

Return to:
David C. Kelly
Peterson Russell Kelly PLLC
P.O. Box 1800
Bellevue, WA 98004-1800



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Skagit County Auditor

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FIRST AMERICAN TITLE CO.
A70697E-3

ATTORNMEN, SUBORDINATION, AND ESTOPPEL AGREEMENT

Grantor: 1. Jerry L. Smith
2. Molly A. Smith

Grantee: General Motors Acceptance Corporation, a Delaware corporation

Legal Description:
TRACT 16/ BURLINGTON HILL BUSINESS PARK BINDING SITE
PLAT/ VOLUME 11 OF SHORT PLATS/ RECORDS OF SKAGIT
COUNTY WASHINGTON.

Complete legal description contained in Exhibit A

Assessors Tax Parcel No.: 8002-000-016-0005

ATTORNTMENT, SUBORDINATION, AND ESTOPPEL AGREEMENT

THIS AGREEMENT is made as of the 15 day of November, 2002, by and between JERRY L. SMITH and MOLLY A. SMITH (individually and collectively referred to as Lessor"), JERRY L. SMITH, INCORPORATED ("Lessee"), and GENERAL MOTORS ACCEPTANCE CORPORATION, its successors and assigns ("GMAC").

RECITALS

1. This Agreement is made in connection with that certain loan from GMAC to Lessor in the maximum principal amount of \$1,500,000.00, and any extensions, modifications, or renewals thereto (the "Loan").
2. The Loan is evidenced by a promissory note of even date herewith (the "Note") and made under the terms of a Loan Application and Agreement of even date herewith, and any amendments thereto, (the "Agreement").
3. The Loan is secured by a Deed of Trust, Security Agreement and Assignments of Leases and Rents (the "Deed of Trust") encumbering that certain real property located in Skagit County, Washington, which is more particularly described on Exhibit A hereto (the "Property").
4. All of the documents for the Loan, including without limitation the Agreement, Note, Deed of Trust, and this Agreement, together with any and all amendments, extensions, and renewals thereof, are hereinafter collectively referred to as the "Loan Documents."
5. Lessor has previously leased the Property and the improvements now or hereafter located thereon (hereafter the "Premises") to Lessee under that certain lease dated 10/15/02, 2002 and thereafter amended from time to time by written agreement (the "Lease").
6. GMAC has required this Agreement as a condition of the Loan, and the parties hereby acknowledge that this Agreement is a principal inducement for GMAC to make the Loan. Lessor and Lessee make this Agreement with the express intent and understanding that GMAC will rely on this Agreement in making the Loan, and Lessor and Lessee desire to afford GMAC the assurances and agreements contained in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties to this Agreement agree as follows:



1. Lessee's Approval. Lessee consents to and agrees with: (a) the funding of the Loan; (b) the encumbrance of the Premises; (c) the encumbrance of any personal property owned by Lessor that may from time to time be situated upon the Premises; (d) the assignment to GMAC of all of Lessor's rights and rents under the Lease; (e) the personal guarantees of the parties comprising Lessor; and (f) all other liens and assurances that are required by GMAC in any of the Loan Documents. Lessee agrees that in making the Loan GMAC assumes no responsibility regarding the application of the proceeds thereof or the performance of Lessor's obligations under the Lease.

2. Lease Assurances. Lessor and Lessee hereby covenant and agree with GMAC as follows:

- (a) The Lease has been properly executed and delivered by Lessee, is valid and binding upon Lessee, has not been modified, and is in full force and effect;
- (b) There exist no defaults under the Lease by Lessor or Lessee as of the date of this Agreement;
- (c) Lessee is in possession and has accepted the condition of the Premises, and no further work on the part of Lessor remains outstanding with respect thereto;
- (d) Lessee has not paid any rent to Lessor more than one month in advance, and there exist no rent concessions or abatements;
- (e) Lessee has no defense, claim of lien, or offset under the Lease or against the rent payable thereunder;
- (f) Lessee has no claims to or interest in the Premises, legal or equitable, or any contract, right of refusal, or option therefor, other than as a tenant under the Lease; and
- (g) The Lease will not merge with the fee title to the Premises without GMAC's prior written consent.

Lessee hereby covenants and agrees to notify GMAC in writing promptly if and when any of the above assurances becomes untrue or incorrect.

3. Lessee's Attornment. Lessee and Lessor hereby covenant and agree with GMAC that:

- (a) If GMAC notifies Lessee of any default under any of the Loan Documents and as a result thereof requests Lessee to attorn to GMAC, Lessee shall promptly recognize GMAC as the lessor under the Lease. In such event, all further obligations on the part of Lessee under the Lease, including without limitation all payments of rents, deposits, or other sums, shall



be paid or performed by Lessee directly to GMAC;

(b) Lessee shall comply with any demand made upon Lessee for the payment of rent due to GMAC in accordance with the terms of the Deed of Trust. Lessor hereby directs Lessee to comply with any such request and agrees that: (i) Lessor shall have no claim against Lessee as a result of such compliance or for any sums paid to GMAC pursuant thereto; and (ii) any notice that Lessee receives from GMAC pursuant to this Agreement shall be as fully effective as if received from Lessor in accordance with the Lease;

(c) If GMAC becomes the owner of the Premises as a result of any foreclosure, trustee's sale, or deed in lieu thereof, or through any disposition of the Premises through any bankruptcy or other action, and if GMAC elects not to terminate the Lease, then Lessee shall attorn to and recognize GMAC as the lessor under the Lease, and GMAC shall have all of the rights, powers, and privileges granted to Lessor thereunder;

(d) This Agreement is specifically enforceable and shall survive any cancellation of the Lease resulting from the foreclosure of the Deed of Trust or any other lien or by operation of law, statute, recorded priority, or private agreement;

(e) If, despite this Agreement, the Lease is terminated without GMAC's express written consent, Lessee agrees to execute a new lease with GMAC on the same terms and conditions and for the unexpired original term of the Lease, and GMAC shall also have the right to specifically enforce this Agreement;

4. Subordination. The Lease, including the entire estate evidenced thereby, is and shall be unconditionally junior and subject to the Deed of Trust. Lessee warrants to GMAC that Lessee has not subordinated the Lease to any other lien, and Lessee covenants not to subordinate the Lease to any other lien without first receiving GMAC's written consent in each instance. Lessee shall have no right to offset against rent or other obligation under the Lease any sum paid or agreed to be paid by Lessee to any person unless such offset is first approved by GMAC in writing and the person to be paid holds a lien against the Premises that is prior to the lien of the Deed of Trust.

5. Lease Modifications. Lessor and Lessee hereby covenant and agree with GMAC that no assignment, subletting, voluntary or involuntary transfer, mortgage, pledge, hypothecation, extension, substitution, revision, surrender, cancellation, termination, or any other modification of the Lease or any of Lessee's interests under the Lease, or any right or option with respect thereto, shall be entered into or agreed upon between Lessor, Lessee, or their successors in interest or unilaterally effected by Lessor or Lessee without in each instance being first specifically and expressly approved in writing by GMAC. The agreement by GMAC to any given modification of the Lease shall not be deemed or construed as a waiver of the obligation of Lessee to obtain GMAC's approval for any subsequent modifications, whether the same be similar or dissimilar to the one so approved, and no such consent shall operate as releasing



Lessee from any of its obligations under the Lease unless such consent expressly so provides.

6. Rental Payments. Lessee hereby covenants and agrees with GMAC that it shall not tender any rent to Lessor that is attributable to any period of the Lease that begins more than two months from the date of rental payment. Lessor agrees with GMAC that Lessor shall not make any demand for or accept any such advance rent. Lessee recognizes and understands that GMAC has materially relied upon the existence of the rental income payable by Lessee, and Lessee shall make no attempt to revise the amount or schedule of any rental payment without first obtaining the express written consent of GMAC in each instance.

7. Condemnation and Insurance Proceeds.

(a) Assignment. Notwithstanding anything to the contrary contained in the Lease, by inference or otherwise, Lessor and Lessee acknowledge that under the terms of the Loan Documents, Lessor has assigned to GMAC: (i) all rights to awards of damages on account of any taking or condemnation or any act of any public or quasi-public authority for which damages are payable; and (ii) all rights to any insurance proceeds payable as a result of damage to the Premises. Under the terms of the Loan Documents, GMAC, in its sole discretion, may apply all or any part of such awards or proceeds to the balance or partial balance of the principal and interest owing on the Loan or may, but shall have no obligation to, apply such awards or proceeds, in whole or in part, to the relocation, modification, repair, or reconstruction of the Premises.

(b) Lessee's Waiver. Lessee hereby waives:

(i) All right to any portion of any such awards and proceeds to the extent that the amount of said award or proceeds is less than the principal sum then due and owing under the Loan;

(ii) Any duty or obligation on the part of Lessor or GMAC, at law or under the Lease, to reconstruct the Premises to the extent that said awards or proceeds are insufficient to do so as a result of the retention thereof by GMAC;

(iii) Any obligation that GMAC may have under the Lease, whether resulting from its acquisition of title to the Premises or otherwise, to reconstruct the Premises in the event of any damage by casualty or taking by condemnation; and

(iv) In the event of a foreclosure, trustee's sale, or deed in lieu thereof by GMAC, Lessee shall and hereby agrees to waive all of its rights to any portion of said awards or proceeds to the extent that the same are less than the greater of: (A) the unpaid principal and accrued interest of the Loan; or (B) the amount paid by GMAC in acquiring title to the Premises.

8. GMAC's Right to Cure. Lessor and Lessee hereby covenant and agree with



GMAC that in the event of any act or omission by any person that would afford Lessor or Lessee the right, either immediately or after any lapse of time, to: terminate the Lease; (b) claim a partial, total, actual, or constructive eviction; or (c) offset any rent, both Lessor and Lessee shall refrain from exercising any such right until: (i) written notification specifying such alleged default has been given to GMAC; and (ii) GMAC has been given a reasonable period of time (but in no event less than fifteen (15) days following GMAC's receipt of such notice) in which to cure such default (the "Cure Period"). The Cure Period may be extended as necessary when GMAC cannot effect such cure without foreclosing upon the Premises or taking some other action which, when pursued with reasonable diligence, entails any period in excess of fifteen (15) days. The parties agree that the foregoing shall not be interpreted or construed as imposing any duty or obligation upon GMAC to cure any default of Lessor or Lessee at any time, and if Lessor's default cannot practically be cured by GMAC, Lessee's remedies shall be limited to the recovery from Lessor of Lessee's actual damages.

9. Liability of GMAC.

(a) Lessee agrees that GMAC shall not be:

(i) Liable for the erection, completion, repair, restoration, or expansion of any improvements on or to any part of the Premises;

(ii) Liable for any act or omission of any prior landlord of the Premises (including Lessor);

(iii) Subject to any offsets or defenses that Lessee may have against any prior landlord (including Lessor);

(iv) Bound by any rent or additional rent that Lessee may have paid in advance to any prior landlord (including Lessor) for a period in excess of two months or by any security deposit, cleaning deposit, or any other prepaid charge that Lessee might have paid in advance to any prior landlord (including Lessor); or

(v) Bound by any agreement or modification of the Lease made without the prior written consent of GMAC in accordance with the terms of this Agreement.

(b) If GMAC requires Lessee to attorn to GMAC, or if GMAC acquires fee title to the Premises, Lessee shall look solely to Lessor or other predecessor of GMAC for any defaults alleged on the part of Lessor under the Lease existing at the time such acquisition of title is recorded. GMAC shall have no further liability under the Lease following the earlier of:

(i) the assignment of the Loan Documents; (ii) the release of the Loan Documents; or (iii) the subsequent disposition in any form of any interest acquired by GMAC in the Premises as a result of any foreclosure, trustee's sale, or deed in lieu thereof under the Deed of Trust.



10. Default. In the event of any default on the part of Lessee under the Lease following any requested attornment to GMAC, GMAC shall have all of the rights and remedies available to Lessor under the Lease and under any applicable procedures at law or in equity.

11. No Waiver. No requirement of this Agreement may be waived at any time except in a writing signed by GMAC, and any such waiver shall be effective only as to its terms and on a single occasion. Neither GMAC's delay or omission in exercising any right, power, or remedy under this Agreement upon default of Lessor or Lessee, nor GMAC's failure to insist upon strict performance of any of the covenants or agreements contained in this Agreement shall be construed as a waiver of any such right, power, remedy, covenant, or agreement or as an acquiescence in Lessor's or Lessee's breach or default. By accepting payment of any sum secured by this Agreement after its due date, GMAC does not waive its right to require prompt payment of any other sums when due or to declare default for failure to pay. All of GMAC's rights or remedies under this Agreement are intended to be cumulative and not in substitution for any rights or remedies available by law or otherwise.

12. Assignment by GMAC; Participation. GMAC may assign this Agreement in whole or in part to any person or entity and may grant participations in any of its rights under this Agreement, without notice and without affecting Lessor's or Lessee's liability under this Agreement. In connection with any proposed assignment, participation, or similar arrangement, GMAC may make available to any person or entity all credit, financial, or other data furnished or to be furnished to GMAC by Lessor or Lessee. Lessor and Lessee agree to provide to the person or entity designated by GMAC any information that such person may reasonably require to form an investment decision regarding the proposed assignment, participation, or other arrangement. Neither Lessor nor Lessee may assign this Agreement to any person at any time, except in connection with a transaction approved in advance and in writing by GMAC.

13. Attorneys' Fees; Costs. Lessor and Lessee agree to reimburse GMAC for all costs, expenses, and reasonable attorneys' fees that GMAC incurs in connection with the realization or enforcement of any obligation or remedy contained in this Agreement, with or without litigation, including without limitation any costs, expenses, and fees incurred: (a) on appeal; (b) in any arbitration proceeding; (c) in any action contesting or seeking to restrain, enjoin, stay, or postpone the exercise of any remedy in which GMAC prevails; (d) in any bankruptcy, probate, or other proceeding involving any person comprising Lessor or Lessee; and (e) in connection with all negotiations, documentation, and other actions relating to this Agreement. All such costs, expenses, and fees shall be due and payable upon demand, shall bear interest from the date incurred through the date of collection at the highest rate stated in the Note (including the Default Rate), and shall be secured by the Deed of Trust.

14. Time; Other Agreements Unimpaired. Time is of the essence of every term, covenant, and condition contained in any of the Loan Documents. Nothing in this Agreement shall be construed to prevent GMAC from enforcing any other notes, security instruments, or agreements between the parties in accordance with their respective terms.



15. Multiple Persons. If Lessor or Lessee is comprised of more than one person or entity, then the terms "Lessor" and "Lessee" shall refer to all such persons or entities collectively and to each such person or entity individually, such that all obligations, covenants, warranties, requirements, restrictions, and other provisions of this Agreement shall apply both collectively and individually. If Lessor or Lessee is comprised of more than one person or entity, then each of such persons or entities shall be jointly and severally liable for the performance of the respective obligations of Lessor and Lessee under the Loan Documents, and for any default on the part of any one or more of the persons or entities comprising Lessor or Lessee.

16. Legal Relationships. No partnership, joint venture, or other similar relationship shall be inferred from this Agreement. Neither Lessor nor Lessee shall have the right or authority to make representations, act, or incur debts or liabilities on behalf of GMAC. Neither Lessor nor Lessee is executing this Agreement as an agent or nominee for an undisclosed principal, and no third party beneficiaries are or shall be created by the execution of this Agreement, other than by GMAC's assignment of or grant of participations in this Agreement.

17. Notices. Any notices, demands, or communications permitted or required hereunder shall be in writing and personally delivered or sent by first class mail, or by certified or registered mail, return receipt requested, postage prepaid, addressed to the parties at the addresses listed below, or at such other addresses as the parties may from time to time designate in writing. All notices shall be deemed received on the date delivered, if personally delivered, or on the earlier of three (3) days after mailing or the date delivery is officially recorded on the return receipt, if sent by certified or registered mail.

TO: Jerry L. Smith and Molly A. Smith
c/o Jerry L. Smith, Incorporated
1246 Reservation Road
Anacortes, WA 98221

TO: Jerry L. Smith, Incorporated
1246 Reservation Road
Anacortes, WA 98221

TO: General Motors Acceptance Corporation
8055 E. Tufts Ave, Suite 300
Denver, Colorado 80237

18. Modification; Successors. This Agreement may be amended, modified, changed, or varied only by a written agreement signed by the parties hereto. This Agreement shall inure to the benefit of and bind all of the parties, their successors, estates, heirs, personal representatives, and assigns.



19. Validity. If a court of competent jurisdiction finally determines that any provision of this Agreement is invalid or unenforceable, the court's determination shall not affect the validity or enforceability of the remaining provisions of this Agreement. In such event, this Agreement shall be construed as if it did not contain the particular provision that was determined to be invalid or unenforceable. No such determination shall affect any provision of this Agreement to the extent that it is otherwise enforceable under the laws of any other applicable jurisdiction. The foregoing notwithstanding, if the court's ruling of invalidity or unenforceability includes a determination that a principal purpose of this Agreement is thereby defeated, then the entire Agreement may be held by the court to be void.

20. Mutual Negotiation. GMAC, Lessor, and Lessee confirm that they have mutually negotiated this Agreement and that none of the terms or provisions of this Agreement shall be construed against any party.

21. Paragraph Headings; Usage. The paragraph headings are for convenience only and in no way define, limit, extend, or describe the scope or intent of this Agreement or any of its provisions. Except as otherwise apparent from the context, plural and singular words are used interchangeably, as are masculine, feminine, or neutral words.

22. Applicable Law; Venue. This Agreement and the rights of the parties hereunder shall be governed by, construed, and enforced in accordance with the laws of the State of Washington. Each of the parties to this Agreement submits to the jurisdiction of the federal or state courts located in King County, Washington or Skagit County, Washington, and further agrees that the venue of any action involving this Agreement shall lie King County, Washington or Skagit County, Washington at the option of GMAC.

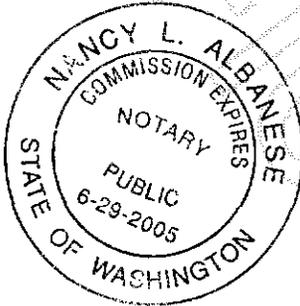
23. Entire Agreement. This Agreement, including any exhibits or addenda, contains the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein and in the other Loan Documents, and together the Loan Documents supersede any previous written or verbal communications, representations, and agreements between the parties concerning the Loan.



STATE OF WASHINGTON)
) ss.
COUNTY OF Skagit)

On this day personally appeared before me Jerry L. Smith, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 15th day of November, 2002.

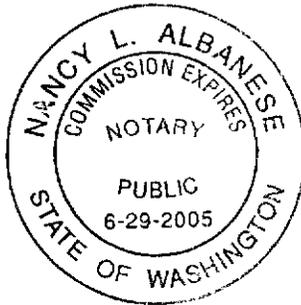


Nancy L. Albanese
NANCY L. ALBANESE
[print notary's name]
Notary Public in and for the State of Washington
residing at anacostis
My commission expires: 6-29-05

STATE OF WASHINGTON)
) ss.
COUNTY OF Skagit)

On this day personally appeared before me Molly A. Smith, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 15th day of November, 2002.



Nancy L. Albanese
NANCY L. ALBANESE
[print notary's name]
Notary Public in and for the State of Washington
residing at anacostis
My commission expires: 6-29-05



IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

LESSOR:


Jerry L. Smith

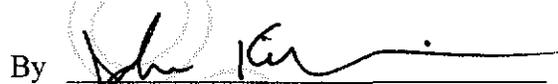

Molly A. Smith

LESSEE:

JERRY L. SMITH, INCORPORATED

By 
Jerry L. Smith, President

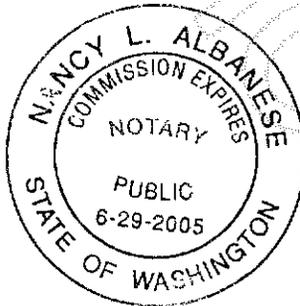
GENERAL MOTORS ACCEPTANCE CORPORATION

By 
Its ASSIST. TRES.

STATE OF WASHINGTON)
) ss.
COUNTY OF Skagit)

On this day personally appeared before me Jerry L. Smith, to me known to be the President of Jerry L. Smith, Incorporated, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the same instrument.

GIVEN under my hand and official seal this 15th day of November, 2002.

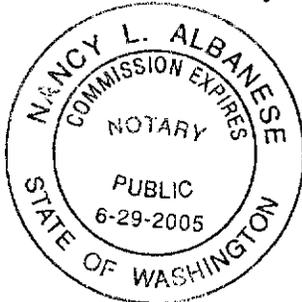


Nancy L. Albanese
[print notary's name]
Notary Public in and for the State of Washington
residing at Anacortes
My commission expires: 6-29-05

STATE OF WASHINGTON)
) ss.
COUNTY OF ~~KING~~ Skagit)

On this day personally appeared before me John Killorin, to me known to be the asst. Trus. of General Motors Acceptance Corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the same instrument.

GIVEN under my hand and official seal this 15th day of November, 2002.



Nancy L. Albanese
[print notary's name]
Notary Public in and for the State of Washington
residing at Anacortes
My commission expires: 6-29-05



EXHIBIT A

LEGAL DESCRIPTION

TRACT 16 OF BURLINGTON HILL BUSINESS PARK BINDING SITE PLAN, APPROVED SEPTEMBER 7, 1994, RECORDED SEPTEMBER 8, 1994, IN VOLUME 11 OF SHORT PLATS, PAGES 109 THROUGH 112, UNDER AUDITOR'S FILE NO. 9409080052, RECORDS OF SKAGIT COUNTY, WASHINGTON, BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M., IN SKAGIT COUNTY, WASHINGTON.

