

After recording return to:

Comerica Bank
Mail Code: 7578
39200 W. Six Mile Road
Livonia, MI 48152

16-011540-18

12548944
6/5/2017 1:26:00 PM \$34.00
Book - 10564 Pg - 5244-5256
Gary W. Ott
Recorder, Salt Lake County, UT
FOUNDERS TITLE
BY: eCASH, DEPUTY - EF 13 P.

**AMENDMENT TO DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FINANCING STATEMENT**

(Site 18, 10990 S. Auto Mall Dr., Sandy, UT)
(Larry H. Miller Used Car Supermarket Sandy)

This AMENDMENT TO DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FINANCING STATEMENT ("Amendment") is made as of June 5, 2017 by MILLER FAMILY REAL ESTATE, L.L.C., a Utah limited liability company ("Trustor" and "Borrower"), 9350 South 150 East, Suite 1000, Sandy, Utah 84070, and COMERICA BANK, a Texas banking association ("Comerica Bank," which designation shall include successors and assigns), as Administrative Agent for the Lenders (as defined below), as beneficiary (in such capacity, the "Agent," which designation shall include successors and assigns), 39200 Six Mile Road, Livonia, Michigan 48152: Attention: Commercial Loan Documentation, Mail Code 7578.

This Amendment amends that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement made as of June 5, 2012 and recorded on June 12, 2012 as Instrument No. 11408790 (the "2012 Deed of Trust"), which amended and restated that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement made as of June 22, 2005 and recorded on June 27, 2005 as Instrument No. 9415062 (the "2005 Deed of Trust"), real property records of Salt Lake County, Utah. The 2012 Deed of Trust remains in full force and effect, as modified hereby.

RECITALS

A. Pursuant to that certain Amended and Restated Credit Agreement of approximately even date herewith (as the same may be amended or otherwise modified from time to time, the "2017 Credit Agreement") made by and among Borrower, Agent, and the financial institutions named in and signatory to the 2017 Credit Agreement (individually a "Lender," and any and all such financial institutions collectively the "Lenders"), the Lenders agreed to extend credit to Borrower in the aggregate principal amount of Two Hundred Seventy-Nine Million and No/100 Dollars (\$279,000,000.00), on the terms set forth in the 2017 Credit Agreement. Pursuant to the 2017 Credit Agreement, Borrower has executed certain promissory notes (the "2017 Notes"), evidencing the credit extended under the 2017 Credit Agreement. The 2017 Credit Agreement amends and restates (but does not extinguish) the indebtedness of Borrower under that certain Credit Agreement dated as of June 5, 2012 (as amended from time to time, the "2012 Credit Agreement"), by and among Borrower, Agent

and the Lenders and the promissory notes (the “**2012 Notes**”) made pursuant thereto. The 2012 Credit Agreement amended and restated the indebtedness of Borrower under that Loan Agreement dated June 22, 2005 (the “**2005 Credit Agreement**”) between Comerica Bank and Borrower, assigned, with the promissory notes (“**2005 Notes**”) made pursuant thereto, to Agent by Comerica Bank.

B. Trustor previously executed and delivered to Trustee, for the benefit of Agent and the Lenders, the 2012 Deed of Trust, creating a deed of trust lien on the “Real Property” described in Exhibit A attached thereto and a security interest in the Property described therein, as security for the obligations of Borrower to Agent and the Lenders, as described therein. The 2012 Deed of Trust amended and restated the terms of the deed of trust lien on the Real Property and the security interests granted in favor of Agent under the 2005 Deed of Trust.

C. The liens, security agreements and assignments granted by Trustor for the benefit of Agent and the Lenders in the 2012 Deed of Trust continue in full force and effect as security for the indebtedness and the obligations of Borrower under the 2012 Credit Agreement, the 2012 Notes and other “Obligations Secured” (as defined in the 2012 Deed of Trust) (the “**Existing Obligations Secured**”).

D. As a condition to the performance of their respective obligations under the 2017 Credit Agreement, the Lenders and Agent have required that Trustor provide this Amendment to the 2012 Deed of Trust to reflect and add the Indebtedness of Borrower under the 2017 Credit Agreement and 2017 Notes as “Obligations Secured” by the 2012 Deed of Trust, upon the terms and conditions outlined in this Amendment. The 2012 Deed of Trust, as amended hereby, is referred to herein as this “**Deed of Trust**.” This Deed of Trust secures, and continues to secure, the Obligations Secured by the 2012 Deed of Trust, as amended hereby.

E. Agent is acting as Agent for the Lenders pursuant to Article 11 of the 2017 Credit Agreement.

F. Trustor is the record owner of the real property described in Exhibit A attached hereto.

TERMS OF AGREEMENT

In consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and for the purpose of securing the Obligations Secured (as defined below), when due, whether by stated maturity, demand, acceleration or otherwise, Trustor and Agent agree as follows:

1. **Accuracy of Recitals.** Trustor hereby acknowledges the accuracy of the foregoing Recitals which are incorporated herein by this reference.

2. **Amended Definitions.** From and after the date hereof, for all purposes under the Deed of Trust (as defined in Recital D) and under the Loan Documents (as defined in the 2017 Credit Agreement), (1) the term “**Deed of Trust**” shall mean the 2012 Deed of Trust as amended hereby, (2) the term “**Credit Agreement**” shall mean the 2017 Credit Agreement, and (3) the term “**Notes**” shall mean the 2017 Notes (as defined in the 2017 Credit Agreement).

All capitalized terms used herein but not defined herein shall have the meanings given to such terms under the Credit Agreement.

3. **Amendment to Obligations Secured.** Article 1, Section 1 Obligations Secured of the Deed of Trust is hereby amended and restated in its entirety to read as follows (the following obligations collectively referred to in the Deed of Trust as the “**Obligations Secured**” or, individually or collectively, the “**Indebtedness**”):

The payment and performance of all of the following:

1.1 All “Indebtedness” of Trustor (as defined in the Credit Agreement), including, without limitation, all obligations of Trustor arising under or in connection with the Credit Agreement and the Notes issued from time to time pursuant to the Credit Agreement, including the payment of all principal of and interest on the loans thereunder and all fees, expenses, indemnities and other amounts whatsoever now or hereafter from time to time owing by Trustor to Agent or the Lenders (or any of them) thereunder, and all present and future obligations of Credit Parties arising under or in connection with any of the other Loan Documents, but excluding the obligations arising under or in connection with the environmental Indemnity dated as of the date hereof made by Trustor in favor of Agent and the Lenders (as amended or otherwise modified from time to time, the “Environmental Indemnity”);

1.2 All obligations of Trustor for payment of all sums hereafter loaned, paid out, expended or advanced by or for the account of Agent or the Lenders (or any of them) under the terms of this Deed of Trust, the Credit Agreement, or the other Loan Documents, in connection with the Property (defined below) or any of the documents or instruments described in this Deed of Trust, the Credit Agreement or the other Loan Documents;

together with interest thereon as provided for herein or therein; and also as security for all costs (including, without limit, attorney fees) incurred by Agent or any Lender in establishing, determining, continuing, or defending the validity or priority of its lien or security interest, or to protect the value of the Property, or for any appraisal, environmental audit, title examination or title insurance policy relating to the Property, or in pursuing its rights and remedies under this Deed of Trust, the Credit Agreement or the other Loan Documents; all costs (including, without limit, attorney fees) incurred by Agent or any Lender in connection with any suit or claim involving or against Agent and/or the Lenders in any way related to the Property, the Indebtedness or this Deed of Trust; all costs (including, without limit, attorney fees) of Agent or any Lender in collecting Indebtedness; all other Indebtedness, whether direct, indirect, absolute or contingent, owing to the Agent and the Lenders in any manner under the Credit Agreement or the Loan Documents, which hereafter become due, or that may hereafter be incurred to or acquired (pursuant to the Credit Agreement or the other Loan Documents) by the Lenders; and all replacements, consolidations, amendments, renewals or extensions of the foregoing (each of

which modifications, replacements, consolidations, amendments, renewals or extensions shall enjoy the same priority as the initial loans made thereunder).

Subject to the Credit Agreement, and as part of the Obligations Secured, Trustor agrees to pay Agent, upon demand, all costs incurred by Agent and/or the Lenders which constitute Indebtedness, and until paid all costs shall bear interest from the time incurred at the highest per annum rate applicable to any of the Indebtedness, but not in excess of the maximum rate permitted by law. Any reference in this Deed of Trust to attorney fees shall be deemed a reference to all reasonable fees, charges, costs and expenses of both in-house and outside counsel and paralegals, whether or not a suit or action is instituted, and to court costs if a suit or action is instituted, and whether attorney fees or court costs are incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding or otherwise.

For avoidance of doubt, and notwithstanding any other provision of this Deed of Trust, the Environmental Indemnity and any similar indemnity provisions contained in this Deed of Trust or the other Loan Documents and relating to the subject matter contained in the Environmental Indemnity, are not secured by this Deed of Trust.

4. **Reserved.**

5. **Amendment to Section 7.4, Deed of Trust as Security Agreement and Affirmation of Grant of Security Interest.** Trustor hereby affirms the grant of a security interest in the Property as provided in Section 7.4 of the 2012 Deed of Trust and hereby grants to Agent, for the benefit of the Lenders, a security interest in and to all items of Property covered by this Deed of Trust that consist of fixtures, as-extracted collateral, rights in action, accounts receivable and other personal property in which a security interest can be granted under the Uniform Commercial Code. This Deed of Trust is intended to be also a security agreement and a financing statement and, upon recording of this Deed of Trust in the real property records of Salt Lake County, Utah, shall perfect the security interests created hereby in fixtures and as-extracted collateral (as such terms are defined in the Uniform Commercial Code). The last sentence of Section 7.4 Deed of Trust as Security Agreement and Financing Statement is hereby amended and restated in its entirety to read as follows:

“Uniform Commercial Code” means the Uniform Commercial Code, as amended or recodified from time to time, in effect in the State of Utah.

6. **Affirmation of Assignment of Leases and Rents.** Trustor hereby affirms the assignment of Leases and Rents (as such terms are defined in the 2012 Deed of Trust, with respect to the Real Property as defined herein) to Agent, under and on the terms of Article 4 of the Deed of Trust, and hereby assigns, transfers, and sets over to Agent for the benefit of the Lenders (i) the Rents, (ii) the Leases, all guaranties of any lessee’s obligations under the Leases, and any modifications or renewals of the Leases and such guaranties, (iii) any award or other payment to which Borrower may become entitled with respect to the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving

the tenants under the Leases, and (iv) all payments made by or on behalf of any tenant of any part of the Property in lieu of Rent. Without limiting the foregoing, the term "**Leases**" shall include, among other Leases, that certain Lease Agreement dated November 1, 2016 (the "**Miller Lease**") between Trustor and Larry H. Miller Used Car Supermarket, Inc. dba Larry H. Miller Used Car Supermarket Sandy, a Utah corporation (the "**Miller Lessee**") and the term "**Rents**" shall include all lease and other payments owing to Trustor under and pursuant to the Miller Lease. Reference is made to that Subordination, Attornment and Non-Disturbance Agreement dated as of the date hereof, given by the Miller Lessee to Agent, for the benefit of the Lenders, and recorded in the real property records of Salt Lake County, Utah.

7. **Replacement of Exhibit B, Permitted Exceptions.** Exhibit B of the Deed of Trust is hereby deleted in its entirety and is replaced with Exhibit B attached hereto, which is incorporated herein and made a part of this Deed of Trust. The term "**Permitted Exceptions**" as used in this Deed of Trust, and for all purposes of this Deed of Trust shall mean the exceptions listed in Exhibit B attached to this Amendment.

8. **Fees and Expenses.** Trustor shall pay all fees and expenses (including, but not limited to, recording fees, endorsement fees, and attorneys' fees) in connection with the preparation, execution and recording of this Amendment.

9. **Effectiveness of Prior Instruments.** Except as amended by this Amendment, all terms and conditions contained in the 2012 Deed of Trust remain in full force and effect in accordance with its terms, including any reference in the 2012 Deed of Trust to future credit secured by the 2012 Deed of Trust; and nothing herein will affect the priority of the 2012 Deed of Trust or the 2005 Deed of Trust. All representations and warranties contained in the 2012 Deed of Trust are hereby affirmed and confirmed as of the date hereof. All collateral previously provided to secure the 2005 Notes, the 2012 Notes and other indebtedness continues as security for the 2017 Notes, other indebtedness, and Trustor's obligations under this Deed of Trust. All guaranties given to guaranty obligations under the 2005 Notes, the 2012 Notes and other indebtedness remain in full force and effect and continue to guaranty the 2017 Notes and all other indebtedness. The 2017 Credit Agreement, and this Amendment, are amendments, not a novation, reflecting a modification to the underlying Obligations Secured. Nothing herein contained shall impair or otherwise affect the security interests and liens established under the 2005 Deed of Trust and the 2012 Deed of Trust, which security interests and liens shall continue in full force and effect with all priorities unchanged.

10. **No Waiver of Defaults; Warranties.** This Amendment shall not be construed as or be deemed to be a waiver by Agent or any Lender of existing defaults by Trustor whether known or undiscovered. All agreements, representations and warranties made in the 2012 Deed of Trust as amended hereby shall survive the execution of this Amendment.

11. **Counterparts.** This Amendment may be signed in any number of counterparts, each of which will be considered an original, but when taken together will constitute one document.

12. **Receipt of Copy.** Trustor hereby acknowledges the receipt of a copy of this Amendment together with a copy of each promissory note secured hereby.

13. **Transferable Record.** This Amendment is a “transferable record” as defined in applicable law relating to electronic transactions. Therefore, Agent may, on behalf of Trustor, create a microfilm or optical disk or other electronic image of this Amendment that is an authoritative copy as defined in such law. Agent may store the authoritative copy of such Amendment in its electronic form and then destroy the paper original as part of Agent’s normal business practices. Agent, on its own behalf and on behalf of the Lenders, may control and transfer such authoritative copy as permitted by such law.

14. **Authorization.** Trustor represents and warrants that the execution, delivery and performance of this Amendment and the documents referenced herein are within the organizational powers (as applicable) of Trustor and have been duly authorized by all necessary organizational action.


IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AMENDMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING, EXPRESSING CONSIDERATION AND SIGNED BY THE PARTIES ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. THE TERMS OF THIS AMENDMENT MAY ONLY BE CHANGED BY ANOTHER WRITTEN AGREEMENT.

[The next page is the signature page.]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first set forth above.

TRUSTOR:

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

By: 

Scott Bates
President

AGENT/BENEFICIARY:

COMERICA BANK,
a Texas banking association

By: _____
Name: Steven J. Engel
Title: Vice President

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first set forth above.

TRUSTOR:

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

By: _____
Scott Bates
President

AGENT/BENEFICIARY:

COMERICA BANK,
a Texas banking association

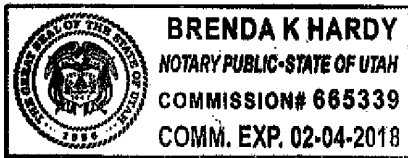
By: Steven J Engel
Name: Steven J. Engel
Title: Vice President

TRUSTOR NOTARIZATION

STATE OF UTAH)
)
) ss.
COUNTY OF Salt Lake)

On this 30 day of May, 2017, before me, the undersigned, a Notary Public in and for said County and State, personally appeared SCOTT BATES, known or proved to me to be President of MILLER FAMILY REAL ESTATE L.L.C., a Utah limited liability company, the person who subscribed said limited liability company's name to the foregoing instrument, and acknowledged to me that he executed the within instrument on behalf of said limited liability company, and that such limited liability company executed the same.

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



Notary Public: Brenda K Hardy
Printed Name: Brenda K. Hardy
My Commission Expires 2-4-2018

AGENT/BENEFICIARY NOTARIZATION

STATE OF Colorado)
) ss.
COUNTY OF Denver)

On this 26 day of May, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared STEVEN J. ENGEL, known or proved to me to be a Vice President of COMERICA BANK, a Texas banking association, the person who subscribed said banking association's name to the foregoing instrument, and acknowledged to me that he executed the within instrument on behalf of said banking association, and that such banking association executed the same.

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

Notary Public: Donna S Albrandt
Printed Name: Donna S Albrandt
Notary Public - State of Colorado My Commission Expires 4-24-20
Notary ID 20044012047
My Commission Expires Jun 14, 2020

**EXHIBIT A TO AMENDMENT TO
DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY
AGREEMENT AND FINANCING STATEMENT**

LEGAL DESCRIPTION OF REAL PROPERTY

Lots 15 through 18, UTAH AUTO MALL PHASE 1, according to the Official Plat thereof, recorded in the Office of the County Recorder of said County, State of Utah.

Tax ID No. 27-13-477-017

**EXHIBIT B TO AMENDMENT TO
DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY
AGREEMENT AND FINANCING STATEMENT**

PERMITTED EXCEPTIONS

1. Taxes for the year 2017 are now a lien, but not yet due. Tax ID No. 27-13-477-017.
2. Said property is included within the boundaries of Sandy City, South Valley Sewer District and Metropolitan Water District of Salt Lake and Sandy, and is subject to the charges and assessments thereof.
3. Easements, Notes and/or Setback Lines as delineated and/or dedicated on the Official Recorded Plat.
4. **EASEMENT AND CONDITIONS CONTAINED THEREIN:**
Grantee: MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY
Location: Exact location not disclosed
Recorded: February 8, 1919
Entry No.: 407061
Book/Page: 2Y/541
5. The subject real property has no rights of direct access to the State Road Commission of Utah property abutting on the Westerly side, by reason of the provisions set forth in that certain document recorded September 16, 1954, as Entry No. 2027741 in Book 2237 at page 9, Salt Lake County Recorder.
6. Notice of Adoption of Redevelopment Plan entitled "Civic Center South Neighborhood Development Plan" and dated November 1, 1989 recorded January 22, 1990 as Entry No. 4873280 in Book 6192, Page 1187 of Official Records.

Ordinance 89-59 of the City of Sandy, Utah adopting the Civic Center South Project Area Redevelopment Plan entitled "Civic Center South Neighborhood Development Plan" dated November 1, 1989, recorded February 23, 1990 as Entry No. 4884602 in Book 6200, Page 24 of Official Records.
7. Resolution No. 90-31c by the City Council of Sandy City, dated March 27, 1990, to create "Sandy City, Utah Special Improvement District No. 90-1, recorded July 9, 1990 as Entry No. 4938315 in Book 6234, Page 2899 of Official Records and re-recorded August 28, 1990 as Entry No. 4958685, Book 6248, Page 144 of Official Records.
8. Resolution No. 90-59 C by Sandy City, being a resolution to create Sandy City, Utah Special Improvement District No. 90-1, and the charges and assessments levied thereunder; recorded November 19, 1990 as Entry No. 4990624 in Book 6268 at page 2638, of Official Records.
9. Ordinance 90-68 of Sandy City, Utah dated November 6, 1990 to change the name from "Crescent Way" to "Auto Mall Drive", recorded January 18, 1991 as Entry No. 5013859 in Book 6283, Page 1719 of Official Records.
10. Resolution No. 92-58 C by Sandy City, being a resolution to create Sandy City, Utah Special Improvement District No. 90-1, and the charges and assessments levied thereunder; recorded September 11, 1992 as Entry No. 5329250 in Book 6516 at page 2844, of Official Records.
11. **COVENANTS, CONDITIONS, RESTRICTIONS and/or EASEMENTS**, but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law:
Recorded: September 25, 1992

Entry No.: 5338559
Book/Page: 6524/906

12. EASEMENT AND CONDITIONS CONTAINED THEREIN: Grantor: Lawrence H Miller and Karen G Miller Grantee: US West Communications Dated: February 21, 1995 Recorded: March 7, 1995 Entry No.: 6035617 Book/Page: 7112/852

13. DEED OF TRUST
Trustor: Miller Family Real Estate, L.L.C., a Utah limited liability company
Trustee: Founders Title Company, a Utah corporation
Beneficiary: Comerica Bank, a Michigan banking corporation
Amount: \$200,000,000.00, plus interest
Dated: as June 22, 2005
Recorded: June 27, 2005
Entry No.: 9415062
Book/Page: 9150/2945

Amended, restated and superseded by
DEED OF TRUST:
Trustor: Miller Family Real Estate, L.L.C.
Trustee: Founders Title Company
Beneficiary: Comerica Bank, a Texas banking association as Administrative Agent
Amount: \$280,000,000.00, plus interest
Dated: June 5, 2012
Recorded: June 12, 2012
Entry No.: 11408790
Book/Page: 10025/5105

14. FINANCING STATEMENT
Debtor: Miller Family Real Estate, L.L.C., a Utah limited liability company
Creditor: Comerica Bank, a Michigan banking corporation
For: Fixture Filing
Recorded: June 27, 2005
Entry No.: 9415063
Book/Page: 9150/2971

15. Any matters that may be disclosed by that certain survey dated March 8, 2017 prepared by Anderson Wahlen & Associates, certified by Bruce D. Pimper, Utah PLS No. 362256.