

After recording return to:

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

16-011540-29

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

(Site 29, 544 S. Lindon Park Dr., Lindon, UT)

(LHM Lexus of Lindon)

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. 48431:2012 (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. 68418:2005 (the “**2005 Deed of Trust**”), real property records of Utah 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 Utah 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 Luxury Cars dba Larry H. Miller Lexus Lindon, 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 Utah 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

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Scott Bates
President

AGENT/BENEFICIARY:

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a Texas banking association

By: *St J G*
Name: Steven J. Engel
Title: Vice President

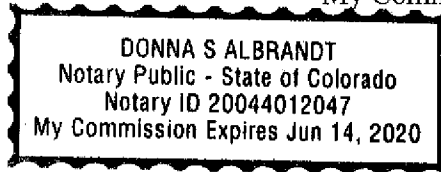
AGENT/BENEFICIARY NOTARIZATION

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
My Commission Expires 6-14-20



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

LEGAL DESCRIPTION OF REAL PROPERTY

Lot 1 and Lot 3, Plat "A", Miller Auto Lots of Lindon Subdivision, according to the Official Plat thereof,
recorded in the Office of the County Recorder of Utah County.

Tax ID No. 46:786:0001 and 46:786:0003

**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.
2. Said property is included within the boundaries of Lindon City, and is subject to the charges and assessments thereof.
3. Controlled Access to and from said property as set forth in Warranty Deed recorded December 21, 1959 as Entry No. 19410 in Book 831 at Page 337 of Official Records.
(Affects Lot 3)
4. Redevelopment Plan for the Lindon Redevelopment Project Area No. 3 recorded December 28, 1989 as Entry No. 39601 in Book 2654 at Page 504 of Official Records.
5. Ordinance No. 174, dated December 21, 1989, adopting the Redevelopment Plan for the Lindon Redevelopment Project Area No. 3, recorded December 28, 1989 as Entry No. 39602 in Book 2654 at Page 535 of Official Records.
6. Tax Increment Agreement dated September 18, 1991 by and between the Lindon Redevelopment Agency and ABP Investments, a Utah Partnership, recorded November 7, 1995 as Entry No. 76722 in Book 3811 at Page 375 of Official Records.

Amended and Restated Tax Agreement recorded February 1, 2000 as Entry No. 8812:2000 of Official Records.
7. DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS recorded December 10, 1997 as Entry No. 98219 in Book 4461 at Page 169 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violated 42 3604 (c).

First Amendment to Declaration of Restrictions and Grant of Easements and the terms, conditions and limitations contained therein:
Recorded: May 16, 2003
Entry No: 73837:2003

Second Amendment to Declaration of Restrictions and Grant of Easements and the terms, conditions and limitations contained therein:
Recorded: July 3, 2003
Entry No: 100866:2003
8. Resolution No. 2000-10 to create Special Improvement District No. 2000-1 of Lindon City, Utah County, Utah, described in the Notice of Intention concerning the district and authorizing the City Officials to proceed to make improvements as set forth in that certain Notice of Intention: Recorded: August 7, 2000 Entry No: 61763:2000

Attachment to Resolution recorded January 17, 2001 as Entry No. 4157:2001
9. Easement and conditions contained therein:
Grantor: Miller Family Real Estate, LLC
Grantee: Questar Gas Company
Dated: October 31, 2003
Recorded: November 20, 2003
Entry No: 184277:2003
10. Declaration of Easement and conditions contained therein:
Declarant: Miller Family Real Estate, LLC
Dated: November 24, 2003
Recorded: December 18, 2003

Entry No.: 198467:2003

11. DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FINANCING STATEMENT:

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: June 22, 2005

Recorded: June 27, 2005

Entry No.: 68418:2005

Consent to Miller Auto Lots of Lindon Plat recorded November 17, 2009 as Entry No. 119506:2009 of Official Records.

Amended, restated and superseded by
DEED OF TRUST:

Trustor: Miller Family Real Estate, LLC

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.: 48431:2012

12. UCC-1 FINANCING STATEMENT:

Debtor: Miller Family Real Estate, L.L.C., a Utah limited liability company

Creditor: Comerica Bank, a Michigan banking corporation

Recorded: June 27, 2005

Entry No.: 68419:2005

Amendment to UCC-1 Financing Statement recorded October 22, 2009 as Entry No. 111287:2009 of Official Records

13. Access Easement, Water Line Easement, Public Utility Easement, Storm Drain Easement and Landscape Easement as the same are shown on Plat "A", Miller Used Cars of Lindon:

Recorded: December 20, 2006

Entry No: 172124:2006

14. Public Access Easement, Water Line Easement, Public Utility Easement, Storm Drain Easement, Gas Line Easement and Landscape Easement as the same are shown on Plat "A", Miller Auto Lots of Lindon:

Recorded: October 22, 2009

Entry No: 111288:2009

15. Easement Agreement and the terms, conditions and limitations contained therein:

Between: Miller Family Real Estate, L.L.C.

And: Qwest Corporation, a Colorado corporation

Dated: January 13, 2010

Recorded: January 21, 2010

Entry No.: 5318:2010

16. EASEMENT AND CONDITIONS CONTAINED THEREIN:

Grantor: Miller Family Real Estate, LLC

Grantee: Lindon City

Recorded: April 18, 2014

Entry No: 25502:2014