THE SOUTH 417.06 FEET) OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 31, 1922 AS DOCUMENT 7521571, IN COOK COUNTY, ILLINOIS.

EXHIBIT A