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Skagit County Auditor

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 Return to: ND7S 1002-89228
 Republic Title of Texas, Inc.
 2625 Howell Street, 10th Floor
 Dallas Texas 75204

RECORDING REQUESTED BY
 AND WHEN RECORDED MAIL TO:

Skagit Bank
 Main Office
 301 E. Fairhaven Avenue
 Burlington, WA 98233

Space above for Recorder's Use

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Nondisturbance and Attornment Agreement ("**Agreement**") is entered into as of March 28, 2016, by (A) Skagit Bank, a Washington corporation ("**Bank**"), (B) Hinton Family, LLC, a Washington limited liability company and Gregory T. Hinton, as his separate property (collectively, "**Landlord**") and (C) Harbor Freight Tools USA, Inc., a Delaware corporation ("**Tenant**").

RECITALS

A. Concurrently herewith, Landlord and Tenant have entered into a lease agreement ("**Lease**"), covering certain premises located at 2400 Riverside Drive, Mt. Vernon, Washington 98723 ("**Property**"). The Property is more particularly described in Exhibit A attached hereto and incorporated herein. 17-3404 340417-2-008-0005

B. Bank is the mortgagee under a Deed of Trust ("**Mortgage**"), dated as of July 29, 2011, and recorded on August 1, 2011, as Instrument No. 201108010067, in the Official Records of Skagit County, Washington, encumbering the Property. The Mortgage secures certain obligations to Bank as more particularly described therein.

C. On the terms and conditions in this Agreement, the parties desire to subordinate Tenant's leasehold interest in the Property to the lien of the Mortgage and to assure Tenant possession of the Property for the entire term of the Lease, even though Bank may foreclose the lien of the Mortgage before expiration of the Lease.

Therefore, incorporating the foregoing Recitals, and in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

Section 1. Subordination.

The Lease, the leasehold estate created thereby, and all rights and privileges of Tenant thereunder shall be subject and subordinate to the lien of the Mortgage, and to any renewals, modifications, consolidations, replacements and extensions of the Mortgage to the full extent of the obligations now or hereafter secured by the Mortgage.

Section 2. Nondisturbance.

So long as Tenant is not in default, beyond any period given to Tenant to cure a default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Tenant's possession of the Property and Tenant's rights and privileges under the Lease, including any extensions or renewals, shall not be diminished or interfered with by Bank during the term of the Lease or any extensions or renewals. So long as Tenant is not in default, beyond any period given Tenant to cure such default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Bank will not join Tenant as a party for the purpose of terminating or otherwise affecting Tenant's interest under the Lease, in any action of foreclosure or other proceeding brought by Bank to enforce any rights arising because of any default under the Mortgage. Bank may, however, join Tenant as a party if joinder is necessary under any statute or law to secure the remedies available to Bank under the Mortgage, but joinder shall be for that purpose only and not for the purpose of terminating the Lease or affecting Tenant's right to possession of the Property.

Section 3. Attornment.

If the Landlord's interest is transferred to and owned by Bank or any successor of Bank ("**Acquiring Party**") because of foreclosure or other proceedings brought by Bank, or by any other manner, and Bank succeeds to Landlord's interest under the Lease, Tenant shall be bound to the Acquiring Party, and Acquiring Party shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the balance of the remaining term, including any extensions or renewals, with the same effect as if Acquiring Party were Landlord under the Lease. Tenant agrees to attorn to Acquiring Party as the Landlord, with the attornment being effective and self-operable immediately upon Acquiring Party succeeding to the interest of Landlord under the Lease, all without the execution by the parties of any further instruments. However, Tenant shall not be obligated to pay rent to Acquiring Party until Tenant receives written notice from Acquiring Party, together with evidence satisfactory to Tenant, demonstrating that Acquiring Party has succeeded to Landlord's interest under the Lease and directing where rent should be mailed. The respective rights and obligations of Tenant and Acquiring Party upon attornment, to the extent of the then-remaining balance of the term of the Lease, shall be the same as in the Lease, which is incorporated by reference in this Agreement. If Acquiring Party succeeds to Landlord's interest in the Lease, Acquiring Party shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, after Acquiring Party's succession to Landlord's interest, have the same remedies against Acquiring Party for the breach of any agreement in the Lease that Tenant might have had against Landlord.

Section 4. Notices.

In this Agreement, wherever it is required or permitted that notice and demand be given by any party to another party, that notice or demand shall be given in writing and sent via a nationally recognized overnight courier service (e.g. Federal Express), addressed as follows:

For Landlord: 18105 NE 23rd St
 Redmond WA 98052
 Attn: Susan Hinton

For Tenant:

Attn: VP of Real Estate
26541 Agoura Road
Calabasas, CA 91302

With a copy to:

Attn: General Counsel
26541 Agoura Road
Calabasas, CA 91302

For Bank:

Main Office
301 E. Fairhaven Avenue
Burlington, WA 98233

Any party may change an address given for notice by giving written notice of that change to all other parties via a nationally recognized overnight courier service.

Section 5. Authority.

If any party is a corporation, limited liability company, or a partnership, all individuals executing this Agreement on behalf of such corporation, limited liability company, or partnership represent and warrant that they are authorized to execute and deliver this Agreement on behalf of the corporation, limited liability company, or partnership and that this Agreement is binding upon such corporation, limited liability company, or partnership.

Section 6. Miscellaneous.

This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest. If any party commences any action against any other party based on this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees, expenses, and costs of suit. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns. The headings of this Agreement are for reference only and shall not limit or define any meaning of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which shall constitute one and the same instrument. This Agreement shall be construed in accordance with and governed by the law of the State in which the Property is located.

The parties have duly executed this Agreement as of the date first above written.

BANK:

SKAGIT BANK,
a Washington corporation

By: 

Name: Karen Henderson

Title: Vice President

TENANT:

HARBOR FREIGHT TOOLS USA, INC.,
a Delaware corporation

By: 

Name: William Feiler

Title: Vice President of Real Estate
and Construction

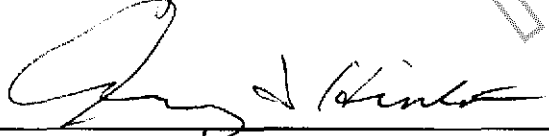
LANDLORD:

HINTON FAMILY LLC,
a Washington limited liability company

By: 

Name: Susan K. Hinton

Title: manager/member


GREGORY T. HINTON, as his separate property

ACKNOWLEDGMENTS

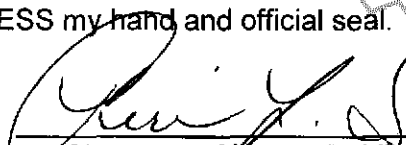
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

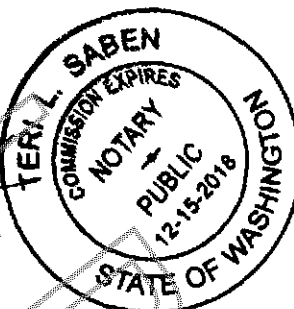
STATE OF WA
COUNTY OF SKagit

On March 30, 2016, before me, Teri L. Saben, a Notary Public, personally appeared Kirk Herbold, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of WA that the foregoing paragraph is true and correct.

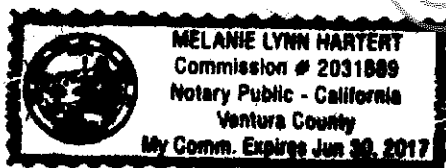
WITNESS my hand and official seal.


Signature of Notary Public



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California
COUNTY OF Los Angeles

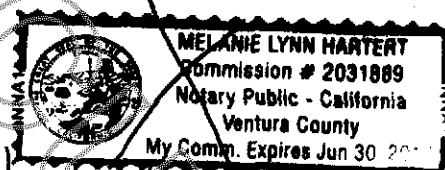


On March 28, 2016, before me, Melanie Lynn Hartert, a Notary Public, personally appeared **William Feiler**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature of Notary Public



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

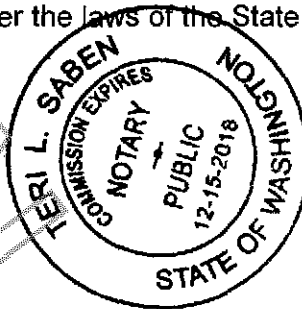
STATE OF WA
COUNTY OF Snohomish

On March 30, 2016, before me, Teri L. Saben, a Notary Public, personally appeared Susan K. Hinton who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of WA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Teri L. Saben
Signature of Notary Public



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF WA
COUNTY OF Snohomish

On March 30, 2016, before me, Teri L. Saben, a Notary Public, personally appeared Gregory T. Hinton, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of WA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Teri L. Saben
Signature of Notary Public

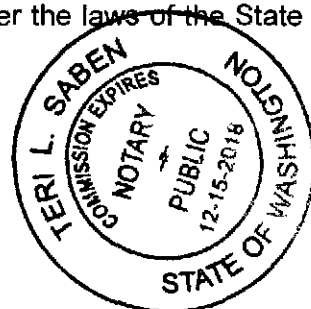


EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL "A":

That portion of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 17, Township 34 North, Range 4 East W.M., lying Southerly of the County Road along the North line thereof, lying Easterly of Old Highway 99 along the West line thereof, lying Northerly of a 60 foot strip conveyed to the City of Mount Vernon by deed dated July 3, 1959 and recorded July 10, 1959, as Auditor's File No. 582951 and lying Westerly of the West line (and Southerly extension of said West line) of a Tract conveyed to Keith S. Johnson, et al, by deed dated October 9, 1957 and recorded October 15, 1957, under Auditor's File No. 557246, records of Skagit County, Washington,

EXCEPT that portion deeded to the City of Mount Vernon by deed recorded under Auditor's File No. 8511050003.

Situate in the City of Mount Vernon, County of Skagit, State of Washington.

PARCEL "B":

A strip of land 10 feet in width lying Easterly of and adjacent to the East line of that certain tract in the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 17, Township 34 North, Range 4 East, W.M., conveyed to Hinton Oldsmobile - G.M.C. Truck, Inc., a corporation, by deed dated May 28, 1968, recorded June 3, 1968, under Auditor's File No. 714268.

EXCEPTING from Parcels "A" and "B" above described, those portions deeded to the City of Mount Vernon by instrument recorded March 28, 2008, under Auditor's File No. 200803280001, records of Skagit County, Washington.

Situate in the City of Mount Vernon, County of Skagit, State of Washington.

APN: 340417-2-008-0005