

11324335

RECORDING REQUESTED AND
WHEN RECORDED RETURN TO:
ASP Realty, Inc.
c/o New Albertson's, Inc.
P.O. Box 20
Boise, ID 83726
Attention: Business Law

11324335
01/31/2012 11:45 AM \$26.00
Book - 9987 Pg - 3920-3928
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: ZJM, DEPUTY - WI 9 P.

(Space above this line for Recorder's Use)

#70012 - Salt Lake Hardware Building
Salt Lake City, Utah

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("**Agreement**") is made as of the 19th day of January, 2012, between SLHNET Investments, L.C., a Utah Limited liability company ("**Landlord**"), ASP Realty, INC., a Delaware corporation ("**Tenant**"), and Wells Fargo Bank, National Association ("**Lender**").

RECITALS:

A. Tenant is the holder of a leasehold interest in a portion of that certain building ("**Building**"), together with all easements, rights and appurtenances thereto, located at 155 North 400 West in the City of Salt Lake City, County of Salt Lake, State of Utah ("**Leased Premises**") on the real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("**Property**"), pursuant to that certain Lease dated as of November 15, 1995 between Landlord, as landlord, and American Stores Properties, Inc., Tenant's predecessor-in-interest, as tenant, and a Memorandum of Lease dated November 15, 1995 and recorded on November 16, 1995 as Instrument No. 6215363, Official Records of Salt Lake County, Utah. The Lease and Memorandum of Lease, as they may have been amended from time to time, shall hereafter be referred to as the "**Lease**;" and

B. Lender has made or has agreed to make a loan to Landlord in the maximum principal amount of \$ 11,700,000.00, which loan shall be secured by that certain Deed of Trust encumbering all or a part of the Property, dated as of January 27, 2012, and recorded on January 31, 2012, as Instrument No. 11324333, Official Records of Salt Lake County, Utah ("**Mortgage**"); and

LTC# 51597

C. The parties desire to subordinate the Lease to the lien of the Mortgage and to establish certain rights of quiet and peaceful possession to the Leased Premises for Tenant's benefit together with certain obligations of attornment, all in the manner hereafter provided.

The foregoing recitals are incorporated into and made an integral part of this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1. Subject to the terms and conditions set forth in this Agreement, the Tenant agrees that the Lease is and shall at all times be subordinate to the lien of the Mortgage.

2. Lender agrees that, if no default exists under the Lease which at such time would then permit Landlord to terminate the Lease or to exercise any dispossessory remedy provided for therein: (a) Tenant will not be made a party in any action or proceeding to foreclose the Mortgage or to remove or evict Landlord from the Leased Premises or from any part of the Property; (b) Tenant will not be evicted or removed from the Leased Premises or from any part of the Property nor will its possession or right to possession of the Leased Premises or of any part of the Property under the Lease for the term thereof (including any and all extensions or renewals thereof effected in accordance with any option therefor in the Lease) be terminated or disturbed or in any way interfered with by any action taken by Lender to enforce any rights or remedies under the Mortgage; and (c) Lender, upon succeeding to Landlord's interest in the Leased Premises, will recognize the Lease and Tenant as its direct tenant under the Lease for the full term thereof (including any and all extensions or renewals thereof effected in accordance with any option therefor in the Lease), and will be bound by and perform all of the obligations of Landlord set forth in the Lease as if said person were originally named therein as the landlord thereunder.

3. In the event that the Lender or any other person acquires title to the Leased Premises pursuant to the exercise of any remedy provided for in the Mortgage or under the law of the state where the Leased Premises is located, the Lease shall not be terminated or affected by said foreclosure or sale resulting from any such proceeding and the Lender hereby covenants that any sale by it of the Leased Premises pursuant to the exercise of any rights and remedies under the Mortgage or otherwise shall include the assumption by the purchaser or grantee of the Lease and the obligations of the Landlord thereunder.

4. Tenant agrees that, if the interest of Landlord in the Leased Premises shall be transferred to and owned by Lender by reason of foreclosure or other proceeding brought by it under any present or future lien against Landlord's interest in the Leased Premises, or by any other manner, Tenant shall be bound to the Lender under all of the terms, covenants, conditions and agreements set forth in the Lease for the balance of the term thereof remaining (including any and all extensions or renewals thereof effected in accordance with any option therefor in the Lease) with the same force and effect as if Lender were originally named therein as the landlord thereunder, and Tenant does hereby agree to attorn to Lender as its landlord thereunder so as to establish direct privity of estate and contract between Lender and Tenant, said attornment to be effective and self-operative without the execution of any further instrument on the part of either of the parties hereto immediately upon Lender

succeeding to the interest of Landlord in the Leased Premises. The parties acknowledge and agree that the Mortgage provides that, under certain circumstances, Lender shall be entitled to collect, receive and demand payment of all or any part of the rent and other sums due and payable to Landlord under the Lease to Lender. The parties agree that: (a) Tenant shall be under no obligation to pay rent or any other sums due and payable to Landlord under the Lease to Lender until such time as Tenant receives written notice from Lender demanding payment of said amounts to Lender; (b) Tenant shall be entitled to rely on any such written notice from Lender and shall not incur any liability to Landlord as a result of such reliance notwithstanding the existence of any dispute between Landlord and Lender with respect to the existence of any default or the satisfaction of any condition under the Mortgage or any other document executed in connection with the transaction which is the subject of the Mortgage which would entitle Lender to collect, receive or demand payment of said amounts from Tenant; (c) all amounts paid by Tenant to Lender shall be credited toward Tenant's corresponding obligations under the Lease; and (d) all of Lender's rights described in this sentence shall be subject to all of Tenant's rights and remedies set forth in the Lease including, without limitation, the right of offset against rent.

5. Lender hereby ratifies, confirms, approves, and at such time, if any, as Lender succeeds to the Landlord's interest in the Leased Premises, assumes and agrees to be bound, by each and every term, covenant, condition and agreement contained in the Lease as if each thereof were set forth herein at length, and each of said terms, covenants, conditions and agreements shall inure to the benefit of and be enforceable by Tenant, its successors and assigns, including, without limitation, the mortgagee or beneficiary under any mortgage or deed of trust on Tenant's interest in the Lease or the Leased Premises, its successors and assigns. Lender covenants and agrees that in the event of a conflict, whether in the express provisions or by reason of variation in inclusion of provisions, between the Mortgage and the Lease, the provisions of the Lease shall govern for all purposes. Lender hereby acknowledges and agrees that, with respect to any assignment of rents contained in the Mortgage as it applies to the Lease between Landlord and Tenant, said assignment shall apply only to the rent which Landlord is entitled to receive pursuant to the Lease.

6. Lender agrees that all condemnation awards and insurance proceeds payable to Landlord or Lender with respect to the Leased Premises, the Building or Common Areas shall be paid and applied to restoration of the Leased Premises, the Building and Common Areas in accordance with the provisions for condemnation and casualty under the Lease. In no event shall the lien of the Mortgage affect or constitute a lien or charge on any fixtures, equipment or personal property owned by Tenant, and Tenant may at any time remove any of its fixtures, equipment or personal property from the Leased Premises in accordance with the provisions of the Lease.

7. For the purpose of this Agreement: (a) the term "**Lease**" shall be deemed to include the Lease as described above in Recital A along with all amendments, modifications and supplements thereto; provided, however, that no such amendment, modification or supplement executed after the date of this Agreement shall be binding on Lender without Lender's written consent, which consent shall not be unreasonably withheld, conditioned or delayed; (b) the term "**foreclosure**" shall be deemed to include the acquisition of Landlord's interest in the Leased Premises by foreclosure or pursuant to the exercise of any power of sale contained in the Mortgage, or by deed (or assignment) given in lieu of, or in anticipation of, foreclosure or the exercise of any such power of sale, or by any other means whatsoever; and (c) the term "**Lender**" shall be deemed to include anyone who succeeds to Landlord's interest in the Leased Premises pursuant to the Mortgage including, without limitation, any purchaser at foreclosure or pursuant to the exercise of any power of sale contained in the Mortgage, or any grantee

of a deed (or assignment) given in lieu of, or in anticipation of, foreclosure or the exercise of any such power of sale.

8. If any term, covenant, condition or agreement contained in this Agreement or the application thereof to any person, firm or entity shall at any time or to any extent be deemed or found to be invalid or unenforceable by operation of law, judicial proceedings or otherwise, the remainder of this Agreement or the application of such term, covenant, condition or agreement to persons or entities or to circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term, covenant, condition or agreement of this Agreement or the application thereof shall be valid and enforced to the fullest extent permitted by law.

9. All notices given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States registered or certified mail, or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below.

Landlord: SLHNET Investments, L.C.
48 Market Street, Suite 250
Salt Lake City, UT 84101
Attention: John W. Williams

Tenant: ASP Realty, Inc. (#70012)
250 Parkcenter Blvd.
P.O. Box 20
Boise, Idaho 83726
Attention: Business Law

Lender: Wells Fargo Bank, National Association
299 S. Main Street, 11th Floor
Salt Lake City, Utah 84111
Attention: _____

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt. For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (a) the date of delivery of the notice or other document to the address specified above as shown on the return receipt; (b) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this section; or (c) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of: (i) the date of the attempted delivery or refusal to accept delivery; (ii) the date of the postmark on the return receipt; or (iii) the date of receipt of notice of refusal or notice of nondelivery by the sending party. Lender agrees that, upon satisfaction of the Mortgage, Lender shall notify Tenant of such satisfaction at the address shown in this paragraph.

10. If any litigation is commenced between the parties hereto concerning this Agreement or the rights or obligations of any party in relation thereto, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for its attorney's fees in such litigation (including any appeal thereof), which sum shall be determined by the court in such litigation or in a separate action brought for that purpose.

11. This Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns, including, without limitation, the mortgagee or beneficiary under any mortgage or deed of trust on Tenant's interest in the Lease or the Leased Premises, its successors and assigns.

12. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which together shall constitute but one and the same instrument, and shall be effective upon execution of one or more of such counterparts by each of the parties hereto.

13. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. This Agreement may not be modified in any manner whatsoever except by an instrument in writing signed by each of the parties hereto.

14. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

15. Lender shall, at its expense, promptly record this Agreement in the Official Records of Salt Lake County, Utah, and the original, recorded Agreement shall be promptly provided by Lender to Tenant.

16. The submission of this Agreement for examination, or its negotiation or the negotiation of the transaction described herein, does not constitute an offer to subordinate the Lease, and execution of this Agreement by Landlord and/or by Lender does not constitute a binding agreement until such time as this Agreement has been executed by all other parties, including by an authorized officer of Tenant, and a fully-executed and acknowledged original of this Agreement has been delivered to all parties. If this Agreement is not executed by both Landlord and Lender and a fully executed and acknowledged original delivered to Tenant's Legal Department at the address set forth herein on or before February 29, 2012, then Tenant shall consider the request for this Agreement withdrawn and Tenant's execution hereof shall be of no force or effect.

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

LENDER:

Wells Fargo Bank, National Association

By: Brady P Bezowski
Name: Brady P Bezowski
Its: Vice - President

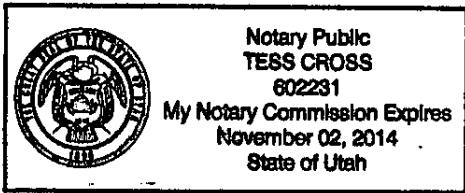
State of Utah)
) ss.
County of Salt Lake)

On this 18th day of January, 2012, before me, the undersigned Notary Public in and for said State, personally appeared Brady Bezowski, known to me to be the Vice-president of Wells Fargo Bank, National Association, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires: 11/02/2014

Deborah
Notary Public for the State of Utah
Residing at Scary, Utah



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

LANDLORD:
SLHNET Investments, L.C.,
a Utah limited liability company

By: SLH Partners, LLC, a Utah limited liability
company

By: *J. Williams*
John W. Williams, Manager

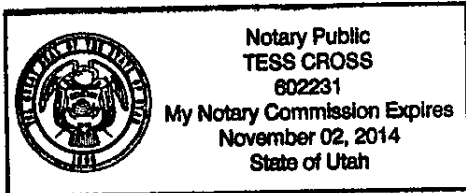
STATE OF UTAH)
) ss.
County of Salt Lake)

On this 18th day of January, 2012, before me, the undersigned Notary Public in and for said State, personally appeared John W. Williams, known to me to be the Manager of SLHNET Investments, L.C., the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.


My commission expires:
11/02/14

Tess Cross
Notary Public for the State of Utah
Residing at *Utah*, Utah



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

TENANT:
ASP Realty, Inc.,
a Delaware corporation

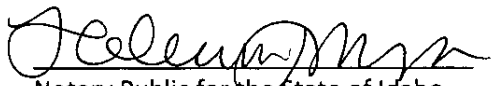
By: 
Bradley R. Beckstrom
Lead Counsel, Business Law

STATE OF IDAHO)
) ss.
County of Ada)

On this 19th day of January, 2012, before me, the undersigned Notary Public in and for said State, personally appeared Bradley R. Beckstrom, to me known to be the Lead Counsel, Business Law of ASP Realty, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:
12-21-2013


Notary Public for the State of Idaho
Residing at Boise, Idaho

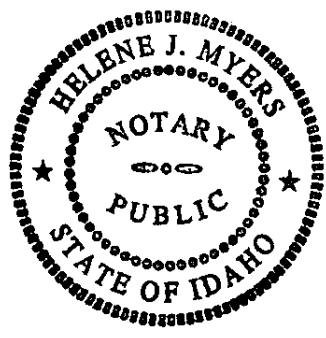


EXHIBIT A
TO
SUBORDINATION, NON-DISTURBANCE,
ATTORNMEN AND ESTOPPEL AGREEMENT

Legal Description of Property:

Real property located in Salt Lake County, Utah:

Beginning at the Northeast Corner of Lot 8, Block 98, Plat "A", Salt Lake City Survey said point being South 0°00'59" East 67.88 feet and South 89°58'53" West 67.00 feet from a street monument found at the intersection of 400 West and 200 North, and running; thence South 0°04'10" West 660.00 feet along the west line of said 400 West and being the east line of Block 98 to the Southeast Corner of Lot 1, Block 98, Plat "A", Salt Lake City Survey; thence South 89°58'54" West 165.00 feet along the north line of North Temple and being the south line of Block 98 to the Southwest Corner of said Lot 1; thence North 0°04'10" East 0.50 feet along the west line of said Lot 1; thence North 89°53'56" West 110.23 feet; thence North 88°00'00" West 4.57 feet; thence North 0°00'27" West 483.92 feet; thence Northwesterly 69.60 feet along the arc of a 645.28 foot radius curve to the left (center bears South 89°59'33" West and the long chord bears North 3°05'51" West 69.57 feet with a central angle of 6°10'48"); thence North 6°11'15" West 50.04 feet; thence Northwesterly 56.17 feet along the arc of 1098.72 foot radius curve to the right (center bears North 83°48'45" East and the long chord bears North 4°43'23" West 56.16 feet with a central angle of 2°55'45") to the north line of said Block 98; thence North 89°58'53" East (North 89°58'54" East, Deed) 294.43 feet along the north line of said Block 98 and to and along the south line of 200 North Street to the point of beginning.

[The foregoing being the boundary description of the 1-lot **Salt Lake Hardware Minor Subdivision**, according to that certain Notice Of Amended Minor Subdivision Approval For Salt Lake Hardware Minor Subdivision recorded December 21, 2011 as Entry No. 11300852, in Book 9976, at Page 2542 of the Official Records of the Salt Lake County Recorder.]

EXCEPTING THEREFROM, all the minerals and all mineral rights as conveyed to UNION PACIFIC LAND RESOURCES CORPORATION, a corporation of the State of Nebraska, in that certain Mineral Deed dated April 1, 1971 and recorded October 3, 1996 as Entry No. 6472020, in Book 7504, at Page 1156 of the Official Records.

Tax Parcel Nos.: 08-36-376-005 and 08-36-376-028