

After recording return to:

Debra Piazza
Montgomery Little & Soran, PC
5445 DTC Parkway, Suite 800
Greenwood Village, CO 80111

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6/12/2012 11:52:00 AM \$23.00
Book - 10025 Pg - 5454-5460
Gary W. Ott
Recorder, Salt Lake County, UT
FOUNDERS TITLE
BY: eCASH, DEPUTY - EF 7 P.

**LEASE SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT**
(Site 25-Larry H. Miller Chevrolet Murray)

THIS LEASE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), dated as of June 5, 2012, is between LARRY H. MILLER CORPORATION – 5650 SOUTH STATE, a Utah corporation d/b/a Larry H. Miller Chevrolet Murray, with offices at 5500 South State Street, Murray, Utah 84107 (hereinafter called "Tenant"), and MILLER FAMILY REAL ESTATE, L.L.C., a Utah limited liability company, whose address is 9350 South 150 East, Suite 1000, Sandy, Utah 84070 (hereinafter called "Landlord"), for the benefit of COMERICA BANK, a Texas banking association ("Comerica Bank," which designation shall include successors and assigns), as Administrative Agent for the Lenders (as defined below) (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.

W I T N E S S E T H

WHEREAS, Tenant has entered into a certain lease with Landlord dated December 31, 2011, for a term of ten (10) years until December 31, 2021 (the "Lease"), covering the premises commonly known as Larry H. Miller Chevrolet Murray, and more particularly described in Exhibit A attached hereto and made a part hereof by this reference (the "Premises");

WHEREAS, pursuant to that certain Credit Agreement dated as of the same date as this Agreement (as amended or otherwise modified from time to time, the "Credit Agreement") by and among Landlord, Comerica Bank as Agent, and the financial institutions which are named in and are signatories to the Credit Agreement (the "Lenders"), the Lenders have agreed to extend credit to Landlord up to the principal amount of Two Hundred Eighty Million and 00/100 Dollars (\$280,000,000.00), which is secured in part by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement (the "Deed of Trust") upon the Premises;

WHEREAS, it is to the mutual benefit of the parties hereto that the Lenders extend such credit to Landlord;

WHEREAS, as a condition to their respective obligations under the Credit Agreement, the Lenders and Comerica Bank, as Agent for the Lenders, have required Landlord to provide this Agreement to Comerica Bank, as Agent for the Lenders, to subordinate the Lease and the leasehold interest of Tenant to the Deed of Trust;

WHEREAS, Tenant acknowledges when it is recorded the Deed of Trust constitutes, or will constitute a lien or charge upon the Premises which is, or will be, unconditionally prior and superior to the Lease and the leasehold interest of Tenant; and

WHEREAS, Comerica Bank, as Agent for the Lenders, has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

1. Subordination. The Lease and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of Tenant in and to the Premises are and shall be subject and subordinate to the Deed of Trust and to all of the terms and conditions contained therein, and to any renewals, modifications, replacements, consolidations and extensions thereof.
2. Non-Disturbance. Comerica Bank, as Agent for the Lenders, has consented to the Lease and, in the event of foreclosure of the Deed of Trust, or in the event Agent comes into possession or acquires title to the Premises as a result of the enforcement or foreclosure of the Deed of Trust, or as a result of any other means, Agent shall recognize Tenant and shall agree that Tenant shall not be disturbed in its possession of the Premises for any reason other than one which would entitle Landlord to terminate the Lease under its terms or would cause, without any further action by Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant from the Premises.
3. Attornment. Tenant agrees that, if the interests of Landlord in the Premises shall be transferred to and owned by Agent by reason of foreclosure or other proceedings brought by Agent, or any other manner, or shall be conveyed thereafter by Agent or shall be conveyed pursuant to a foreclosure sale of the Premises (and for purposes of this paragraph, the term "Agent" shall be deemed to include any grantee of Agent or the purchaser at a foreclosure sale), Tenant shall be bound to Agent under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any option therefor in the Lease, with the same force and effect as if Agent were the landlord under the Lease, and Tenant does hereby attorn to Agent as its landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Agent succeeding to the interest of Landlord in the Premises. Tenant agrees, however, upon the election of and written demand by Agent within twenty (20) days after Agent receives title to the Premises, to execute an instrument in confirmation of the

foregoing provisions, satisfactory to Agent, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.

4. Limitation on Agent's Liability. Tenant agrees that if Agent shall succeed to the interest of Landlord under the Lease, neither Agent nor any Lender shall be (a) liable for any action or omission of any prior landlord under the Lease, or (b) subject to any offsets or defenses which Tenant might have against any prior landlord, or (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, unless such deposit is in an escrow fund available to Agent, or (d) bound by any amendment or modification of the Lease made without Agent's consent, or (e) bound by any provision in the Lease which obligates any prior landlord to erect or complete any building or to perform any construction work or to make any improvements to the Premises. Tenant further agrees that Tenant will not voluntarily subordinate the Lease to any other lien or encumbrance without Agent's consent.

5. Landlord Default. In the event that Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Agent and Agent shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including without limitation any action in order to terminate, rescind or void the Lease or to withhold any rental thereunder, for a period of ten (10) days after receipt of such written notice thereof by Agent with respect to any such default capable of being cured by the payment of money and for a period of thirty (30) days after receipt of such written notice thereof by Agent with respect to any other such default (provided that, in the case of any default which cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period because of the nature of such default or because Agent requires time to obtain possession of the Premises in order to cure the default, if Agent shall proceed promptly to attempt to obtain possession of the Premises, where possession is required, and to cure the default and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity).

6. Environmental Indemnification. Tenant agrees it shall not take any action or allow the Premises to be used in such a manner that violates any applicable federal, state and local environmental laws or regulations. In the event Agent shall succeed to the interest of Landlord under the Lease or title to the Premises shall be transferred to Agent by foreclosure sale or by deed in lieu of foreclosure, Tenant shall defend, indemnify and hold harmless Agent and the Lenders, and their successors and assigns, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to (a) the presence, disposal, release or threatened release of any hazardous materials on, over, under, from or affecting the Premises or its soil, water, vegetation, buildings, personal property, persons or animals, and which is caused by or

related to Tenant's use or occupancy of the Premises; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials on the Premises; (c) any lawsuit brought or threatened, settlement reached or government order relating to such hazardous materials with respect to the Premises; and/or (d) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of Agent, which are based upon or in any way related to such hazardous materials used on the Premises.

7. Binding Effect. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein the term "Tenant" shall include Tenant, its successors and assigns; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure; and the word "Agent" shall include Agent as herein specifically named and any of its successors and assigns, including anyone who shall have succeeded to Landlord's interest in the Premises by, through or under foreclosure of the Deed of Trust.

8. Entire Agreement. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Lease and leasehold interest of Tenant to the lien or charge of the Deed of Trust in favor of Agent, and shall supersede and cancel any prior agreements as to such, or any, subordination, including, but not limited to, those provisions, if any, contained in the Lease which provide for the subordination of the Lease and leasehold interest of Tenant to a deed or deeds of trust or to a mortgage or mortgages to be thereafter executed, and shall not be modified or amended except in writing signed by all parties hereto.

9. Tenant Representations. Tenant declares, agrees and acknowledges that:

(a) Tenant consents to (i) all provisions of the Deed of Trust and (ii) all agreements, including but not limited to any loan or escrow agreements, between Landlord and Agent for the disbursement of the proceeds of the loans;

(b) Agent, in making disbursements pursuant to such loans is under no obligation or duty to, nor has Agent represented that it will see to, the application of such proceeds by the person or persons to whom Agent disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in any agreement related to such loan shall not defeat the subordination herein made in whole or in part;

(c) Tenant intentionally and conditionally waives, relinquishes and subordinates the Lease and its leasehold interest in favor of the lien or charge upon the Premises of the Deed of Trust and, in consideration of this waiver, relinquishment and subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination;

(d) Tenant acknowledges that under the Deed of Trust, Landlord has assigned to Agent all damages and compensation on account of any taking for public use under the power of eminent domain, condemnation or damage by public works or private acts, and all insurance proceeds as a result of insured damage to the Premises (collectively the "Proceeds"). Notwithstanding anything to the contrary in the Lease, as long as the Deed of Trust secures the Credit Agreement, Tenant agrees that any proceeds shall be held by Agent according to the provisions of the Deed of Trust. In the event of the exercise by Agent of any rights under the Deed of Trust, or if Agent becomes the owner of the Premises as a result of the exercise of any rights, Tenant further agrees that it waives (i) all claims to any portion of the Proceeds to the extent that such Proceeds are less than the Agent's acquisition cost of the Premises, and (ii) any duty which Landlord may have to reconstruct any improvements on the Premises.

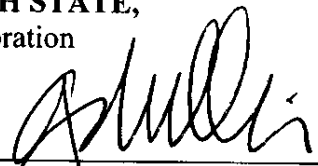
10. Estoppel. Tenant hereby certifies that (i) the Lease is in full force and effect according to its terms and has not been amended or modified in any respect; (ii) Tenant has accepted possession of the Premises and all improvements and other such requirements under the Lease have been completed to Tenant's satisfaction; (iii) Landlord is not in default under the Lease, and any and all prior defaults are hereby waived; (iv) Tenant is not in default under the Lease; (v) the monthly rental now being paid by Tenant under the Lease is \$130,430.00, and no rent required under the Lease has been paid for more than thirty (30) days in advance of its due date; (vi) Tenant has at this time no defense, charge, lien, claim or offset under the Lease or otherwise against the rents and obligations due and to become due under the Lease; and (vii) Tenant does not possess any contractual right, title or interest in the Premises (except as "Lessee" under the Lease) evidenced by option, contract, agreement or deed or otherwise, for the purchase of or affecting all or any part of the Premises, whether by verbal understanding or by recorded or unrecorded instrument.

IN WITNESS WHEREOF, the parties have placed their hands and seals as of the day and year first above written.

TENANT:

LARRY H. MILLER CORPORATION -
5650 SOUTH STATE,
a Utah corporation

By

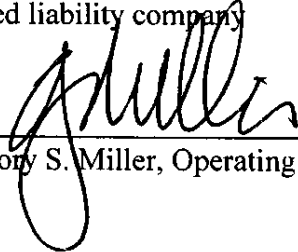


Its

Gregory S. Miller, Secretary

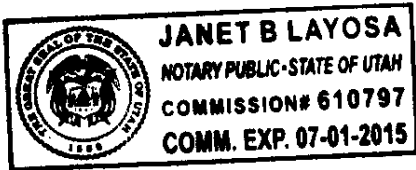
LANDLORD:

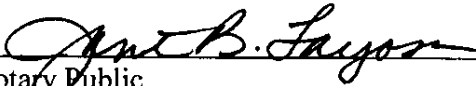
MILLER FAMILY REAL ESTATE, L.L.C.,
a Utah limited liability company

By 
Gregory S. Miller, Operating Manager

STATE OF UTAH)
) ss.
County of Salt Lake)

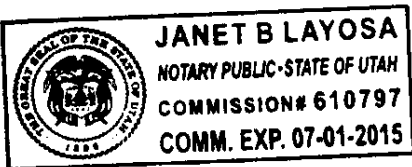
On this 6 day of June, 2012, before me, a notary public, in and for said State, personally appeared Gregory S. Miller, known to me or identified to me to be the Secretary of LARRY H. MILLER CORPORATION – 5650 SOUTH STATE, a Utah corporation, whose name is subscribed to the within instrument on behalf of said corporation, and who acknowledged to me that such corporation executed the same.

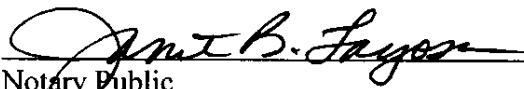



Notary Public
Salt Lake County, State of Utah
My Commission Expires: 7-1-2015

STATE OF UTAH)
) ss.
County of Salt Lake)

On this 6 day of June, 2012, before me, a notary public, in and for said State, personally appeared Gregory S. Miller, known to me or identified to me to be the Operating Manager of MILLER FAMILY REAL ESTATE, L.L.C., a Utah limited liability company, whose name is subscribed to the within instrument on behalf of said company, and who acknowledged to me that such company executed the same.




Notary Public
Salt Lake County, State of Utah
My Commission Expires: 7-1-2015

**EXHIBIT A TO LEASE SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT**
(Legal Description)

Parcel 1:

Being a portion of the Northwest Quarter of Section 18, Township 2 South, Range 1 East, Salt Lake Base and Meridian, Murray City, Salt Lake County, Utah and being described as follows:

Commencing at the Northwest corner of said Section 18; thence North 89°19'46" East 747.19 feet to a point on the Westerly right-of-way line of State Street; thence South 02°15'30" West along said Westerly line 316.84 feet to the point of beginning; thence continuing South 02°15'30" West along said Westerly line 733.03 feet; thence South 82°00'00" West 189.48 feet; thence South 00°53'00" West 163.97 feet to the Northerly line of Wilson Street; thence South 85°40'00" West along said Northerly line 103.58 feet; thence North 12°37'29" West 124.50 feet; thence North 12°27'34" West 47.34 feet; thence South 77°36'08" West 10.97 feet; thence North 15°20'40" West 88.45 feet; thence South 74°27'07" East 4.34 feet; thence North 15°39'44" West 112.84 feet; thence North 18°14'45" West 50.72 feet; thence North 17°31'10" West 82.38 feet; thence South 84°44'53" East 1.28 feet; thence North 17°09'19" West 0.71 feet; thence North 17°18'10" West 79.11 feet; thence North 15°36'04" West 152.61 feet; thence North 11°10'54" West 6.23 feet; thence North 15°40'47" West 134.68 feet; thence North 82°00'00" East 5.67 feet; thence North 15°59'30" West 52.01 feet; thence South 82°00'00" West 5.67 feet; thence North 16°02'00" West 37.13 feet; thence North 89°56'22" East 7.51 feet; thence North 15°59'30" West 1.25 feet; thence North 90°00'00" East 579.37 feet to the point of beginning.

(Basis of bearing North 02°15'30" East - being the monument line of State Street)

The following is shown for informational purposes only: Tax Parcel No. 22-18-101-043

Parcel 2:

Beginning at a point in the center of State Street 12.25 chains South and 11.75 chains East and South 1° 30' West 6.05 chains, more or less, (actually 412.66 feet), to the projected North line of a one rod lane, from the Northwest corner of Section 18, Township 2 South, Range 1 East, Salt Lake Base and Meridian; (said point also being North 2° 15' 30" East 175.62 feet and North 85° 40' East 0.50 of a foot from the county Monument at the intersection of 5600 South and State Streets) and running thence South 85° 40' West along the North line of said one rod lane 179.05 feet; thence North 1° 30' East 108.09 feet; thence North 85° 40' East along an old fence line 179.05 feet more or less, to the center of State Street; thence South 1° 30' West 108.09 feet to the point of beginning.

The following is shown for informational purposes only: Tax Parcel No. 22-18-103-023