

When recorded mail to:

AutoZone Development Corporation  
Attn: Teresea Hicks  
P.O. Box 2198, 3<sup>rd</sup> Floor  
Memphis, TN 38101-2198

APN: 27-17-176-029

File No. NCS-668653-SLC1-AI

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10/21/2015 9:05:00 AM \$32.00  
Book - 10372 Pg - 131-142  
Gary W. Ott  
Recorder, Salt Lake County, UT  
FIRST AMERICAN NCS  
BY: eCASH, DEPUTY - EF 12 P.

**EASEMENTS, COVENANTS AND RESTRICTIONS AGREEMENT**

## EASEMENTS, COVENANTS AND RESTRICTIONS AGREEMENT

**THIS EASEMENTS, COVENANTS AND RESTRICTIONS AGREEMENT** (the "Agreement") is made as of October 20, 2015, 2015, by and between **Harvest Pointe, LLC, a Utah limited liability company** ("Harvest Pointe"), and **AutoZone Parts, Inc., a Nevada corporation** ("AutoZone").

### WITNESSETH:

**WHEREAS**, AutoZone is, or will become, the fee simple owner of certain real property located in the County of Salt Lake, City of South Jordan and State of Utah, being commonly known as Lot 4 of Albertson's 10400 South Street Subdivision, recorded September 5, 2002, under Book 2002A, Page 243 and Instrument Number 8343187, in the Recorder's Office of Salt Lake County, Utah ("Parcel 1");

**WHEREAS**, Harvest Pointe is the owner of certain real property located in said County, City and State, being commonly known as Lot 5 of Albertson's 10400 South Street Subdivision, recorded September 5, 2002, under Book 2002A, Page 243 and Instrument Number 8343187, in the Recorder's Office of Salk Lake County, Utah ("Parcel 2"); and

**WHEREAS**, Harvest Pointe and AutoZone have agreed that Parcel 1 and Parcel 2 shall each be held, sold and conveyed subject to the easements, covenants and restrictions contained herein.

**NOW, THEREFORE**, in consideration of the mutual 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. No part of Parcel 2 shall be used as an automobile parts store or for the sale of automobile parts, supplies or accessories for off-premises installation or otherwise compete with AutoZone. Notwithstanding the above, this restriction does not apply to any business whose principal business is a drugstore 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 automobile 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.

2. (a) Harvest Pointe hereby grants to AutoZone, for the benefit of Parcel 1, a perpetual, non-exclusive access easement providing continuous uninterrupted ingress and egress for two way vehicular and pedestrian traffic over and across Parcel 2 as such easement is illustrated on **Exhibit "A"** as the Cross Access Easement (the "Cross Access Easement") and defined on **Exhibit "B"**.

(b) The easements granted herein shall be kept clear of parked vehicles at all times. Neither party shall allow any of its respective permittees, including, without limitation, employees and customers, to park on the other party's parcel. Each parcel shall have its own separate and independent vehicle parking areas sufficient to satisfy the requirements of local zoning. Each party agrees to use reasonable efforts to enforce this Section 2(b).

3. Each party agrees to keep the Access Easement Area free and clear from obstacles or obstructions which would prevent or hinder the free passage of vehicular traffic within or across the Access Easement Area except temporarily, for reasonable times and in a reasonable manner, for purposes of performing work permitted by this Agreement. No portion of any drive aisles located on any property described herein shall be used for the sale or display of merchandise.

4. AutoZone may, but is not obligated to, construct certain improvements on the Cross Access Easement in the areas as that party deems necessary (the "Improvements"), and, if AutoZone desires to construct the same, in its sole discretion, all development and construction costs of the Improvements shall be borne by AutoZone, and the work shall be performed free and clear of liens and other encumbrances. Harvest Pointe hereby grants to AutoZone a construction easement for such purposes. Except as otherwise provided herein, nothing contained in this Agreement shall be construed as allowing one party to construct any improvements, perform any work or grant any other easements on the other party's respective parcel without that party's prior written consent or to allow any liens on another party's respective parcel without that party's prior written consent. Nothing contained herein shall require either party to develop its respective parcel or to operate any business thereon.

5. The owner of Parcel 1 shall, at all times, maintain the Cross Access Easement and the Improvements thereon in good repair, clean and clear of snow, ice, rubbish, and debris, properly drained, and adequately lighted at its sole cost and expense.

6. Each party (and their respective successors and assigns) shall indemnify, defend and hold harmless the other, its respective successors and assigns, from and against, any and all liability, demands, claims, causes of action, judgments and costs and expenses incurred in the investigation of the same (including, without limitation, court costs and reasonable attorney's fees) for, by way of illustration and not limitation, injury to persons, loss of life or damage to property occurring within any easement areas granted herein which arise out of any breaches of this Agreement or any other obligations of this Agreement by such party.

7. Any and all notices required or permitted to be given under this Agreement shall be in writing, postage and/or shipping and delivery prepaid and shall be sent by U.S. Postal Service Certified Mail with Return Receipt Requested or via a national overnight (or 2d day) courier service requiring a signature upon delivery (such as Federal Express) to:

If by U.S. Postal Service Certified Mail:

**AutoZone Parts, Inc.**  
123 S. Front Street  
Attn: Property Management, Dept. 8700  
Memphis, TN 38103

**Harvest Pointe:**  
225 South 200 East  
Suite 200  
Salt Lake City, UT 84111

Harvest Pointe and AutoZone and any other person to whom any such notice, instrument or communication may be given, shall each have the right to specify, from time to time, as its address for purposes of this Agreement, any address in the 48 contiguous States of the United States of America upon giving fifteen (15) days' notice thereof to each other person then entitled to receive notices, instruments or communications hereunder.

8. As used in this Agreement, unless the context clearly otherwise requires, AutoZone and Harvest Pointe shall mean, with respect to each parcel, the record owner(s) from

time to time of an interest in fee simple in all or any part of Parcel 1 or Parcel 2 whether such owner be one or more persons or entities.

9. Nothing contained herein shall be deemed to be a gift or dedication of any portion of any property to the general public. This Agreement shall not be construed as conferring upon any third party any right or benefit and any and all claims which may arise hereunder may be enforced solely by the parties and their respective successors and assigns.

10. Notwithstanding anything contained herein to the contrary, each party reserves the right to eject any person or persons not authorized hereby. Each party hereby reserves any and all rights which are not directly incompatible with the easements granted hereunder, including, without limitation, the right to grant easements to third parties over, under and through the granting party's respective parcel.

11. The agreements and restrictions described in this Agreement shall run with the land and shall be binding upon and inure to the benefit of Harvest Pointe, AutoZone, and their respective successors, lessees, and the future owners and leases of Parcel 2 and shall be perpetual, and shall commence upon the recording of this Agreement with the Recorder's Office of Salt lake County, Utah. Except as provided herein, all easements granted herein may be used for the purposes designated herein by Harvest Pointe, AutoZone, and their respective successors, designees, tenants, employees, agents, customers, and invitees free from charge. Except as specifically set forth herein, no other easements are granted herein, nor shall any other easements be implied.

12. It is further understood and agreed to by Harvest Pointe and AutoZone that the easements and other rights may be mortgaged to any mortgagee taking a mortgage on Parcel 2 or Parcel 1, but any mortgagee taking a mortgage on any easement herein shall take said mortgage subject to the other rights, benefits, duties, and obligations created and established herein.

13. No waiver of any provision hereof shall be deemed to constitute or imply a further waiver thereof of any other provision set forth herein. Unless the context in which used clearly requires another construction, throughout this Agreement, the masculine gender shall be deemed to include the neuter of feminine or both, the neuter gender shall include the masculine or both, and the singular of terms shall include the plural and vice versa. Each exhibit described herein is hereby attached hereto and incorporated herein by reference. If any one or more of the provisions contained herein shall be held invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provisions 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.

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 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.

15. Any amendment to this Agreement shall require the prior written consent of all owners of Parcel 1 and Parcel 2. Notwithstanding the above, any amendment to the use restriction in Section 1(a) shall at all times (and whether or not if AutoZone owns or leases any portion of Parcel 1) require the prior written consent of AutoZone or its corporate successors or assigns. In the event there are easements of record prior to this Agreement providing for any matters stated herein, then this Agreement shall amend any prior documents with respect to all property mentioned herein.

16. Harvest Pointe hereby represents that it is the fee simple owner of Parcel 2, and that all lienholders have consented to this Agreement. AutoZone shall have the right to assign this Agreement at or after the closing of its respective parcel.

17. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF UTAH, WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAW.

18. This Agreement constitutes the entire Agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations and understandings, oral or otherwise, between or among the parties with respect to the matters contained herein.

19. Nothing contained herein shall be construed as creating an employment, partnership, agency or principal, or joint venture relationship between the parties.

20. The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement 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 Agreement, as fully as if copied herein verbatim. The word "party" or "parties" means only those persons or entities who are signatories to this Agreement. 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 Agreement 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.

21. Each party agrees that upon written request of another party, it will issue to a prospective mortgagee of or prospective successor to such other party, an estoppel certificate stating:

(a) Whether the party to whom the request has been directed knows of any default by the requesting party under the Agreement, and if there are known defaults, specifying the nature of the default;

(b) Whether to its knowledge this Agreement has been modified or amended in any way (and if it has, then stating the nature thereof); and

(c) That to the party's knowledge, this Agreement is in full force and effect as of that date.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date hereinabove.


**Parcel 2 Owner:**  
**Harvest Pointe, LLC**


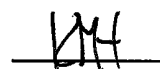
**Parcel 1 Owner:**  
**AutoZone Parts, Inc.**

By: \_\_\_\_\_

Its: Manager

By:  \_\_\_\_\_  
Its: **Vice President**

By:  \_\_\_\_\_  
Its: **MARIA LEGGETT**  
**Vice President, Assistant General**  
**Counsel & Assistant Secretary**

Approved for Execution (AutoZone Internal)  
 \_\_\_\_\_  \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date hereinabove.

**Parcel 2 Owner:**  
**Harvest Pointe, LLC**

**Parcel 1 Owner:**  
**AutoZone Parts, Inc.**

By: *Barrett Peterson*  
Its: Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved for Execution (AutoZone Internal)

\_\_\_\_\_

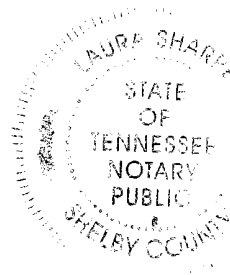
STATE OF TENNESSEE    )  
  ) SS.:  
COUNTY OF SHELBY    )

Personally appeared before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, James C. Griffith and Maria Leggett, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged themselves to be the Vice President and Vice President, respectively, of AutoZone Parts, Inc., a Nevada corporation, the within named bargainors, and that they as such Vice President and Vice President, and being fully authorized to do so, executed the foregoing instrument, for the purposes therein contained by signing the name of the corporation by themselves as such officers.

WITNESS my hand and seal this 14<sup>th</sup> day of October, 2015.

Laura Sharpe  
Notary Public

My Commission Expires: 4-27-2014





STATE OF Utah )  
 ) SS.:  
COUNTY OF Salt Lake )

Personally appeared before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, Barrett Peterson, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be the Manager of Harvest Pointe, LLC, the within named bargainer, a Utah limited liability company, and that he/she as such Manager, and being fully authorized to do so, executed the foregoing instrument, for the purposes therein contained by signing the name of Barrett Peterson by himself/herself as such Manager.

WITNESS my hand and seal this 20th day of October, 2015.

Lori Johnston  
Notary Public

My Commission Expires: 03-22-2019



**ACKNOWLEDGMENT BY SECURITY INTEREST HOLDER**

The undersigned holds a security interest in Parcel 2 as described in **Exhibit "A"** of this Agreement. The undersigned hereby joins in the execution of the Agreement for the following purposes only:

- 1. **CONSENT.** To grant consent to the execution of this Agreement by the owner of the property.
- 2. **ACKNOWLEDGMENT OF AGREEMENT.** To subject any and all security interests it has in the property to the provisions of this Agreement solely to the extent that, if title to the property is acquired through sale under foreclosure or by deed in lieu of foreclosure or otherwise, such title shall be subject to the charges and burdens affecting the property by virtue of this Agreement.

Signed: TRANSAMERICA LIFE INSURANCE COMPANY, an Iowa corporation

By: *John Downer* *zdt*

Date: October ~~19~~, 2015

Its: Vice President

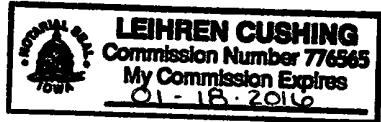
STATE OF IOWA                            )  
  ) SS.:  
COUNTY OF LINN                        )

Personally appeared before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, JOHN DOWNER, 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 of Transamerica Life Insurance Company, the within named bargainor, and that he as such Vice President, and being fully authorized to do so, executed the foregoing instrument, for the purposes therein contained by signing the name of Transamerica Life Insurance Company by himself as such Vice President.

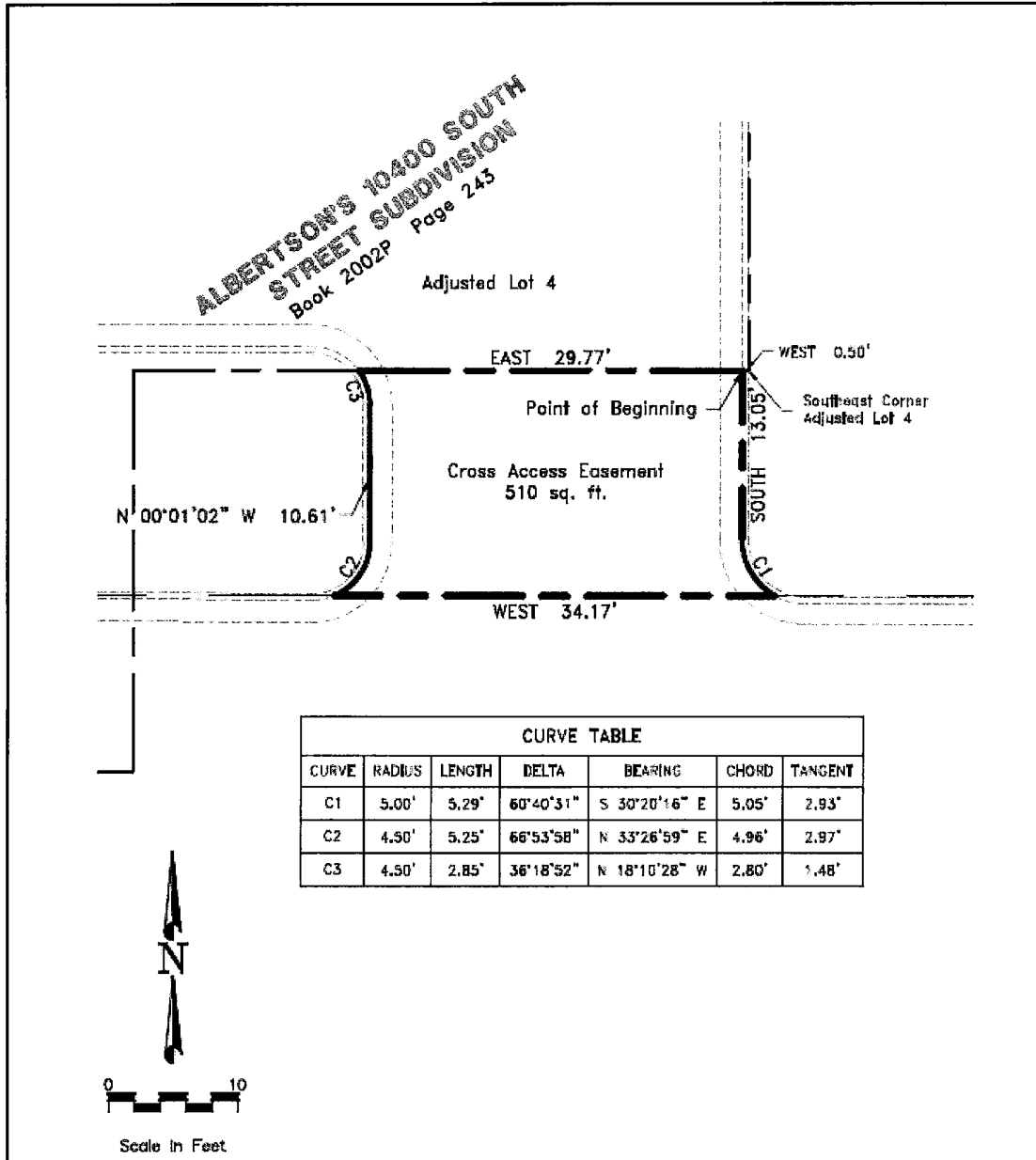
WITNESS my hand and seal this 19<sup>th</sup> day of OCTOBER, 2015.

*Lehren Cushing*  
Notary Public

My Commission Expires: 01-18-2016



# EXHIBIT "A"



## EXHIBIT "B"

A permanent, non-exclusive cross access easement located in the Northwest Quarter of Section 17, Township 3 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, described as follows:

BEGINNING at a point on the southerly line of Adjusted Lot 4, Albertson's 10400 South Street Subdivision, said point being West 0.50 feet from the Southeast Corner of said Lot, and thence South 13.05 feet to a point of tangency of a 5.00 foot radius curve to the left; thence Southeasterly 5.29 feet along said curve through a central angle of  $60^{\circ}40'31''$  and a long chord of South  $30^{\circ}20'16''$  East 5.05 feet; thence West 34.17 feet to a point on the arc of a 4.50 foot radius non-tangent curve to the left, the center of which bears North  $23^{\circ}06'02''$  West; thence Northeasterly 5.25 feet along said curve through a central angle of  $66^{\circ}53'58''$  and a long chord of North  $33^{\circ}26'59''$  East 4.96 feet; thence North  $00^{\circ}01'02''$  West 10.61 feet to a point of tangency of a 4.50 foot radius curve to the left; thence northerly 2.85 feet along said curve through a central angle of  $36^{\circ}18'52''$  and a long chord of North  $18^{\circ}10'28''$  West 2.80 feet to said southerly line of Adjusted Lot 4; thence East 29.77 feet to the POINT OF BEGINNING. Said parcel contains 510 square feet or 0.01 acres, more or less.