

**PREPARED BY:**

**KELLY G REYNOLDSON, ESQ  
KUTAK ROCK LLP  
1801 CALIFORNIA ST, STE 3000  
DENVER, CO 80202**

*65-595-0001*

---

**WHEN RECORDED MAIL TO:**

**FIDELITY NATIONAL TITLE CO – NCS DIV  
ONE EAST WASHINGTON STREET, SUITE 450  
PHOENIX, AZ 85004  
ATTN: KELLI VOS  
(602)343-7572**

**TITLE NO.: 152245-GTF**

**ESCROW NO.: Z2140057-KJV**

**MASTER NO.: Z2140054-KJV**

**DO NOT REMOVE THIS COVER SHEET. IT IS NOW PART OF THE RECORDED DOCUMENT.**

**DOCUMENT TO BE RECORDED:**

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

PREPARED BY:  
Kutak Rock LLP  
1801 California Street, Suite 3000  
Denver, CO 80202  
Attention: Kelly G. Reynoldson, Esq.

TO BE RETURNED TO:  
Fidelity National Title Insurance Company  
1 E. Washington Street, Suite 450  
Phoenix, AZ 85004  
Attention: Kelli Vos

Tax Parcel Number: 65-595-0001

---

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

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

This Subordination, Non-Disturbance and Attornment Agreement ("Agreement"), is made as of this 28<sup>th</sup> day of December, 2021, among **CITIBANK, N.A.**, ("Mortgagee"), **STORE MASTER FUNDING XV, LLC**, a Delaware limited liability company ("Landlord"), and **CARVANA, LLC**, an Arizona limited liability company ("Tenant").

**Background**

A. Mortgagee has been appointed as the collateral agent pursuant to that certain Second Amended and Restated Collateral Agency Agreement dated April 16, 2015, by and among Mortgagee, Landlord and STORE Capital Corporation, a Maryland corporation ("STORE Capital") and is the mortgagee of record as set forth in the deed of trust (the "Security Instrument") on Landlord's property described more particularly on Exhibit A attached hereto ("Property").

B. Pursuant to that certain Limited Power of Attorney dated April 26, 2021, Mortgagee granted STORE Capital the authority to execute this Agreement of behalf of Mortgagee.

C. Tenant is the present lessee under that certain Fourteenth Amended and Restated Master Lease Agreement between Landlord and Tenant dated as of the date hereof, as the same may be amended and restated or otherwise modified and supplemented ("Lease"), demising all of the Property as described more particularly in the Lease.

D. A requirement of the Security Instrument is that Tenant's Lease be subordinated to the Security Instrument. Landlord has requested Tenant to subordinate the Lease in exchange for Mortgagee's agreement not to disturb Tenant's possession of the Property upon the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Security Instrument, as if the Security Instrument had been executed and recorded prior to the Lease.

2. Nondisturbance. Mortgagee agrees that no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, or other sale of the Property in connection with enforcement of the Security Instrument shall operate to terminate the Lease or Tenant's rights thereunder to possess and use the Property in accordance with the terms of the Lease, provided, however, that (a) the term of the Lease has commenced, (b) Tenant is in possession of the Property, and (c) the Lease is in full force and effect and no uncured default exists under the Lease beyond the expiration of any applicable notice and cure periods. Mortgagee further agrees so long as no Event of Default (as defined in the Lease) has occurred and is continuing, Lessee shall not be named as a party defendant in any such foreclosure suit, except as may be required by Law (as defined by the Lease).

3. Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure (whether judicial or nonjudicial) of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument ("Successor Owner"). Provided that the conditions set forth in Section 2 above are met at the time Successor Owner becomes owner of the Property, Successor Owner shall perform all obligations of the landlord under the Lease arising from and after the date title to the Property is transferred to Successor Owner. In no event, however, will any Successor Owner be: (a) liable for any default, act or omission of any prior landlord under the Lease unless otherwise expressly assumed by Successor Owner as an obligation to cure under the Lease; (b) subject to any offset or defense which Tenant may have against any prior landlord under the Lease; (c) bound by any payment of rent or additional rent made by Tenant to Landlord more than 30 days in advance; (d) bound by any modification or supplement to the Lease, or waiver of Lease terms, made without Mortgagee's written consent thereto or expressly assumed by Mortgagee; (e) liable for the return of any security deposit or other prepaid charge paid by Tenant under the Lease, except to the extent such amounts were actually received by Mortgagee; or (f) liable for construction or completion of any improvements to the Property or as required under the Lease for Tenant's use and occupancy (whenever arising). Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Mortgagee or any Successor Owner such further instruments as Mortgagee or a Successor Owner may from time to time request in order to confirm this Agreement. If any liability of Successor Owner does arise pursuant to this Agreement, such liability shall be limited to Successor Owner's interest in the Property.

4. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease. After notice is given to Tenant by Mortgagee that Landlord is in default under the Security Instrument and that the rentals under the Lease are to be paid to Mortgagee directly pursuant to the

assignment of leases and rents granted by Landlord to Mortgagee in connection therewith, Tenant shall thereafter pay to Mortgagee all rent and all other amounts due or to become due to Landlord under the Lease. Landlord hereby expressly authorizes Tenant to make such payments to Mortgagee upon reliance on Mortgagee's written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability to Landlord in connection with Tenant's compliance with Mortgagee's written instructions.

5. Miscellaneous.

(a) Notices. All notices and other communications under this Agreement are to be in writing and addressed as set forth below such party's signature hereto. Default or demand notices shall be deemed to have been duly given upon the earlier of: (i) actual receipt; (ii) one (1) business day after having been timely deposited for overnight delivery, fee prepaid, with a reputable overnight courier service, having a reliable tracking system; (iii) one (1) business day after having been sent by telecopier (with confirmation of transmission) provided an additional notice is given pursuant to (ii); or (iv) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by certified mail, postage prepaid, return receipt requested, and in the case of clause (ii) and (iv) irrespective of whether delivery is accepted. A new address for notice may be established by written notice to the other parties; provided, however, that no address change will be effective until written notice thereof actually is received by the party to whom such address change is sent.

(b) Entire Agreement; Modification. This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes and replaces all prior discussions, representations, communications and agreements (oral or written). This Agreement shall not be modified, supplemented, or terminated, nor any provision hereof waived, except by a written instrument signed by the party against whom enforcement thereof is sought, and then only to the extent expressly set forth in such writing.

(c) Binding Effect; Joint and Several Obligations. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors, and assigns, whether by voluntary action of the parties or by operation of law.

(d) Unenforceable Provisions. Any provision of this Agreement which is determined by a court of competent jurisdiction or government body to be invalid, unenforceable or illegal shall be ineffective only to the extent of such determination and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

(e) Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Agreement (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed Agreement even though all signatures do not appear on the same document.

(f) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns shall be construed to cover all genders. Article and section headings are for convenience only and shall not be used in interpretation of this Agreement. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or other subdivision; and the word "section" refers to the entire section and not to any particular subsection, paragraph of other subdivision; and "Agreement" and each of the Security Instruments referred to herein mean the agreement as originally executed and as hereafter modified, supplemented, extended, consolidated, or restated from time to time.

(g) Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State where the Property is located (excluding any choice of law rules that may direct the application of the laws of another jurisdiction).

(h) Consent to Jurisdiction. Each party hereto irrevocably consents and submits to the exclusive jurisdiction and venue of any state or federal court sitting in the county and state where the Property is located with respect to any legal action arising with respect to this Agreement and waives all objections which it may have to such jurisdiction and venue.

(i) **WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY HERETO WAIVES AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT.**

***[Remainder of page is blank; signatures appear on following pages.]***

IN WITNESS WHEREOF, this Agreement is executed effective as of the date first set forth above.

**MORTGAGEE:**

**CITIBANK, N.A.**

By: STORE Capital Corporation, a Maryland corporation, its attorney-in-fact

By: [Signature]

Name: Lori Markson

Title: Senior Vice President

**Mortgagee Notice Address:**

Citibank, N.A.  
Agency and Trust, STORE Capital  
388 Greenwich Street, 14th Floor  
New York, NY 10013  
Attn: John Hannon

*Notary Acknowledgement for Mortgagee:*

State of ARIZONA :  
:ss  
County of MARICOPA :

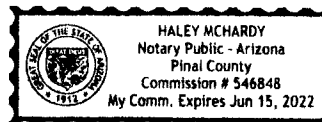
On this, the 14 day of January, 2022 before me, the undersigned Notary Public, personally appeared Lori Markson, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and who acknowledged to me that he/she is an officer of STORE Capital Corporation, a Maryland corporation, as attorney-in-fact, on behalf of Citibank, N.A., in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]  
Notary Public

My Commission Expires:

6/15/2022



IN WITNESS WHEREOF, this Agreement is executed effective as of the date first set forth above.

**LANDLORD:**

**STORE MASTER FUNDING XV, LLC, a**  
Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Lori Markson  
Senior Vice President

**Landlord Notice Address:**

8377 E. Hartford Drive, Suite 100  
Scottsdale, AZ 85255  
Attn: Asset Management

**With a copy to:**

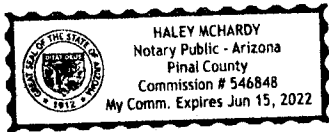
Kutak Rock LLP  
1801 California Street, Suite 3000  
Denver, CO 80202  
Attn: Kelly G. Reynoldson, Esq.

*Notary Acknowledgement for Landlord:*

State of ARIZONA :  
:SS  
County of MARICOPA :

The foregoing instrument was acknowledged before me this 14 day of January, 2022, by Lori Markson, the Sr. Vice President of **STORE MASTER FUNDING XV, LLC**, an Arizona limited liability company, on behalf of said company.

(SEAL)



Haley Mchardy  
Notary Public  
My Commission Expires: 6/15/2022

IN WITNESS WHEREOF, this Agreement is executed effective as of the date first set forth above.

**TENANT:**

CARVANA, LLC, an Arizona limited liability company

By: [Signature]  
Name: Bret Sassenberg  
Title: VP, Real Estate

**Tenant Notice Address:**

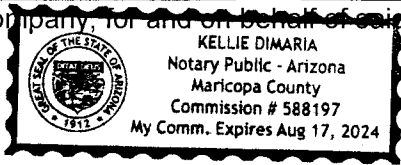
1930 W. Rio Salado Parkway  
Tempe, AZ 85281  
Attn: Real Estate Department

*Notary Acknowledgement for Tenant:*

State of ARIZONA            )  
  ) ss  
County of MARICOPA        )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of December, 2021, by Bret Sassenberg, the VP, Real Estate of CARVANA, LLC, an Arizona limited liability company, for and on behalf of said company.

(SEAL)



[Signature]  
Notary Public

My commission expires: August 17, 2024



**EXHIBIT A**

**Property**

Street Address: 2980 N. Triumph Blvd., Lehi, UT 84043

Legal Description:

All of Lot 1, CARVANA LEHI SUBDIVISION, a Commercial Subdivision, Lehi City, Utah County, according to the official plat thereof, recorded September 17, 2019 as Entry No. 29129-2019.