

To: **Mayor and City Council**
From: **Ryan Schroeder, City Manager**
Date: **May 11, 2020**

Approval of Stipulated Settlement with Auto Zone, 1520 Robert Street

BACKGROUND INFORMATION:

Enclosed, please find a proposed Stipulation of Settlement between the City of West St. Paul and Auto Zone in order for the Court to make a final award for the value of the real estate the City has purchased from Auto Zone, which is located at 1520 Robert Street. The settlement is for \$1,800,000. Staff and the City Attorneys are recommending approval of this settlement as enclosed, which authorized representatives of Auto Zone have signed.

As part of the agreement, Auto Zone has the opportunity to a leaseback of the property from April 10, 2019 (date of acquisition by the City) through October 31, 2020. By that date, Auto Zone will move to their new location at 1422 Robert Street.

This acquisition is in accordance with the Joint Powers Agreement (JPA) between Dakota County and the City regarding construction of the River-to-River Greenway and Tunnel project. In order to construct that project, Crawford Drive will be moved north of its present location into the Auto Zone parcel, such that acquisition of the entire parcel was deemed required. Under the JPA, the County has taken on 75% of the acquisition costs of this parcel.

On April 10, 2019, the City deposited \$1,550,000 with the Court, which awarded title to the City on April 14, 2019. This deposit included a contribution from the County for \$1,162,500, in accordance with the JPA (balance from the City). The enclosed stipulation increases the cost of this acquisition by a stated amount of \$250,000.

Auto Zone is entitled to relocation and moving expense in addition to the award for the real estate. The actual cost of this relocation will not be known until after their move. Under the JPA, that is also a shared expense. On November 19, 2019, the City received a Dakota County CDA RIG grant, which the City will use to reimburse its expenses of this acquisition.

As noted above, the purpose of this acquisition is to provide property required for construction of the River-to-River Greenway tunnel. The impetus for this project appears to have begun in 2008 with adoption of the Park System Plan. This plan created a vision of an interconnected system of regional greenways within the urban areas of the County. What is now known as the River-to-River (R2R) Greenway was part of that plan.

On December 12, 2011, the West St. Paul City Council approved the Pedestrian and Bicycle Plan. This plan included the R2R and a grade separated crossing of Robert Street as part of the Greenway. In 2014, the City received a Legislative authorization of \$2 million of State Bond Funds for the Robert Street

crossing project. In 2017, the Legislature increased that authorization to \$2.2 million. On November 13, 2017 the City Council approved Resolution 17-99 accepting the State Bond Fund authorization for the grade separated crossing which set the acquisition of 1520 Robert Street in motion. Related actions since this date have included:

- February 22, 2018 appraisal report received in amount of \$1,550,000
- May 14, 2018 Council approved Resolution 18-68 approving use of Eminent Domain in the case the a negotiated sale of property for the Greenway was not possible
- May 15, 2018 the City Attorney made a final written offer on behalf of the City for the Auto Zone parcel as an integral component of the Right-of-Way necessary for the greenway project
- October 8, 2018 Council entered the JPA with Dakota County to construct the River-to-River tunnel and trailway. On this same date Council adopted Resolution 18-117 authorizing a quick take action against the owner of the Auto Zone property
- November 13, 2018 the City Council approved a State required Met Council grant agreement without which the City could not access the State Bond funds. The deadline for use of State Bond funds is December 31, 2021
- December 9, 2019 Council approved amendments to the County JPA, approved an amendment to the zoning code chapters 153.170-153.187 to allow for auto accessory stores in a B3 zone (allowing Auto Zone to relocate) and authorized an easement agreement for use by Auto Zone for access during tunnel construction

The current project schedule is for the Dakota County Board to bid the tunnel project in June 2020 with a projected construction start date in July. Should bids come in beyond County projections, the County could rebid the project in the fall and still achieve project completion by December 31, 2021.

FISCAL IMPACT:

\$62,500 as 25% of the award.

STAFF RECOMMENDATION:

By motion, authorize the Mayor and City Manager to sign the Stipulated of Settlement agreement for 1520 Robert Street.

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT
COURT FILE No. 19HA-CV-18-4656

City of West St. Paul,
a Minnesota municipal corporation,

STIPULATION OF SETTLEMENT

Petitioner,

Case Type: Condemnation

v.

Autozone Texas, L.P., a Delaware limited
partnership; et al.,

Respondents.

THIS STIPULATION is made by and between Petitioner City of West St. Paul (“City”) and AutoZone Texas LLC, a Nevada limited liability company (“Owner”).

RECITALS

- A. The following recitals are a part of the parties’ stipulation.
- B. The Owner is the fee owner of the real property located in the City of West St. Paul, PID 42-11560-01-020, and legally described as follows: Lot 2, Block 1, Andler and Olson’s Addition to West St. Paul, County of Dakota, State of Minnesota (“Property”).
- C. The City commenced this condemnation action to acquire the Property in fee for the purposes of constructing trail and related improvements for the River to River Greenway Project (“Project”).
- D. The Court granted the City’s petition to condemn the property (“Taking”) and filed its Findings of Fact, Conclusions of Law, and Order Granting Petition, Authorizing

Payment or Deposit, and Awarding Title and Right of Possession, and Order Appointing Commissioners on February 14, 2019 (“Condemnation Order”).

E. The Condemnation Order identifies Autozone Texas, L.P., as the fee owner of the Property. Autozone Texas, L.P., has been converted to AutoZone Texas LLC, a Nevada limited liability company.

F. The Condemnation Order identifies Bank of America as having had a possible interest in the action by virtue of a mortgage.

G. The Condemnation Order identifies Dakota County as having a possible interest in the action for the payment of taxes.

H. On April 10, 2019, pursuant to the Condemnation Order, the City deposited the sum of \$1,550,000.00 with the Dakota County District Court, in payment of its approved appraisal of value for the Taking of the Property (the “Deposit”).

I. The City and the Owner have reached a full and final settlement and compromise of the matters in dispute.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, it is hereby stipulated and agreed between the parties as follows:

1. Stipulation to Commissioners’ Award. The City and the Owner agree to an award of condemnation damages for the Property by the court-appointed commissioners in the total amount of \$1,800,000.00 (“Settlement Amount”) in substantially the form attached hereto as *Exhibit 1* (“Proposed Award”). The City and the Owner jointly request the Proposed Award and will not appeal the Proposed Award. This settlement agreement is contingent upon the filing of the Proposed Award, and upon the expiration of the statutory appeal period without any appeal. All

known respondents who may claim an interest in the Property will be given due notice of the commissioners hearing and the award that is filed by the commissioners.

In the event the court-appointed commissioners fail to issue the Proposed Award, or in the event any other party appeals, this Stipulation of Settlement shall be null and void except as follows: The Lease Agreement attached hereto as *Exhibit 2* (“Lease”) shall remain valid and enforceable.

2. Payment of Settlement Amount. The City shall pay the Settlement Amount as follows:

- a. The Deposit shall be credited against the Settlement Amount.
- b. Within 10 business days after the expiration of the statutory period to appeal from the Stipulated Award, without an appeal having been filed, the City shall deposit with the Dakota County Court Administrator the balance of the Settlement Amount, \$250,000.00 (“Supplemental Deposit”).

3. Deposit. The Owner may apply for disbursement of the Deposit or Supplemental Deposit at any time by filing a motion with the Court that: (a) advises the Court of the Bank of America mortgage interest; and (b) is timely served on Bank of America. Provided that the Owner complies with this paragraph, the City will take no position on the Owner’s disbursement application.

4. Other Considerations. The parties agree to the following additional terms:

- a. The City shall lease the Property back to the Owner through October 31, 2020, pursuant to the terms of the Lease attached hereto as *Exhibit 2*. The parties’ rights under the Lease shall survive the termination or voiding of this Stipulation of Settlement.

- b. The Owner's claims for relocation benefits (if any) under the Minnesota Uniform Relocation Assistance Act are expressly reserved.
- c. After the Project is completed, the Taking will result in a remnant parcel that will no longer be needed for public use ("Remnant"). The City agrees that the Remnant shall be subject to the following use restriction for a period of 20 years ("Restrictive Covenant"):

The Remnant shall not be primarily used for the sale or advertisement of automobile parts, supplies and/or accessories. The intent of this restriction is to prevent Owner's competitors, including but not limited to O'Reilly Auto Parts, NAPA Auto Parts, and other similar auto parts retailers from operating or advertising on the Remnant. This restriction does not prohibit the incidental sale of hand tools, ice scrapers, air fresheners, mobile phone accessories, or other auto-related items by businesses primarily engaged in other uses including but not limited to hardware stores, car washes, gas stations, cellular phone stores, convenience stores, grocery stores, and dollar stores.

Any conveyance of the Remnant shall be made subject to the Restrictive Covenant.

- d. In consideration of the Settlement Amount, pursuant to Minn. Stat. § 117.226, the Owner hereby declines to repurchase the Remnant, and knowingly and voluntarily waives the right to repurchase the Remnant. The Owner agrees that, upon payment in full of the Settlement Amount, the attorney for the City may prepare and record a certificate to evidence the termination of the Minn. Stat. § 117.226 right of first refusal.
- e. The Owners acknowledge that the County has satisfied its statutory obligation to reimburse them for appraisal fees incurred (if any) under Minn. Stat. § 117.036.

5. Full and Final Compromise. Except as expressly reserved in Paragraph 4(b), this Agreement constitutes a full and final settlement of all claims arising out the Taking. In consideration of the Settlement Amount, except as expressly reserved in Paragraph 4(b), the Owner waives and releases any and all claims against the City, its agents, employees, contractors, or consultants, including without limitation claims for just compensation, statutory remedies, interest, appraisal and other expert fees, attorney fees, costs and disbursements, and all other damages arising from the Taking. The Owner waives any and all rights to further notices, viewings, or hearings regarding this action.

6. Concluding Condemnation Action. After issuance of the Award of Commissioners and expiration of the statutory appeal period, the City will file a Final Certificate in this action and record a discharge of notice of lis pendens with the Office of the Dakota County Recorder. Each of the parties will bear its own costs in connection with this action.

7. Entire Agreement. The undersigned confirm that each has read this Stipulation of Settlement, and that each knows and understands its consequences and legal effect. This Stipulation of Settlement contains the entire agreement of the parties in the above-referenced action.

8. Execution. The parties agree that this Stipulation of Settlement may be executed in separate counterparts which, taken together, shall be and comprise one agreement. The parties further agree that the Stipulation of Settlement may be executed with electronic signatures pursuant to the Uniform Electronic Transactions Act, Minnesota Statutes Chapter 325L.

9. Authority. Any person signing this Stipulation of Settlement in a representative capacity represents and warrants by signing this Agreement that it is the signer's intent to bind the principal being represented to the terms and conditions of this Agreement, that the signer has been

authorized to bind the principal to the terms and conditions, and that it is the intent of the principal to be so bound.

**OWNER – AUTOZONE TEXAS LLC,
a Nevada limited liability company**

By: AutoZone Investment Corporation, a Nevada corporation

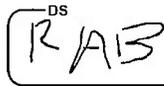
Its: Sole Member

Dated: April 29, 2020.

DocuSigned by:
By: Timothy Goddard
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Its: Vice President, Store Development

Dated: April 29, 2020.

DocuSigned by:
By: Maria Leggett
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Its: Vice President, Assistant General Counsel and Assistant Secretary

Dated: April 31, 2020

MALKERSON GUNN MARTIN LLP



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ROETZEL & ANDRESS, P.A.
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Columbus, OH 43215
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jyoung@ralaw.com

Attorneys for AutoZone Texas LLC

PETITIONER -- CITY OF WEST ST. PAUL

Dated: _____, 2020.

By: _____
David J. Napier, Mayor

By: _____
Ryan Schroeder, City Manager

LEVANDER, GILLEN & MILLER, P.A.

Dated: _____, 2020

Peter G. Mikhail (# 249907)
Korine L. Land (#262432)
633 South Concord Street, Suite 400
South St. Paul, MN 55075
651-451-1831
pmikhail@levander.com
kland@levander.com

Attorneys for City of West St. Paul

EXHIBIT 1

Proposed Award

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT
COURT FILE No. 19HA-CV-18-4656

City of West St. Paul,
a Minnesota municipal corporation,

AWARD OF COMMISSIONERS

Petitioner,

Case Type: Condemnation

v.

Autozone Texas, L.P., a Delaware limited
partnership; et al.,

Respondents.

The undersigned commissioners, appointed by the above-named Court, having qualified according to law, make the following award of damages with respect to the Petitioner's taking of the subject property in the above-captioned matter ("Property"), as of April 10, 2019, which is the date of taking, including interest accrued: **\$1,800,000.00.**

This award of damages is made after notice of viewing, notice of hearing, and an opportunity for possible claimants to be heard; and it is based on the commissioners' viewing of said real estate and the Stipulation of Settlement entered into between the City of West St. Paul and AutoZone Texas, L.P., which the commissioners received and accepted.

The Property is legally described as: Lot 2, Block 1, Andler and Olson's Addition to West St. Paul, County of Dakota, State of Minnesota. (PID 42-11560-01-020)

Dated: _____, 2020.

Brian Taurinskas, Commissioner

Scott Ruppert, Commissioner

Pete Sampair, Commissioner

EXHIBIT 2

Lease Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is made and entered into this ____ day of April, 2020 (the “Effective Date”), by and between City of West St. Paul, Minnesota, a Minnesota Municipal corporation (the “Landlord”), and AutoZone Parts, Inc., a Nevada corporation (the “Tenant”). Landlord and Tenant may be referred to collectively herein as the “parties” or each a “party”.

ARTICLE 1 PREMISES

Landlord, for and in consideration of the rents, covenants and conditions hereinafter contained to be performed and observed by Tenant, does hereby demise and lease to Tenant the real estate legally described on Exhibit A attached hereto (the “Real Estate”), addressed as 1520 Robert Street South, West St. Paul, Minnesota, with all improvements located therein, existing fixtures and any appurtenant parking areas, driveways and landscaped areas (collectively, the “Improvements”) (the Real Estate and Improvements are collectively referred to herein as the “Premises”).

ARTICLE 2 TERM

Tenant shall have and hold the Premises for and during the term commencing April 10, 2019, the date the Landlord acquired title to and the right of possession of the Premises in the condemnation action entitled *City of West St. Paul v. Autozone Texas, L.P., et al.*, Dakota County District Court File No. 19HA-CV-18-4656 (the “Commencement Date”), and terminating on October 31, 2020 (the “Term”), unless extended by the parties in writing. This Lease is terminable at will by Tenant upon vacation and written notice to Landlord.

ARTICLE 3 BASE RENT

As consideration for this Lease, Tenant shall pay to Landlord base rent in the amount of \$10,150.00 per month, commencing April 10, 2019. Said rent shall be deemed fully paid and satisfied in the form of an offset included within the final settlement of Tenant’s claims against Landlord for just compensation, statutory damages, interest, fees, or costs in the condemnation action entitled *City of West St. Paul v. Autozone Texas, L.P., et al.*, Dakota County District Court File No. 19HA-CV-18-4656. In the event Tenant’s claims are not settled, the rent shall be paid in the form of an offset against any amount Landlord is adjudicated to owe Tenant in said condemnation action.

ARTICLE 4 ADDITIONAL RENT

All amounts which Tenant is required to pay under the terms and provisions of this Lease, other than Base Rent, including but not limited to the amounts payable by Tenant pursuant to

Articles 10, 11, 12, and 13 shall be considered as “**Additional Rent**”.

**ARTICLE 5
USE OF PREMISES**

The Premises shall be used by Tenant for a retail location. Tenant agrees not to commit a nuisance in or upon the Premises so as to substantially interfere with the comfort and safety of others.

**ARTICLE 6
TENANT’S ACCEPTANCE OF THE PREMISES/CONDITION**

Except as provided for in Article 7, Landlord will not be obligated to construct or install any improvements in or to the Premises. Landlord makes no representation, covenant or warranty of any kind, character or nature concerning the Premises or otherwise. Tenant accepts the Premises in “as-is”, “where-is”, and “with all faults” condition.

**ARTICLE 7
TRAIL AND ROAD CONSTRUCTION PROJECT**

Tenant acknowledges that the Landlord and Dakota County will be undertaking a project to install a new segment of the River to River Greenway Trail and to reconstruct and realign Crawford Drive (“Project”). Tenant accepts the Premises subject to the Project on the following terms and conditions. Commencing on June 24, 2020, and continuing thereafter for the remaining Term of the Lease, the driveway onto Crawford Drive will be closed and the Project will be constructed on portions of the Premises south of the building face. The Project construction area on the Premises is graphically depicted highlighted in green on Exhibit B (“Construction Area”). The remainder of the Premises will be for Tenant’s retail operations and parking. Project construction activities may include demolition of existing site improvements, grading, and the construction of road, trail, and related facilities (“Project Construction”), but Project Construction shall not include demolishing or damaging the building on the Premises during the Term of the Lease. From and after June 24, 2020, the closure of the driveway onto Crawford Drive shall not be deemed a breach of this Lease or of the Tenant’s right to quiet enjoyment of the Premises. From and after June 24, 2020, Project Construction within the Construction Area shall not be deemed a breach of this Lease or of the Tenant’s right to quiet enjoyment of the Premises. Landlord and Tenant agree to the following terms to mitigate the impact of the Project:

- (a) The driveway onto Crawford Drive shall not be closed until a substitute access drive has been installed across the adjacent parcel to the north, PID 42-11560-01-010.
- (b) The parties recognize that ordinary, foreseeable and expected demolition and construction activities occurring in the Construction Area may conflict with Tenant’s normal retail operations. The construction contracts for the Project Construction shall include the following terms:

- a. Before commencing demolition or other work on the Premises, contractors shall be required to install temporary construction fencing to separate the construction work from the retail operations. Once installed, the fencing shall be maintained throughout the duration of the Term of the Lease.
- b. The contractors and their employees shall be prohibited from traversing and/or parking on the retail side of the Premises.
- c. If contractors require access to the Premises north of the Construction Area for any reason, they shall be required to coordinate the work schedule with Tenant's store manager to minimize disruption to the extent reasonably feasible.
- d. The contractors shall be required to maintain commercial general liability insurance policies with minimum coverage limits of \$1 million per occurrence.

**ARTICLE 8
FIXTURES, FURNITURE, AND EQUIPMENT**

Landlord agrees that all trade fixtures, furniture, equipment, or other personal property of whatever kind and nature kept or installed on the Premises by Tenant shall not become the property of the Landlord or a part of the realty no matter how affixed to the Premises and shall be removed by Tenant, on or before the termination of this Lease or any renewal.

**ARTICLE 9
ALTERATIONS, TITLE TO AND REMOVAL OF IMPROVEMENTS**

Except for non-structural alterations or improvements that in the aggregate do not exceed \$5,000.00 during any calendar year period, Tenant may not without Landlord's prior written consent, remodel or make any alterations to the Premises.

Tenant shall have no authority to create or place any lien or encumbrance of any kind whatsoever upon or in any manner to bind the interest of the Landlord in the Premises, and Tenant covenants and agrees promptly to pay all sums legally due and payable by it on account of any labor performed on the Premises upon which any lien is or could be asserted.

**ARTICLE 10
REPAIRS, MAINTENANCE AND SIGNAGE**

Tenant shall, at all time during the Term and any renewal thereof, at its own cost and expense, keep and maintain the Premises. If the improvements on the Premises are damaged or destroyed, Tenant may at its sole option and expense repair and restore the improvements or Tenant may terminate the Lease and vacate the Premises.

Tenant shall be permitted to maintain current signage on the Premises during the Term of the Lease. Tenant shall maintain all signage at its sole cost and expense.

**ARTICLE 11
REAL ESTATE TAXES AND SPECIAL ASSESSMENTS**

Landlord shall be responsible for the payment of all real estate taxes and current and future installments of special assessments covering the Premises during the Term and any renewal thereof.

**ARTICLE 12
UTILITIES**

During the Term, any renewal thereof, and thereafter in the event Tenant holds over, Tenant agrees that it shall pay all costs for water, sewer, gas and electric, heating and cooling, garbage and any other utilities used, or consumed upon or in connection with the Premises, as and when the charges for the same shall become due and payable.

**ARTICLE 13
INSURANCE**

Tenant hereby covenants and agrees that it shall at all times during the Term and any renewal thereof, obtain and maintain and keep in force and effect the following minimum insurance:

- a. A comprehensive general liability insurance policy with a combined limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate, against claims for personal injury, death or property damage occurring in, on or about the Premises. Any deductible amount shall be paid by Tenant; and

All policies of insurance maintained in accordance with this Article 13 shall be subject to and governed by the following:

- a. All policies of insurance and the form thereof shall be standard policies of the insurer.
- b. Tenant shall deliver a certificate of insurance to the Landlord upon execution of this Lease Agreement and renewal certificates shall be delivered not less than ten (10) days prior to the expiration of any then current policy.
- c. All policies of insurance provided for in Article 13 shall be issued in a form reasonably acceptable to Landlord by sound and reputable insurance companies and qualified to do business in the state in which the Improvements are located.

**ARTICLE 14
INDEMNIFICATION**

Tenant hereby agrees to indemnify, defend and save Landlord and Landlord's elected officials, officers, staff, employees, agents and representatives (collectively, "Landlord

Indemnified Parties”) harmless from all claims, actions, judgments, suits, losses, fines, penalties, demands, costs and expenses and liability whatsoever, including reasonable attorneys’ fees, expert fees and court costs (“Tenant Indemnified Claims”) on account of (i) any damage or liability occasioned in whole or in part by any use or occupancy of the Premises or by any act or omission of Tenant or any of Tenant’s agents, employees, subtenants, assignees, licensees, contractors or invitees (collectively, “Tenant Parties”); or (ii) the use of the Premises by Tenant or any Tenant Parties and conduct of Tenant’s business by Tenant or any Tenant Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any Tenant Parties, in or about the Premises. In case any action or proceeding is brought against Landlord or any Landlord Indemnified Parties solely by reason of any such Tenant Indemnified Claims, Tenant, upon notice from Landlord, shall defend the same at Tenant’s expense by counsel approved in writing by Landlord and Landlord’s insurance carrier, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall not be liable for damage or injury occasioned by the negligence or fault of Landlord or its agents, contractors or employees. Tenant’s indemnification obligation under this Article 14 shall survive the expiration or earlier termination of this Lease.

Landlord hereby agrees to indemnify, defend and save Tenant and Tenant’s officers, trustees, directors, partners, beneficiaries, ground lessors, joint venturers, members, stockholders or other principals or representatives (and their respective successors or assigned) (collectively, “Tenant Indemnified Parties”) harmless from all claims, actions, judgments, suits, losses, fines, penalties, demands, costs and expenses and liability whatsoever, including reasonable attorneys’ fees, expert fees and court costs (“Landlord Indemnified Claims”) on account of any act or omission of Landlord or any of Landlord’s agents or employees (collectively, “Landlord Parties”). In case any action or proceeding is brought against Tenant or any Tenant Indemnified Parties solely by reason of any such Landlord Indemnified Claims, Landlord, upon notice from Tenant, shall defend the same at Landlord’s expense by counsel reasonably acceptable to Landlord. Landlord shall not be liable for damage or injury occasioned by the negligence or fault of Tenant or its agents, contractors, employees, or invitees. Landlord’s indemnification obligation under this Article 14 shall survive the expiration or earlier termination of this Lease.

**ARTICLE 15
RESERVED**

**ARTICLE 16
MECHANIC’S LIENS**

Tenant shall not suffer or permit any mechanic’s liens to be filed against the Premises or any part thereof by reason of work, labor, services, or materials supplied or claimed to have been supplied to Tenant or anyone holding (or claiming to hold) the Premises or any part thereof through or under Tenant. If any such mechanic’s liens or notice of lien shall at any time be filed against the Premises on account of an alleged debt of Tenant or any notice of lien by a party engaged by Tenant or Tenant’s contractor or materialmen to work on the Premises, Tenant shall cause the same to be discharged of record by payment, deposit, bond, order of court of

competent jurisdiction or otherwise within forty-five (45) days after the date of filing the same, or in the event such party disputes the validity of such lien, such party may deposit 110% of the amount claimed by the lien holder in escrow with a title insurance company, and/or the other party, or as prescribed by law as security against foreclosure of the lien. If Tenant fails to discharge such mechanic's lien within such period, then, in addition to any other right or remedy of Landlord hereunder, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit in court or by giving security or in such other manner as is or may be prescribed by law. Any amount paid by Landlord for any of the aforesaid purposes, and all reasonable legal and other expenses of such party, including reasonable attorneys' fees, in procuring the discharge of such lien, with all necessary disbursements in connection therewith, with interest thereon at the rate of five percent (5%) per annum from the date of payment shall be repaid by Tenant on demand. Any such amount owed by Tenant to Landlord shall become immediately due and payable by Tenant as Additional Rent with the next succeeding installment of monthly Base Rent which shall become due after such demand. Nothing herein contained shall imply any consent or agreement on the part of Landlord to subject Landlord's estate to liability under any mechanic's lien law.

ARTICLE 17
ASSIGNMENT AND SUBLETTING

Tenant shall not sublet, sell, assign, mortgage, pledge, or in any manner transfer this Lease or any estate or interest thereunder, without the prior written consent of Landlord. Any assignment or subletting permitted by Landlord hereunder shall not release Tenant from any of its Lease obligations.

ARTICLE 18
DEFAULT AND REMEDIES OF LANDLORD

If Tenant shall fail to promptly keep and perform any other obligations of this Lease, strictly in accordance with the terms of this Lease, and shall continue in default for a period of thirty (30) days after written notice thereof by Landlord of default and demand of performance (and Tenant is not diligently proceeding to cure a non-monetary default), then and in any such event and as often as any such event shall occur; and upon such default Landlord may declare the Term or any renewal thereof ended, and enter into said Premises with process of law and expel Tenant or any person occupying the same in or upon said Premises; such reentry shall not work a forfeiture of the rents to be paid nor affect the covenants to be performed by Tenant.

ARTICLE 19
COMPLIANCE WITH LAWS

Tenant shall, at Tenant's sole cost and expense, comply with all federal, state, and local laws and regulations which may be applicable to the Premises. Tenant will observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the Premises and the personal property therein.

Tenant shall secure and maintain all appropriate licenses and permits required from all federal, state, and local governments, if any, needed to operate its business on the Premises so long as the Lease is in effect.

**ARTICLE 20
RESERVED**

**ARTICLE 21
AMENDMENTS**

No waivers, alterations or modifications of this Lease or any agreements in connection therewith shall be valid unless in writing duly executed by both Landlord and Tenant herein.

**ARTICLE 22
RECORDING**

This Lease shall not be recorded.

**ARTICLE 23
SURRENDER OF PREMISES**

Tenant shall, after the last day of the Term or renewal Term, if applicable, or upon any earlier termination, surrender and yield the Premises to Landlord.

**ARTICLE 24
SERVICE OF NOTICE**

Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless the same shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, as follows:

If to Landlord at: City Manager
 City of West St. Paul
 1616 Humboldt Avenue
 West St. Paul, MN 55118

With a copy to: Peter G. Mikhail
 LeVander, Gillen & Miller, P.A.
 633 South Concord St. Suite 400
 South St. Paul, MN 55075

If to Tenant at: AutoZone Parts, Inc.
Department 8700 Store MN3081
123 South Front Street
Memphis, TN 38103

With a copy to: Jeremy S. Young
41 South High Street
Huntington Center, 21st Floor
Columbus, OH 43215

Bradley J. Gunn
Malkerson Gunn Martin LLP
220 South Sixth Street, Suite 1900
Minneapolis, MN 55402

or to such other address as either party may designate by notice given from time to time in accordance with this Article 24. Any notice given in accordance with the provisions of this Article 24 shall be deemed to have been given as of the date occurring two (2) days after such notice shall have been placed for mailing with the United States Postal Service. The amounts payable by Tenant to Landlord hereunder shall be paid to the address designated by Landlord from time to time.

**ARTICLE 25
HOLDING OVER**

In the event Tenant continues to occupy the Premises after the last day of the Term hereby created, or after the last day of any renewal Term, if applicable, Tenant shall pay all actual damages sustained by Landlord as a result of any such holdover.

**ARTICLE 26
RESERVED**

**ARTICLE 27
CAPTIONS**

The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such Articles of this Lease or in any way affect this Lease.

**ARTICLE 28
INVALIDITY OF PROVISIONS**

If any term, covenant, condition or provision of this Lease or the application thereof, to any person or circumstance shall, at any time, or to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances

other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**ARTICLE 29
LANDLORD'S ACCESS TO PREMISES**

Landlord shall have reasonable rights of access to the Premises after reasonable notice and during normal business hours for the purpose of inspecting the condition thereof from time to time throughout the Term of this Lease and any renewals thereof. Landlord shall also have reasonable rights of access to the Premises after reasonable notice for the purpose of surveying, geotechnical testing or other investigation in preparation for the construction of the project for which Landlord condemned the Premises. In the event of an emergency, Landlord shall have the immediate right to access the Premises, without prior notice to Tenant.

**ARTICLE 30
ENTIRE AGREEMENT**

This Lease entered into between Landlord and Tenant as to the Premises supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the Premises and it contains all of the covenants, agreements and other obligations between the parties in respect to said Premises.

**ARTICLE 31
LIABILITY OF LANDLORD**

Landlord's elected officials, officers, staff, employees, agents and representatives will have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease.

**ARTICLE 32
GOVERNING LAW; VENUE**

This Lease will be governed by and construed according to the laws of the State of Minnesota. Any actions or proceedings arising under this Lease, in connection with the Premises will be venued in state or federal courts located in Dakota County, Minnesota, to the exclusion of all other venues. Tenant hereby expressly consents to the exercise of personal jurisdiction over Tenant by such courts.

**ARTICLE 33
AUTHORITY**

Landlord and Tenant hereby represent and warrant that each individual executing this Lease on behalf of said entity is duly authorized to execute and deliver this Lease on behalf of said entity and that this Lease is binding upon said entity in accordance with its terms.

**ARTICLE 34
BROKERS**

Each party warrants to the other that it has had no dealings with any broker or agent in connection with this Lease. Notwithstanding the foregoing, each party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person, with whom the other party has or purportedly has dealt.

**ARTICLE 35
RESERVED**

**ARTICLE 36
RESERVED**

**ARTICLE 37
TIME OF THE ESSENCE**

With respect to all acts of the Tenant and Landlord required under or pursuant to this Lease, time is of the essence.

**ARTICLE 38
COUNTERPARTS**

This Lease may be executed in counterparts, each of which shall be deemed an original, but which taken together shall constitute one and the same instrument. Electronic or facsimile signatures shall be deemed sufficient to create a binding obligation hereunder and shall have the same force and effect as an original signature of such party.

**ARTICLE 39
HAZARDOUS MATERIALS**

Tenant shall not keep or have in or on the Premises any article or thing which is deemed “hazardous” or “extra hazardous” by any responsible insurance company or under federal, state or local law, rule, regulation, code or ordinance except in compliance with all requirements of applicable law. To the extent caused by Tenant or its employees, agents, or invitees, Tenant shall indemnify and save harmless Landlord against all liabilities, damages, claims, fines, penalties, costs and other expenses, including, reasonable attorneys’ fees, which may be imposed upon, incurred by, or asserted against Landlord by reason of any use or condition of the Premises or any part thereof, including, without limitation, liability resulting from the use, storage, generation, or release of any “hazardous substance,” “hazardous waste,” “pollutant” or “contaminant” (as such terms may be now or hereafter defined under any applicable federal, state, or local statute, ordinance, or regulation, collectively referred to as “**Hazardous Material**”).

[Remainder of page left blank intentionally; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

LANDLORD:

City of West St. Paul,
a Minnesota municipal corporation

By: _____
David J. Napier
Its: Mayor

By: _____
Ryan Schroeder
Its: City Manager

TENANT:

AutoZone Parts, Inc.
a Nevada corporation

By: _____

Print Name: _____

Its: _____

By: _____

Print Name: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION

PID 42-11560-01-020

Lot 2, Block 1, Andler and Olson's Addition to West St. Paul, County of Dakota, State of Minnesota.

Abstract Property.

Together with that certain Temporary Easement for Access Purposes by and between Hy-Vee, Inc., and the City of West St. Paul, dated _____, 2020 for the real property situated within Dakota County, Minnesota, and described as:

PID 42-11560-01-010

Lot 1, Block 1, Andler and Olson's Addition, according to the recorded plat thereof.

