



W2867103

Recording Requested By:
WELLS FARGO BANK,
NATIONAL ASSOCIATION
299 S Main St
Salt Lake City, UT 84111

E# 2867103 PG 1 OF 8
Leann H. Kilts, WEBER COUNTY RECORDER
10-Jul-17 0345 PM FEE \$24.00 DEP TN
REC FOR: BACKMAN FPTP
ELECTRONICALLY RECORDED

And After Recording, Return To:
WELLS FARGO BANK,
NATIONAL ASSOCIATION
BBOCS Business Lending Loan Operations
LDI, P.O. Box 65119, San Antonio, TX
78265
Attn: Collateral Department

ADDRESS TAX STATEMENT:
Wetzel Enterprises, L.L.C.
1106 Stansbury Way
Salt Lake City, UT 84108

Tax Account Number(s) of Real Property:
08-391-0002
6-074121



DTP34290

SUBORDINATION, NON-DISTURBANCE,
ATTORNMEN T AND ESTOPPEL AGREEMENT

(DEED OF TRUST)

THIS AGREEMENT is entered into as of June 29, 2017, by and between Larry H. Miller Used Car Supermarket, Inc. ("Tenant"), Wetzel Enterprises, LLC ("Landlord") and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender").

RECITALS

A. Lender, or its predecessor in interest has extended credit or may hereafter extend credit to Utah Saturn Holdings, Inc. ("Borrower") secured, in whole or in part, by one or more deeds of trust (the "Deed of Trust") covering that certain real property situated in Weber County, Utah, and described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Tenant leases all or a portion of the Property pursuant to a lease entered into between Landlord and Tenant, or between Landlord's and/or Tenant's assignors or predecessor(s) in interest, as the case may be, dated as of September 1, 2012, as may have been amended, modified, restated, or otherwise assigned, transferred or sub-let (the "Lease"). It is a condition of Lender's agreement to extend or continue credit to Borrower secured by the Property that the security of the Deed of Trust be and at all times remain a lien or charge on the Property prior and superior to the rights of Tenant under the Lease.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. SUBORDINATION.

(a) Subordination of Lease. The Deed of Trust and any and all extensions, renewals, modifications or replacements thereof shall be and at all times remain a lien or charge on the Property prior and superior to the Lease. Tenant intentionally and unconditionally waives, relinquishes and subordinates the priority and superiority of the Lease, and Tenant's right and interest to the Property thereunder; including without limitation, all rights under any option(s) to purchase or right(s) of first refusal with respect to the Property, to the lien or charge of the Deed of Trust, and any and all extensions, renewals, modifications or replacements thereof.

(b) Reliance. Tenant acknowledges that Lender, in extending credit or continuing to extend credit to Borrower secured by the Property is doing so in material reliance on this Agreement.

(c) Acknowledgments of Tenant. Tenant acknowledges that it has such information with respect to any credit extended by Lender to Borrower, and all loan documents executed in connection therewith, as Tenant deems necessary in order to provide this subordination. Tenant further agrees that Lender is under no obligation or duty to, nor has Lender represented that it has or will, see to the application of the proceeds of any such credit by any person or entity, and any application or use of any such proceeds for purposes other than those for which they were intended shall not defeat this subordination.

(d) Entire Subordination Agreement. This Agreement constitutes the whole and only agreement between the parties hereto with regard to the subordination of the Lease, and any applicable option(s) to purchase or rights of first refusal, to the lien or charge of the Deed of Trust; there are no agreements (written or oral) outside or separate from this Agreement with respect to the subject matter hereof; and all prior negotiations with respect thereto, if any, are merged into this Agreement. This Agreement shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including without limitation those provisions, if any, contained in the Lease which provide for the subordination thereof to the lien of a deed of trust or mortgage affecting all or any portion of the Property.

2. LEASE. Tenant hereby covenants and agrees that, so long as the Deed of Trust remains in force and effect:

(a) No Modification, Termination or Cancellation. Without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed, Tenant shall not (1) consent to any modification of the Lease which would (i) reduce the term of the Lease, (ii) reduce the rent payable or change the due dates thereunder, (iii) change any notice or cure period set forth therein or (iv) materially increase the obligations or responsibilities of Landlord thereunder; nor (2) consent to any voluntary termination or cancellation of the Lease; provided however, that the foregoing shall not prevent Tenant from terminating the Lease as a result of a default by Landlord thereunder which is not cured within such time periods after notice, as may be applicable thereto under the terms of the Lease and this Agreement.

(b) Notice of Default. Tenant shall notify Lender in writing concurrently with any notice given to Landlord of any breach of or default by Landlord under the Lease. Tenant agrees that Lender shall have the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below, and Tenant shall not declare a default of the Lease, as to Lender, if Lender cures such breach or default within thirty (30) days after the expiration of the time period provided in the Lease for the cure thereof by Landlord; provided however, that if such breach or default cannot with diligence be cured by Lender within such thirty (30) day period, the commencement of action by Lender within such thirty (30) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence.

(c) No Advance Rents. Tenant shall not make any payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease.

(d) Assignment of Rents. Upon receipt by Tenant of written notice from Lender that Lender has elected to terminate the license granted to Landlord to collect rents, as provided in the Deed of Trust, and directing Tenant to make payment thereof to Lender, Tenant shall comply with such direction to pay and shall not be required to determine whether Landlord or Borrower is in default under any obligations to Lender. Lender and Landlord acknowledge and agree that Tenant shall be entitled to rely solely upon the written demand given by Lender referred to herein. Landlord, by appending its signature below, acknowledges and agrees that Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with the provisions hereof to the same extent as if such rents were paid directly to Landlord.

3. ATTORNNMENT. If Lender or any other transferee acquires Landlord's right, title and interest in and to the Property pursuant to a foreclosure of the Deed of Trust or a transfer of the Property in lieu thereof or in any other manner whereby Lender or such transferee succeeds to the interest of Landlord under the Lease, Tenant agrees as follows for the benefit of Lender or such transferee:

(a) Payment of Rent. Tenant shall pay to Lender or such transferee all rental payments required to be made by Tenant pursuant to the terms of the Lease for the remaining term thereof.

(b) Continuation of Performance. Tenant shall be bound to Lender or such transferee in accordance with all of the terms of the Lease for the remaining term thereof, and Tenant hereby attorns to Lender or such transferee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender or such transferee succeeding to Landlord's interest in the Lease and giving written notice thereof to Tenant.

(c) No Offset or Lender Liability acts or omissions of Landlord. Neither Lender nor such transferee shall be liable for, or subject to, any offsets or defenses which Tenant may have by reason of any act or omission of Landlord as the prior Landlord under the Lease, except that Tenant shall be entitled to exercise all remedies provided Tenant under the Lease with respect to continuing defaults thereunder resulting from the acts or omissions of Landlord, and arising after Lender has received notice of such defaults and has not cured the same after notice and the opportunity to do so, as set forth in the Lease and this Agreement.

The foregoing shall not relieve Lender or such transferee from performing the obligations of a landlord under the Lease arising after Lender or any other transferee acquires Landlord's right, title and interest in and to the Property. In no event shall Lender nor any such transferee be liable for, or subject to any offsets or defenses with respect to the return of any sums which Tenant may have paid to Landlord as the prior Landlord under the Lease as security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Landlord to Lender or such transferee.

(d) Subsequent Transfer. If Lender or such transferee, by succeeding to Landlord's interest under the Lease, becomes obligated to perform the covenants of a Landlord thereunder, then, upon any further transfer by Lender or further transfer by such transferee of its interest as a Landlord under the Lease, all of such obligations accruing after the date of such transfer, shall terminate as to Lender or such transferee, as applicable.

4. NON-DISTURBANCE. In the event of a foreclosure of the Deed of Trust, or a transfer of the Property in lieu thereof or in any other manner whereby Lender or such transferee succeeds to the interest of Landlord under the Lease, so long as there shall then exist no breach, default or event of default by Tenant under the Lease, (a) the leasehold interest of Tenant shall not be extinguished or terminated by reason of such foreclosure, (b) the Lease shall continue in full force and effect, (c) Lender and its successors-in-interest shall recognize and accept Tenant as the tenant under the Lease, subject to the terms and conditions of the Lease as modified by this Agreement, and (d) Lender will not join Tenant as a party defendant in any action or foreclosure proceeding unless such joinder is required by law to foreclose, then only for such purpose and not for the purpose of terminating the Lease Notwithstanding the foregoing, Tenant and Lender agree that any provision of the Lease (if any) with

respect to any option to purchase or right of first refusal to purchase all or any portion of Property shall not be binding on Lender.

5. ESTOPPEL. Tenant acknowledges and represents and certifies to Lender as follows:

(a) Lease Effective. The Lease has been duly executed and delivered by Tenant and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Tenant thereunder are valid and binding, and there have been no amendments, modifications or additions to the Lease (written or oral), other than those included in the Lease definition set forth above. The Lease constitutes the entire agreement between Landlord and Tenant with respect to the Property, and Tenant claims no rights to the Property other than as set forth in the Lease.

(b) No Default. As of the date hereof and to the best of Tenant's knowledge, (i) there exists no breach of or default under the Lease, nor any condition, act or event which with the giving of notice or the passage of time, or both, would constitute such a breach or default, and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the terms of the Lease.

(c) No Prepaid Rent. No deposits or prepayments of rent have been made in connection with the Lease, except as follows: _____.

6. MISCELLANEOUS.

(a) Remedies Cumulative. All remedies provided herein are cumulative, not exclusive, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Borrower, Landlord or any other person or entity.

(b) Costs, Expenses and Attorneys' Fees. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Lender or any other person) relating to Borrower, Tenant or any other person or entity.

(c) Notices. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the address set forth below its signature, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (iii) if sent by telecopy, upon receipt.

(d) Further Assurances. At the request of any party hereto, each other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

(e) Borrower; Landlord. If Borrower and Landlord are the same, each reference in this Agreement to Borrower or Landlord shall be deemed a reference to said person or entity in its respective capacity.

(f) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of Utah.

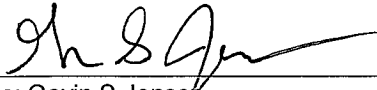
(g) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

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

LENDER:

WELLS FARGO BANK,
NATIONAL ASSOCIATION

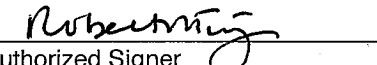
By: 
Name: Gavin S Jensen
Title: Vice President

Address: 299 S Main St
Salt Lake City, UT 9411

TENANT:

Larry H. Miller Used Car Supermarket, Inc.


By: 
Authorized Signer

By: 
Authorized Signer

Address: 5212 SOUTH FREEWAY PARK DR
RIVERDALE, UT 84405

LANDLORD:

Wetzel Enterprises, LLC

By: 
Name: Jeffrey K Wetzel
Title: Manager

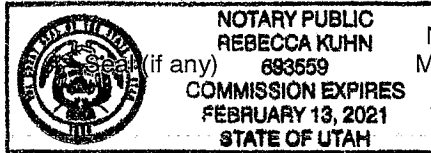
Address: 1106 Stansbury Way
Salt Lake City, UT 84108

BLAST Job ID 1837850218
Obligor NEW
Obligation NEW
Processor Initials DW

LENDER ACKNOWLEDGMENT

STATE OF UTAH)
)
COUNTY OF Salt Lake) SS

On this 10 day of July, 20 17, before me, the undersigned Notary Public, personally appeared Gavin S Jensen and known to me to be the Vice-President, authorized agent for the Wells Fargo Bank, National Association, a national banking association, that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the said national banking association, duly authorized by the national banking association through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument.

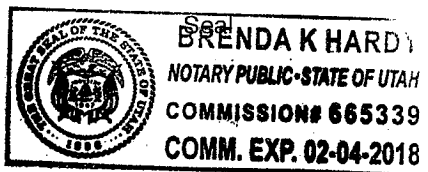


Notary Signature: Rebecca Kuhn
My commission expires: February 13, 2021

CORPORATE ACKNOWLEDGMENT

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

On the 5 day of July, 2017, personally appeared before me Dean Fitzpatrick, President of the Larry H. Miller Used Car Supermarket, Inc., the signer of the within instrument, who duly acknowledged to me that he/she executed the same.

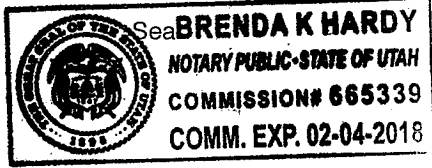


Brenda K. Hardy
Signature of Person Taking Acknowledgment
Executive Administrator
Title
My commission expires: 2-4-2018
Residing at: Sandy, UT

CORPORATE ACKNOWLEDGMENT

STATE OF UTAH)
COUNTY OF Salt Lake)ss.

On the 5 day of July, 2017, personally appeared before me Robert Tunney, Secretary of the Larry H. Miller Used Car Supermarket, Inc., the signer of the within instrument, who duly acknowledged to me that he/she executed the same.

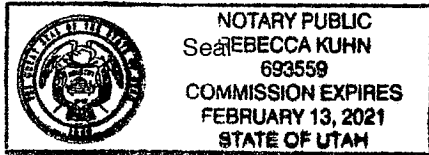


Brenda K. Hardy
Signature of Person Taking Acknowledgment
Executive Administrator
Title
My commission expires: 2-4-2018
Residing at: Sandy, UT

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH)
COUNTY OF Salt Lake)ss.

On the 10 day of July, 2017, personally appeared before me Jeffrey K Wetzel, Manager of the Wetzel Enterprises, LLC, the signer of the within instrument, who duly acknowledged to me that they executed the same.



Rebecca Kuhn
Signature of Person Taking Acknowledgment
Notary Public
Title
My commission expires: February 13, 2021
Residing at: Salt Lake City, UT

**EXHIBIT A
TO
SUBORDINATION, NON-DISTURBANCE,
ATTORNTMENT AND ESTOPPEL AGREEMENT
(DEED OF TRUST)**

Exhibit A where Real Property or its address is commonly known as 5212 FREEWAY PARK DR, RIVERDALE, UT 84405.

Description of Property

Lot 2G, Freeway Park Subdivision Amended, according to the official plat thereof on file and of record in the office of the Weber County Recorder.

Parcel No.: 08-391-0002