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E# 2968097 PG 1 OF 11  
Leann H. Kilts, WEBER COUNTY RECORDER  
04-Mar-19 1136 AM FEE \$30.00 DEP KL  
REC FOR: MOUNTAIN VIEW TITLE - OGDEN  
ELECTRONICALLY RECORDED

When Recorded Return To:

Bank of America, N.A.  
NC1-001-05-13  
One Independence Center  
101 North Tryon Street  
Charlotte, NC 28255-0001

APN: 060160141, 060160140, and 060160029

150200

SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT

This SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of March 1, 2019 (the "Effective Date"), between BANK OF AMERICA, N.A., a national banking association ("Lender"), whose address is Bank of America, N.A., C1-001-05-13, One Independence Center, 101 North Tryon Street, Charlotte, NC 28255-0001, Attention: Commercial Real Estate Banking, and KEN GARFF OGDEN, LLC, a Utah limited liability company ("Tenant"), whose address is 111 E. Broadway, Suite 900, Salt Lake City, Utah 84111, with reference to the following facts:

A. GARFF PROPERTIES-LA QUINTA, LLC, a Utah limited liability company whose address is 111 E. Broadway, Suite 900, Salt Lake City, Utah 84111 ("Landlord"), owns the real property located at 900-1000 Riverdale Road, Riverdale, Utah 84405 (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord's Premises"), as more particularly described in Schedule A.

B. Lender has made a loan to Landlord in the original principal amount of \$8,531,923.00 (the "Loan"), all as provided in and subject to the terms and conditions set forth in the Loan Documents (as hereinafter defined).

C. To secure the Loan, Landlord has encumbered Landlord's Premises by entering into that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated March 1, 2019, for the benefit of Lender as beneficiary (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Deed of Trust") to be recorded in the Official Records of Weber County, Utah (the "Official Records").

D. Pursuant to a Lease, dated as of March 1, 2019 (as may be further amended, modified, extended, supplemented, or restated from time to time, the "Lease"); Landlord demised to Tenant Landlord's Premises ("Tenant's Premises"). Tenant's Premises are commonly known as Ken Garff Honda and Ken Garff GMC Buick.

E. A memorandum or short form of the Lease is to be recorded in the Official Records prior to the recording of this Agreement.

F. Tenant and Lender desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

**NOW, THEREFORE**, for good and sufficient consideration and intending to be legally bound hereby, Tenant and Lender agree:

1. Definitions. The following terms shall have the following meanings for purposes of this Agreement.

1.1 "Civil Asset Forfeiture Reform Act" means the Civil Asset Forfeiture Reform Act of 2000 (18 U.S.C. Sections 983 et seq.), as amended from time to time, and any successor statute.

1.2 "Construction-Related Obligation(s)" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at Landlord's Premises, including Tenant's Premises. Construction-Related Obligations shall not include: (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

1.3 "Controlled Substances Act" means the Controlled Substances Act (21 U.S.C. Sections 801 et seq.), as amended from time to time, and any successor statute.

1.4 "Foreclosure Event" means: (a) foreclosure under the Deed of Trust, whether by judicial action or pursuant to nonjudicial proceedings; (b) any other exercise by Lender of rights and remedies (whether under the Deed of Trust or under applicable Law, including bankruptcy law) under the Loan Documents and/or the Deed of Trust, as a result of which any Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Lender (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

1.5 "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.6 "Governmental Authority" or "Governmental Authorities" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

1.7 "Law" or "Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law. With respect to Tenant and the Tenant Premises, "Law" or "Laws" includes all Laws pertaining to the construction, sale, leasing or use of the improvements and to access and facilities for handicapped or disabled persons.

1.8 "Loan Documents" mean the Deed of Trust and any other document now or hereafter evidencing, governing, securing or otherwise executed in connection with the Loan, including any promissory note and/or loan agreement, pertaining to the repayment or use of the Loan proceeds or to any of the real or personal property, or interests therein, securing the Loan, as such documents or any of them may have been or may be from time to time hereafter renewed, extended, supplemented, increased or modified. This Agreement is a Loan Document.

1.9 “Offset Right” means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant’s payment of Rent or performance of Tenant’s other obligations under the Lease, arising (whether under the Lease or other applicable Law) from Landlord’s breach or default under the Lease.

1.10 “Rent” means any fixed rent, base rent or additional rent under the Lease.

1.11 “Successor Landlord” means any party that becomes owner of Landlord’s Premises as the result of a Foreclosure Event.

1.12 “Termination Right” means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable Law) from Landlord’s breach or default under the Lease.

2. Subordination. The Lease, including all rights of first refusal, purchase options and other rights of purchase, shall be, and shall at all times remain, subject and subordinate to the Deed of Trust, the lien and security interest imposed by the Deed of Trust and the right to enforce such lien or security interest, and all advances made under or secured by the Loan Documents. Tenant hereby intentionally and unconditionally subordinates the Lease and all of Tenant’s right, title and interest thereunder and in and to Landlord’s Premises (including Tenant’s right, title and interest in connection with any insurance proceeds or eminent domain awards or compensation relating to Landlord’s Premises and Tenant’s right to receive and retain any rentals or payments made under any sublease or concession agreement of or relating to any portion of Tenant’s Premises), to the lien of the Deed of Trust and all of Lender’s rights and remedies thereunder, and agrees that the Deed of Trust shall unconditionally be and shall at all times remain a lien on Landlord’s Premises prior and superior to the Lease.

3. Nondisturbance; Recognition; and Attornment.

3.1 No Exercise of Deed of Trust Remedies Against Tenant. So long as the Lease has not been terminated on account of Tenant’s default that has continued beyond applicable cure periods (an “Event of Default”), Lender shall not name or join Tenant as a defendant in any judicial action or proceeding that is commenced pursuant to the exercise of Lender’s rights and remedies arising upon a default by Landlord under the Deed of Trust unless (a) applicable Law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or in order to prosecute or otherwise fully enforce such rights and remedies; or (b) such joinder of Tenant is required for the recovery by Lender of any Rent at any time owing by Tenant under the Lease, whether pursuant to the assignment of rents set forth in the Deed of Trust or otherwise; or (c) such joinder is required in order to enforce any right of Lender to enter Landlord’s Premises for the purpose of making any inspection or assessment, or in order to protect the value of Lender’s security provided by the Deed of Trust. The foregoing provisions of this Section shall not be construed in any manner that would prevent Lender from (i) carrying out any nonjudicial foreclosure proceeding under the Deed of Trust, or (ii) obtaining the appointment of a receiver for the Landlord’s Premises as and when permitted under applicable Law.

3.2 Nondisturbance and Attornment. In the event of a foreclosure under the Deed of Trust or other transfer of Landlord’s Premises to Lender or its affiliate, at Lender’s sole option and election, Lender may terminate the Lease upon written notice to Tenant, but only if there is a continuing Event of Default by Tenant. If the Lease has not been terminated on account of an Event of Default by Tenant, then, when a Successor Landlord other than Lender takes title to Landlord’s Premises: (a) Successor Landlord shall not terminate or disturb Tenant’s possession of Tenant’s Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to

Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

3.3 Use of Proceeds. Lender, in making any advances of the Loan pursuant to any of the Loan Documents, shall be under no obligation or duty to, nor has Lender represented to Tenant that it will, see to the application of such proceeds by the person or persons to whom such advances are disbursed, and any application or use of such proceeds for purposes other than those provided for in any Loan Document shall not defeat Tenant's agreement to subordinate the Lease in whole or in part as set forth in this Agreement.

3.4 Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

3.5 Default Under Deed of Trust. In the event that Lender notifies Tenant of a default under the Deed of Trust and demands that Tenant pay its rent and all other sums due under the Lease directly to Lender, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Lender, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Deed of Trust and notwithstanding any contrary instructions of or demands from Landlord. The consent and approval of Landlord to this Agreement shall constitute an express authorization for Tenant to make such payments to Lender and a release and discharge of all liability of Tenant to Landlord for any such payments made to Lender in compliance with Lender's written demand.

4. Protection of Successor Landlord. Notwithstanding anything to the contrary in the Lease or the Deed of Trust, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. (The foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment, or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease.)

4.2 Acts or Omissions of Former Landlord. Any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Former Landlord) or obligations accruing prior to Successor Landlord's actual ownership of the Landlord's Premises.

4.3 Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

4.4 Payment: Security Deposit. Any obligation (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant, or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Lender. This Section is not intended to apply to Landlord's obligation to make any payment that constitutes a Construction-Related Obligation.

4.5 Modification; Amendment; or Waiver. Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Lender's written consent.

4.6 Surrender; Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4.7 Construction-Related Obligations. Any Construction-Related Obligation of Landlord under the Lease.

5. [Reserved.]

6. Lender's Right to Cure.

6.1 Notice to Lender. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right, Tenant shall provide Lender with notice of the breach or default by Landlord giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 Lender's Cure Period. After Lender receives a Default Notice, Lender shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Lender agrees or undertakes otherwise in writing.

6.3 Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided only that Lender undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this Section, Lender's cure period shall continue for such additional time (the "Extended Cure Period") as Lender may reasonably require to either (a) obtain possession and control of Landlord's Premises and thereafter cure the breach or default with reasonable diligence and continuity, or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

7. Confirmation of Facts. Tenant represents to Lender and to any Successor Landlord, in each case as of the Effective Date:

7.1 Effectiveness of Lease. The Lease is in full force and effect, has not been modified, and constitutes the entire agreement between Landlord and Tenant relating to Tenant's Premises. Tenant has no interest in Landlord's Premises except pursuant to the Lease. No unfulfilled conditions exist to Tenant's obligations under the Lease.

7.2 Rent. Tenant has not paid any Rent that is first due and payable under the Lease after the Effective Date.

7.3 No Landlord Default. To the best of Tenant's knowledge, no breach or default by Landlord exists and no event has occurred that, with the giving of notice, the passage of time or both, would constitute such a breach or default.

7.4 No Tenant Default. Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease.

7.5 No Termination. Tenant has not commenced any action nor sent or received any notice to terminate the Lease. Tenant has no presently exercisable Termination Right(s) or Offset Right(s).

7.6 Commencement Date. The "Commencement Date" of the Lease was March 1, 2019.

7.7 Acceptance. Tenant has accepted possession of Tenant's Premises.

7.8 No Transfer. Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein, other than sublease(s) made in compliance with the Lease.

7.9 Due Authorization. Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

7.10 No Violations of Laws. Tenant has not violated, and shall not violate, any Laws affecting Tenant's Premises, including the Controlled Substances Act, or which could otherwise result in the commencement of a judicial or nonjudicial forfeiture or seizure proceeding by a Governmental Authority (including the commencement of any proceedings under the Civil Asset Forfeiture Reform Act) on the grounds that Tenant's Premises or any part thereof has been used to commit or facilitate the commission of a criminal offense by any person, including Tenant, pursuant to any Law, including the Controlled Substances Act, regardless of whether or not Tenant's Premises is or shall become subject to forfeiture or seizure in connection therewith.

8. Miscellaneous.

8.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this Section. Notices shall be effective the next business day after being sent by overnight courier service, and five (5) business days after being sent by certified mail (return receipt requested).

8.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Lender assigns the Deed of Trust, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

8.3 Entire Agreement. This Agreement constitutes the entire agreement between Lender and Tenant regarding the subordination of the Lease to the Deed of Trust and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement.

8.4 Interaction with Lease and with Deed of Trust; Severability. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the beneficiary of, the Deed of Trust. Lender confirms that Lender has consented to Landlord's entering into the Lease. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, such provision shall be considered severed from the

rest of this Agreement and the remaining provisions shall continue in full force and effect as if such provision had not been included.

8.5 Lender's Rights and Obligations. Except as expressly provided for in this Agreement, Lender shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Lender under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

8.6 Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of Utah, excluding its principles of conflict of laws.

8.7 Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

8.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

8.9 Lender's Representation. Lender represents that Lender has full authority to enter into this Agreement, and Lender's entry into this Agreement has been duly authorized by all necessary actions.

8.10 Reliance by Lender. Tenant acknowledges the right of Lender (as well as any Successor Landlord) to rely upon the certifications and agreements in this Agreement in making the Loan to Landlord.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered under seal by Lender and Tenant as of the Effective Date.

LENDER:

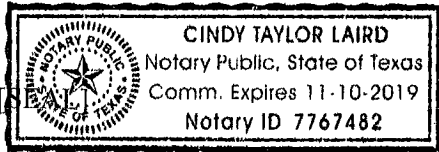
BANK OF AMERICA, N.A., a national banking association

By: [Signature]  
Name: Nicola Reeves  
Title: Vice President

STATE OF Texas )  
County of Dallas ) ss.

The foregoing instrument was acknowledged before me this 28th day of February, 2019, by Nicola Reeves, the Vice President of Bank of America on behalf of the Bank of America

Cindy Taylor Laird  
NOTARY PUBLIC  
Residing at 2728 McKinnon St.  
Dallas, TX 75201





TENANT:

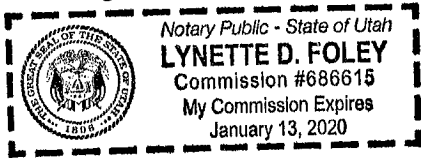
KEN GARFF OGDEN, LLC, a Utah limited liability company

By: Ken Garff Automotive, LLC,  
sole Manager/Member

By: *[Signature]*  
Michael D. Creer  
Secretary/General Counsel

STATE OF Utah )  
County of Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 27 day of February, 2019, by Michael D. Creer, the Secretary/General Counsel of Ken Garff Automotive, LLC, sole Manager/Member of Ken Garff Ogdan, LLC.



*Lynette D. Foley*  
NOTARY PUBLIC  
Residing at Salt Lake City, Utah

[SEAL]

LANDLORD'S CONSENT

Landlord consents and agrees to the foregoing Agreement, which was entered into at Lender's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Deed of Trust or the Lease. The above Agreement discharges any obligations of Lender under the Deed of Trust and related loan documents to enter into a nondisturbance agreement with Tenant. Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Lender upon receipt of a notice as set forth in Section 3.5 above from Lender and Tenant is not obligated to inquire as to whether a default actually exists under the Deed of Trust. Landlord is not a party to the above Agreement.

LANDLORD:

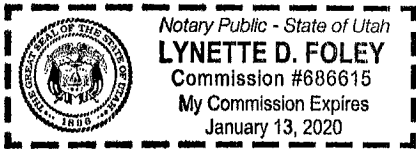
GARFF PROPERTIES-LA QUINTA, LLC, a Utah limited liability company

By: Matthew B. Garff  
Matthew B. Garff  
Vice President

Dated: February 27, 2019

STATE OF Utah )  
County of Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 27 day of February 2019, by Matthew B. Garff, the Vice President of Garff Properties La-Quinta, LLC, on behalf of the limited liability company.



Lynette D. Foley  
NOTARY PUBLIC  
Residing at Salt Lake City, Utah

[SEAL]

Exhibit ALegal Description

Part of the Southwest Quarter of Section 7, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning on the North line of Riverdale Road, said point being 26.95 feet South  $0^{\circ}18'31''$  West (South  $0^{\circ}19'57''$  West along Section Line) and 1168.00 feet North  $64^{\circ}15'$  East along the North line of Riverdale Road from the Southwest corner of said Section 7, said point also being on the Southeast corner of the property conveyed to C.C. Pingree by Warranty Deed in Book 402 of Records, Page 507; running thence North  $64^{\circ}15'$  East 438.65 feet along the North line of Riverdale Road to the West line of 900 West Street; thence two courses along said West line as follows: North  $0^{\circ}38'20''$  East 340.34 feet, and North  $2^{\circ}33'12''$  East 264.69 feet to the South line of an existing street, being 4600 South Street; thence North  $89^{\circ}22'30''$  West 378.40 feet along said South line of said existing street, being 4600 South Street; thence South  $0^{\circ}44'15''$  West 259.27 feet; thence North  $89^{\circ}15'45''$  West 175.53 feet; thence South  $53^{\circ}26'14''$  West 116.80 feet to the extension of the West wall of a metal building; thence South  $0^{\circ}28'12''$  West 169.05 feet along said extension of the West wall and the West wall of a metal building to the Southwest corner of said metal building; thence South  $10^{\circ}13'09'$  West 26.34 feet; thence South  $2^{\circ}25'$  East 389.05 feet, more or less, (389.20 feet to close) to the North line of Riverdale Road (a State Road); thence North  $64^{\circ}15'$  East 255.30 feet (255.37 feet to close) to the point of beginning.