

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

U.S. Bank National Association
170 South Main Street, 6th Floor
Salt Lake City, Utah 84101
Attention: Nate Quist

12560235
6/21/2017 3:27:00 PM \$26.00
Book - 10570 Pg - 69-77
Gary W. Ott
Recorder, Salt Lake County, UT
FOUNDERS TITLE
BY: eCASH, DEPUTY - EF 9 P.

17-011946

(Space Above For Recorder's Use)

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT
AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made as of June 20, 2017, among U.S. Bank National Association, a national banking association ("Lender"), Miller Family Real Estate, L.L.C., a Utah limited liability company ("Lessor"), and Larry H. Miller Luxury Cars, a Utah corporation, doing business as Larry H. Miller Lexus of Murray ("Lessee").

Recitals:

A. Lessor and Lessee have entered into that certain Lease Agreement dated November 1, 2016 (the "Lease"), concerning certain leased premises (the "Premises") located on certain real property in Salt Lake County, Utah, which is legally described on the attached Exhibit A (the "Land" and along with any and all buildings and other improvements that are now existing or will exist on the Land, collectively, the "Project").

B. As security for a loan from Lender to Lessor in the original principal amount of \$23,600,000.00 (the "Loan"), Lessor is encumbering the Project under a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith in favor of Lender, to be recorded in the official records of Salt Lake County, Utah (as now or hereafter increased, amended, modified, supplemented, consolidated, replaced, substituted, extended and/or renewed, the "Deed of Trust").

C. Lender has required the execution of this Agreement as a condition to making the Loan.

D. Lender, Lessor and Lessee have agreed to the following with respect to their mutual rights and obligations pursuant to and under the Lease and the Deed of Trust.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Subordination.** All of Lessee's right, title and interest in and to the Premises, the Lease and all rights, remedies and options of Lessee under the Lease are and shall remain unconditionally subject and subordinate to the Deed of Trust and the lien thereof, to all the terms,

conditions and provisions of the Deed of Trust, to each and every advance made or hereafter made under the Deed of Trust, and to all increases, amendments, modifications, supplements, consolidations, replacements, substitutions, extensions and renewals of the Deed of Trust so that at all times the Deed of Trust shall be and remain a lien on the Premises prior and superior to the Lease for all purposes.

2. Non-Disturbance. In the event of a foreclosure under the Deed of Trust, at Lender's sole option and election, Lender may terminate the Lease upon written notice to Lessee. If Lender does not exercise such option and so long as there shall then exist no breach, default, or event of default on the part of Lessee under the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Lessee under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Lessee as tenant under the Lease subject to the terms and provisions of the Lease except as modified by this Agreement; provided, however, that Lessee and Lender agree that the following provisions of the Lease (if any) shall not be binding on Lender: any option to purchase with respect to the Project; any right of first refusal with respect to the Project; any provision regarding the use of insurance proceeds or condemnation proceeds with respect to the Project which is inconsistent with the terms of the Deed of Trust. Lender may exercise its option to terminate the Lease at any time during the term of the Lease notwithstanding any prior attornment by Lessee and any prior non-disturbance of the Lease by Lender by agreement, action, notice, acceptance of rent, full or partial performance, reliance by Lessee, or otherwise.

3. Attornment. Subject to Lender's rights under Section 2 above, upon Lessee's receipt of notice that Lender or any other party has become the owner of the Premises following a foreclosure sale or conveyance in lieu of foreclosure ("New Owner"), Lessee will attorn to and recognize such New Owner as its substitute lessor under the Lease. Lessee's attornment to and recognition of New Owner pursuant to this Agreement will be effective and self-operative immediately upon Lessee's receipt of such notice without the execution or delivery of any further instrument. Upon New Owner's request, Lessee will execute and deliver an instrument acknowledging Lessee's attornment to and recognition of New Owner.

4. New Owner. New Owner will be bound, as the lessor, to Lessee under all covenants and conditions of the Lease for the remainder of the term of the Lease and any renewal or extension thereof pursuant to the terms of the Lease, except that New Owner:

- (i) will not be bound by any provision of the Lease restricting the use of any properties owned by New Owner, other than the Land;
- (ii) will not be bound by any amendment, supplement or other modification of the Lease which was not consented to in writing by Lender;
- (iii) will not be liable for any act, omission, or breach by any lessor under the Lease which occurs prior to the date New Owner acquires title to and possession of the Project, nor subject to any right of set-off or defense which Lessee may have against any prior lessor;

- (iv) will not be liable for the return of any security deposit given by Lessee to Lessor except to the extent actually received by New Owner;
- (v) will not be liable under any covenant or warranty in the Lease with regard to the construction of the Premises and/or the Project, nor for any delays in completion of construction, nor for any implied warranty relating to the construction of the Premises and/or the Project; and
- (vi) will, upon any sale or other transfer by New Owner of its interest in the Premises, automatically be released and discharged from all liability thereafter accruing under the Lease.

Lessee shall look only to the estate and property of New Owner in the Land and the Project for the satisfaction of Lessee's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by New Owner as the lessor under the Lease, and no other property or assets of New Owner shall be subject to levy, execution or other enforcement procedure for the satisfaction of Lessee's remedies under or with respect to the Lease.

5. Miscellaneous.

- (a) **Notices.** Any notice required or permitted to be given by any party under the terms of this Agreement shall be deemed to have been given on the date the same is deposited in the United States Mail registered or certified, return receipt requested, postage prepaid, or deposited with Federal Express, Airborne or another reputable overnight courier, addressed to the party to which the notice is to be given at the address set forth below, or at any other address specified in a notice given by such party to the others not less than ten (10) days prior to the effective date of the address change:

If to Lender: U.S. Bank National Association
170 South Main Street, 6th Floor
Salt Lake City, Utah 84101
Attention: Nate Quist

If to Lessor: Miller Family Real Estate, L.L.C.
9350 South 150 East, Suite 1000
Sandy, Utah 84070
Attention: Scott Bates, President

If to Lessee: Larry H. Miller Luxury Cars
5686 S. State Street
Sandy, Utah 84107
Attention: Managing Officer

With a copy to:

Sarah Starkey
Association Counsel
9350 South 150 East, Suite 500
Sandy, Utah 84070

- (b) **Notice of Default.** Lessee will provide to Lender each notice of default by Lessor, as and when it provides such notice to Lessor, and Lender will have the right, but not the obligation, to cure any such default within 15 days after the expiration of the time provided in the Lease to Lessor to cure such default, provided that if Lender, acting with diligence, cannot cure such default within such 15-day period, Lender's commencement of a remedy within such 15-day period will be sufficient so long as a cure is effected within a reasonable time. Lessee agrees not to exercise any of its remedies in connection with any default notice to Lessor until the expiration of the cure period provided to Lender by this Agreement, and Lessee agrees to accept any cure from Lender as if made by Lessor. Notwithstanding the foregoing, unless Lender otherwise agrees in writing to assure any obligations of Lessor under the Lease, Lessor shall remain solely liable to perform Lessor's obligations under the Lease, both before and after Lender's exercise of any right or remedy under this Agreement.
- (c) **No Advance Rent.** Lessee will not pay the rent or any other sums due under the Lease more than one month in advance, except with the written consent of Lender.
- (d) **Insurance and Condemnation Proceeds.** Notwithstanding any provision of the Lease to the contrary, the Deed of Trust and the other documents executed in connection with the Loan shall control the application of insurance or condemnation proceeds and the restoration of the Premises or the Project in the event of a casualty loss.
- (e) **Assignment of Rents.** Lessor and Lessee acknowledge that Lender is entitled, pursuant to an Assignment of Leases and Rents executed by Lessor in favor of Lender, to receive and collect all rent payable under the Lease directly from Lessee. Lessee agrees to pay all of said rent directly to Lender upon receipt of a written request from Lender. Until Lessee receives such request from Lender, Lessee will pay all of said rent to Lessor in accordance with the provisions of the Lease. Upon Lessee's receipt of such request, Lessee will not be required to determine whether Lessor is in default under the Loan or the Deed of Trust.
- (f) **No Modification or Termination.** Neither Lessor nor Lessee will cancel or terminate the Lease or amend, modify, supplement, or in any manner alter any of its terms without the prior written consent of Lender.
- (g) **No Other Subordination.** Neither Lessor nor Lessee will, during the term of the Deed of Trust, permit the Lease to become subordinate to the lien of any mortgage or security instrument in favor of any person or entity other Lender.

- (h) **Successors and Assigns.** This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, including any New Owner.
- (i) **Governing Law.** This Agreement and the Lease will be governed by and construed and interpreted in accordance with the internal laws of the State of Utah.
- (j) **Counterparts.** This Agreement may be signed in counterparts and each counterpart shall be effective as an original when counterparts have been signed by all parties.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Subordination, Non-Disturbance and Attornment Agreement has been duly executed as of the day and year first above written.

LENDER:

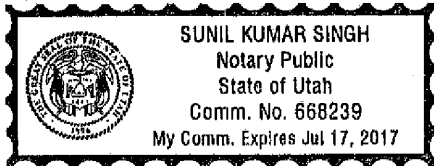
U.S. BANK NATIONAL ASSOCIATION

By: [Signature]
Name: Mark Gust
Title: VP

STATE OF UTAH)
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me on this 20 day of June, 2017 by Mark Gregory Gust Vice President of U.S. BANK NATIONAL ASSOCIATION, a national banking association, on behalf of said association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[SEAL]

[Signature]
NOTARY PUBLIC

LESSOR:

MILLER FAMILY REAL ESTATE, L.L.C.,
a Utah limited liability company

By: 
Scott Bates, Operating Manager

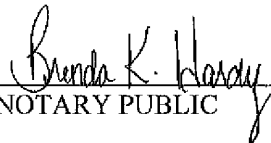
STATE OF UTAH)
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me on this 19 day of June, 2017 by Scott Bates, the Operating Manager of MILLER FAMILY REAL ESTATE, L.L.C., a Utah limited liability company, on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[SEAL]


NOTARY PUBLIC

LESSOR:

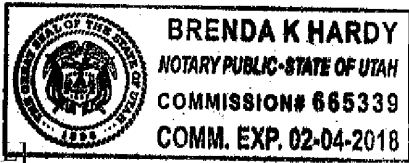
LARRY H. MILLER LUXURY CARS,
a Utah corporation

By: *[Signature]*
Name: Dean Fitzpatrick
Title: President

STATE OF UTAH)
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me on this 19 day of June, 2017 by Dean Fitzpatrick, the President of LARRY H. MILLER LUXURY CARS, a Utah corporation, on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Brenda K. Hardy
NOTARY PUBLIC

EXHIBIT A

Legal Description

That certain real property located in Salt Lake County, Utah and more particularly described as follows:

Being a portion of the Northwest Quarter of Section 18, Township 2 South, Range 1 East, Salt Lake Base and Meridian, Salt Lake County, Utah and being described as follows:

Commencing at the West Quarter Corner of said Section 18; thence North 665.28 feet; thence East 21.78 feet; thence South 86°30'00" East 269.00 feet; thence South 2°15'00" West 10.00 feet to a point on the Southerly line of Stauffer Lane; thence South 86°30'00" East, along said Southerly line, 42.22 feet to the Northwest corner of the Miller Family Real Estate property, said corner also being THE POINT OF BEGINNING; thence South 02°15'00" West, along the Westerly line of said Miller Family Real Estate property 339.91 feet; thence continuing along said Westerly line, coincident with the Easterly line and the Northerly prolongation of the Easterly line of "Utahna-Murray No. 3" a recorded Plat shown in Book "S" O.R., Page 63, on file in the Salt Lake County Recorder's Office, South 36°03'50" West 206.48 feet to the Northwest corner of the Sharrie C. Rushton Trust property; thence South 85°00'00" East, along the Northerly line of said Sharrie C. Rushton Trust property 464.71 feet to the Westerly line of State Street; thence North 02°15'30" East, along said Westerly line, 530.38 feet to the Southerly line of said Stauffer Lane; thence North 90°00'00" West, along said Southerly line, 69.57 feet; thence continuing along said Southerly line North 86°30'00" West 279.90 feet to the point of beginning.

Basis of Bearing=North 02°15'30" East-being the monument line on State Street between 5770 South and 5600 South as shown on a Record of Survey (S97-03-0253) on file in the Salt Lake County Recorder's Office.

The following is shown for informational purposes only: Tax ID No. 22-18-152-021