

When Recorded Return to:  
JPMorgan Chase Bank, N.A.  
Dealer Commercial Service  
PO Box 71, Dept. AZ1-1125  
Phoenix, AZ 85001-0071  
Attn: Documentation

**ASSUMPTION AND MODIFICATION AGREEMENT**

**DATE:** January 7, 2010

**PARTIES:** **Borrowers:** **Garff Warner Nissan of Orem**  
("Original Borrower")  
  
**Garff-Wade Properties, LLC**  
**Garff-Warner Automotive Group, LLC**  
("Assuming Borrowers")  
  
**Bank:** **JPMorgan Chase Bank, N.A.**

**RECITALS:** F-7836

- A.** Bank has extended to Original Borrower credit ("Loan") in the principal amount of \$4,360,000 pursuant to the Loan Agreement, dated January 25, 2005 ("Loan Agreement"), and evidenced by the Promissory Note dated January 25, 2005, as modified from time to time, (the "Note"). The unpaid principal of the Loan as of the date hereof is \$3,874,144.56
- B.** The Loan is secured by, among other things, (i) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated January 25, 2005 ("Deed of Trust"), by Original Borrower, as trustor, for the benefit of Bank, as beneficiary, recorded on February 7, 2005, Entry No. 12498:2005, in the records of Utah County, Utah (the Deed of Trust, agreements, documents, and instruments securing the Loan and the Note are referred to individually and collectively as the ("Security Documents").
- C.** The Note, the Loan Agreement, the Security Documents, and environmental indemnity agreement, and all other agreements, documents and instruments evidencing, securing, or otherwise relating to the Loan are sometimes referred to individually and collectively as the "Loan Documents".
- D.** Original Borrower will transfer all of its right, title and interest in the property which is subject to the Deed of Trust to Assuming Borrowers. Original Borrower and Assuming Borrowers have requested that Bank (i) consent to the assumption of the Loan and the Loan Documents by Assuming Borrowers, (ii) release Original Borrower from its liabilities under the Loan Documents, and (iii) modify the Loan and the Loan Documents as provided herein. Bank is willing to so consent and to so modify the Loan and the Loan Documents, subject to the terms and conditions herein.

**AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Original Borrower, Assuming Borrowers and Bank agree as follows:

**1. ACCURACY OF RECITALS.**

Original Borrower and Assuming Borrowers acknowledge the accuracy of the Recitals.

**2. ASSUMPTION AND CONSENT.**

**2.1** Assuming Borrowers hereby assumes all of the obligations of the Original Borrower under each of the Loan Documents and acknowledges and confirms that it is liable to Bank for all amounts due and to become due on the Note and under each of the Loan Documents. Assuming Borrowers hereby further agrees to be bound by all the terms, conditions, and agreements of the Loan Documents in the same manner, at the same time, and with the same effect as though Assuming Borrowers had originally joined in the execution thereof.

**2.2** Bank hereby releases and discharges Original Borrower of and from any and all actions, liabilities and any other claims and demands whatsoever, in law or in equity, which Bank ever had, now has or hereafter may have arising out of or in connection with the Loan Documents.

**3. MODIFICATION OF LOAN DOCUMENTS.**

**3.1** The Loan Documents are modified as follows:

**3.1.1** The Maturity Date as defined in the Loan Agreement and Note is hereby changed from December 27, 2010 to January 6, 2015. On the maturity date Assuming Borrowers shall pay to Bank the unpaid principal, accrued and unpaid interest, and all other amounts payable by Assuming Borrowers under the Loan Documents as modified herein.

**3.2** Each of the Loan Documents is modified to provide that it shall be a default or an event of default thereunder if Assuming Borrowers shall fail to comply with any of the covenants of Original Borrower or Assuming Borrowers herein or if any representation of warranty by Assuming Borrowers or Original Borrower herein or by any guarantor in any related Consent and Agreement of Guarantor(s) is materially incomplete, incorrect, or misleading as of the date hereof.

**3.3** Each reference in the Loan Documents to any of the Loan Documents shall be a reference to such documents as modified herein.

**4. RATIFICATION OF LOAN DOUCMENTS AND COLLATERAL.**

The Loan Documents are ratified and affirmed by Original Borrower and Assuming Borrowers and shall remain in full force and effect as modified herein. Any property or rights to or interests in property granted as security in the Loan Documents shall remain as security for the Loan and the obligations of Assuming Borrowers in the Loan Documents.

**5. BORROWER REPRESENTATIONS AND WARRANTIES.**

Each Assuming Borrowers and Original Borrower represents and warrants Bank:

**5.1** No default or event of default under the Loan Documents as modified herein, nor any event, that, with the giving of notice or the passage of time or both,

would be a default or an event of default, under the Loan Documents as modified herein has occurred and is continuing.

- 5.2 There has been no material adverse change in the financial condition of the Assuming Borrowers or any other person whose financial statement has been delivered to Bank in connection with the Loan from the most recent financial statement received by Bank.
- 5.3 Each and all representations and warranties of Original Borrower and Assuming Borrowers in the Loan Documents are accurate on the date hereof.
- 5.4 Original Borrower and Assuming Borrowers have no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.
- 5.5 The Loan Documents as modified herein are the legal, valid, and binding obligation of Original Borrower and Assuming Borrowers, enforceable against Original Borrower and Assuming Borrowers in accordance with their terms.
- 5.6 Each Original Borrower and Assuming Borrowers, is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of the of Assuming Borrowers. This Agreement has been duly executed and delivered on behalf of Assuming Borrowers.
- 5.7 Title to Properties; Liens. Assuming Borrowers has, or will have, good, sufficient, and legal title to all properties and assets reflected in its most recent balance sheet delivered to Bank, except for assets disposed of in the ordinary course of business since the date of such balance sheet. Assuming Borrowers is the sole owner of, and has good and marketable title to the fee interest in the real property described in the Deed of Trust, free from any adverse lien, security interest or encumbrance of any kind whatsoever, excepting only (a) liens and encumbrances shown on the Title Policy dated October 7, 2009, (b) liens and security interests in favor of Bank, and (c) other matters which have been approved in writing by Bank.

## 6. BORROWER COVENANTS.

Original Borrower and Assuming Borrowers covenants with Bank:

- 6.1 Original Borrower and Assuming Borrowers shall execute, deliver and provide to Bank such additional agreements, documents, and instruments as reasonably required by Bank to effectuate the intent of this Agreement.
- 6.2 Original Borrower and Assuming Borrowers fully, finally, and forever releases and discharges Bank and its successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind of nature, in law or equity of Original Borrower and Assuming Borrowers, whether now known or unknown to Original Borrower and Assuming Borrowers, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Bank in respect of the Loan or the Loan Documents and (ii) arising from events occurring prior to the date of this Agreement.

**6.3** Contemporaneously with the execution and delivery of this Agreement, Original Borrower or Assuming Borrowers have paid to Bank:

**6.3.1** All accrued and unpaid interest under the Note and all amounts, other than interest and principal, due and payable by Original Borrower and Assuming Borrowers under the Loan Documents as of that date hereof.

**6.3.2** All the internal and external costs and expenses incurred by Bank in connection with this Agreement (including, without limitation, inside and outside attorneys, appraisal, appraisal review, processing, title, filing, and recording costs, expenses, and fees).

**6.4** Contemporaneously with the execution and delivery of this Agreement, the Original Borrower and Assuming Borrowers have executed and delivered or caused to be executed delivered, to the Bank, the Continuing Guaranties, each dated of even date herewith, executed by Garff Enterprises, Inc., and Garff-Warner Nissan of Orem, LLC., each for the benefit of the Bank.

**7. EXECUTION AND DELIVERY OF AGREEMENT BY BANK.**

Bank shall not be bound by this Agreement until (i) Bank has executed and delivered this Agreement, (ii) Original Borrower and Assuming Borrowers have performed all of the obligations of Original Borrower and Assuming Borrowers under this Agreement to be performed contemporaneously with the execution and delivery of this Agreement, if any, (iii) each guarantor of the Loan, if any, has executed and delivered to Bank a Consent and Agreement of Guarantor(s), and (iv) if required by Bank, Original Borrower and Assuming Borrowers and any Guarantor have executed and delivered to Bank and environmental indemnity agreement.

**8. INTEGRATION, ENTIRE AGREEMENT, CHANGE, DISCHARGE, TERMINATION, OR WAIVER.**

The Loan Documents as modified herein contain the complete understanding and agreement of Original Borrower, Assuming Borrowers and Bank in respect of the Loan and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations. No provision of the Loan Documents as modified herein may be changed, discharged, supplemented, terminated, or waived except in a writing signed by the parties thereto.

**9. BINDING EFFECT.**

The Loan Documents, as modified herein, shall be binding upon and shall inure to the benefit of Original Borrower and Assuming Borrowers and Bank and their successors and assigns and the executors, legal administrators, personal representatives, heirs, devisees, and beneficiaries of Original Borrower and Assuming Borrowers; provided, however, Original Borrower and Assuming Borrowers may not assign any of its rights or delegate any of its obligations under the Loan Documents and any purported assignment or delegation shall be void.

**10. CHOICE OF LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to conflicts of law principles.

**11. COUNTERPART EXECUTION.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

DATED as of the date first above stated.

**ORIGINAL BORROWER:**

GARFF WARNER NISSAN OF OREM

By:   
John K. Garff, Chief Operating Officer

**ASSUMING BORROWERS:**

GARFF-WARDE PROPERTIES, LLC

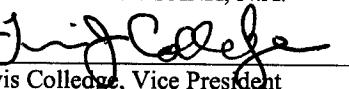
By:   
Robert H. Garff, Manager

GARFF-WARNER AUTOMOTIVE GROUP, LLC

By:   
John K. Garff, Chief Operating Officer

**BANK:**

JPMORGAN CHASE BANK, N.A.

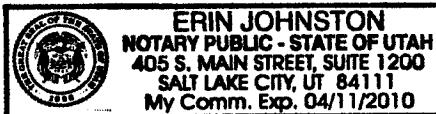
By:   
Travis Colledge, Vice President

## STATE OF UTAH

COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this Jan 11 2010 (date) by  
John K Garff, COO (person acknowledging, title  
 or representative capacity, if any).

(Seal)



Notary Public

Printed Name: Erin Johnston

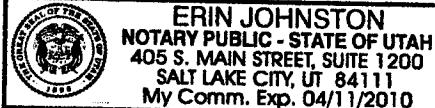
My Commission Expires:

## STATE OF UTAH

COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this Jan 11 2010 (date) by  
Robert H Garff, Manager (person acknowledging, title  
 or representative capacity, if any).

(Seal)



Notary Public

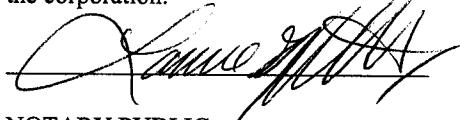
Printed Name: Erin Johnston

My Commission Expires:

STATE OF UTAH

County of Salt Lake

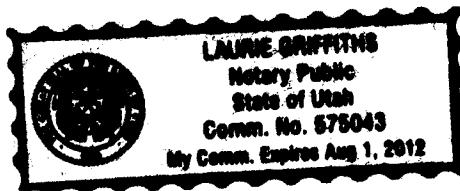
The foregoing instrument was acknowledged before me this 11/10 (date) by  
TRAVIS Colledge (name of officer or agent, title or officer or  
agent) of JP Morgan Chase Bank (name of corporation  
acknowledging) a Utah (state or place of incorporation) corporation, on behalf of  
the corporation.



NOTARY PUBLIC

Print Name: Laurie Griffiths

My Commission Expires: 8/1/2012



**Exhibit "A"**  
**(Legal Description)**

Parcel No . 1:

Commencing at a point located South 89° 08' 12" East along t he Section line 671.43 feet and South 791.68 feet from the North quarter corner of Section 27, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 89° 53' 08" East along a fence 118.57 feet; thence South 89° 36' 34" East along a fence 93.13 feet ; thence South 89° 49' 44" East along a fence 204.45 feet; thence South 04° 05' 45" West 261.55 feet; thence North 89° 59' 06" West 3.00 feet; thence South 06° 53' 54" West 83.54 feet; thence South 84° 19' 11" East 4.70 feet; thence South 01° 51' 54" West 16.78 feet ; thence North 89° 04' 02" West along the North line of 1400 South Street 383.37; thence along the arc of a 56.00 foot radius curve to the left 16.58 feet (chord bears South 82° 27' 07" West 16.52 feet); thence North 01° 46' 55 " East along a fence 358.17 feet to the point of beginning . (19:028 :0075 & 19 :028:0076)