



RECORDING REQUESTED BY AND

AFTER RECORDING, RETURN TO:

Troutman Sanders LLP  
P. O. Box 1122  
Richmond, Virginia 23218-1122  
Attn: Matthew J. Murcko, Esq.

2014-010183

Klamath County, Oregon

10/01/2014 01:35:44 PM

Fee: \$92.00

*SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE*

### SUBORDINATION AND ATTORNMENT AGREEMENT

**NOTICE: THIS SUBORDINATION AND ATTORNMENT AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR LIENS OF SOME OTHER OR LATER SECURITY INSTRUMENT OR INSTRUMENTS.**

This Subordination and Attornment Agreement ("Agreement"), is made and entered into effective as of October 1, 2014 by and between LITHIA REAL ESTATE, INC., an Oregon corporation ("Landlord"), LITHIA KLAMATH, INC., an Oregon corporation ("Tenant") and TOYOTA MOTOR CREDIT CORPORATION, a California corporation ("Lender").

#### Background

- A. Lender has agreed to make a loan to Landlord in the original principal amount Four Million Five Thousand Dollars and No Cents (\$4,005,000.00) ("Loan"), which will be evidence by that certain Loan and Security Agreement dated as of even date herewith ("Loan Agreement") and secured by a mortgage, deed of trust or similar security instrument (either, "Security Instrument", and, together with the Loan Agreement and all of the other documents now or hereafter executed in connection with the Loan, the "Loan Documents") on Landlord's property described more particularly on Exhibit A attached hereto ("Property").
- B. Tenant is the present lessee under that certain lease agreement between Landlord and Tenant dated December 17, 2001, as thereafter modified and supplemented ("Lease"), demising the Property to Tenant.
- C. A requirement of the Loan is that Tenant's Lease be subordinated to the Security Instrument.

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 Notwithstanding anything to the contrary contained in the Lease, the Lease and the leasehold estate created thereby are and shall at all times be subject and subordinate to the Security Instrument and the other Loan Documents and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby, interest thereon and any other sum due thereunder. The Security Instrument and the other Loan Documents shall take precedence over the Lease and shall be entitled to the same rights and privileges, both in law and in equity, as the Security Instrument and the other Loan Documents would have if such instruments had been executed, delivered, and recorded prior to the execution, delivery, and recording, or any of them, of the Lease or any notice thereof. Tenant intentionally and unconditionally waives, relinquishes and subordinates the Lease, the leasehold estate created thereby, and all right, title, interest and privileges of Tenant thereunder, including, without limitation, any and all purchase options, rights of first offer and rights of first refusal, to the lien or charge of the Security Instrument and the other Loan Documents. Tenant and Landlord agree that notwithstanding anything to the contrary contained in the Lease, (i) Tenant will not subordinate the Lease or its interest in the Property to any other deed of trust, mortgage or other encumbrance without the prior written consent of Lender, and (ii) this Agreement shall supersede, to the extent inconsistent herewith, any provision of the Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby to the lien or charge of the Security Instrument.

2. Attornment. 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 or otherwise in satisfaction of the Loan shall hereinafter be referred to as "Successor Owner". Successor Owner may elect to perform obligations of the landlord under the Lease arising from and after the date title to the Property is transferred to Successor Owner, in which event Tenant agrees to attorn to and recognize Successor Owner as its landlord under the Lease. In no event, however, will any Successor Owner be: (a) liable for any default, act or omission of any prior landlord 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 Lender's written consent thereto; (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 Lender; (f) liable or bound by any right of first refusal or option to purchase all or any portion of the Property; (g) 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); or (h) bound by any obligation to cure any default under the Lease which occurred prior to the time any Successor Owner succeeded to any prior landlord's interest, or to make any payment to Tenant which was required to be made prior to the time such Successor Owner succeeded to any prior landlord's interest. Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Lender or any Successor Owner such further instruments as Lender 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. Tenant further acknowledges that Lender is not obligated to cure any Landlord default, but if Lender elects to do so, Tenant agrees to accept cure by Lender as that of Landlord under



the Lease and will not exercise any right or remedy under the Lease for a Landlord default. Performance rendered by Lender on Landlord's behalf is without prejudice to Lender's rights against Landlord under the Security Instrument or any other documents executed by Landlord in favor of Lender in connection with the Loan.

3. 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 Lender that Landlord is in default under the Security Instrument and that the rentals under the Lease are to be paid to Lender directly pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender 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 Lender upon reliance on Lender'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 Lender's written instructions.

4. Miscellaneous.

(a) Notices. All notices and other communications under this Agreement are to be in writing and addressed as follows:

**Landlord Notice Address:**

Lithia Real Estate, Inc.  
150 North Barlett Street  
Medford, Oregon 97501  
Attn: \_\_\_\_\_

**Tenant Notice Address:**

Lithia Klamath, Inc.  
150 North Bartlett Street  
Medford, Oregon 97501  
Attn: \_\_\_\_\_

**Lender Notice Address:**

Toyota Motor Credit Corporation  
19001 S. Western Ave., EF12  
Torrance, California 90509  
Attn: Legal Department – Real Estate

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 answer back acknowledged) 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. No Indemnitor may delegate or transfer its obligations under this Agreement.

(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 Loan Documents 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. With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, this Agreement shall be interpreted and enforced according to federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of Oregon. In all other respects, this Agreement



will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Agreement is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Agreement has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of California.

(h) Consent to Jurisdiction. Each party hereto irrevocably consents and submits to the exclusive jurisdiction and venue of the courts of Los Angeles County, State of California 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.

This Agreement shall be interpreted and enforced according to the laws of the State of California (without giving effect to its rules governing conflict of laws).

(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.

[Signatures Appear on the Following Page]



IN WITNESS WHEREOF, this Agreement is executed this 1 day of oct, 2014.

**TENANT:**

LITHIA KLAMATH, INC.,  
an Oregon corporation

By: \_\_\_\_\_  
Name: JOHN NORTH  
Title: ASST. SEC.

**LANDLORD:**

LITHIA REAL ESTATE, INC.,  
an Oregon corporation

By: \_\_\_\_\_  
Name: JOAN NORTH  
Title: AUTHORIZED AGENT

**LENDER:**

TOYOTA MOTOR CREDIT CORPORATION,  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



IN WITNESS WHEREOF, this Agreement is executed this 1 day of oct, 2014.

**TENANT:**

LITHIA KLAMATH, INC.,  
an Oregon corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

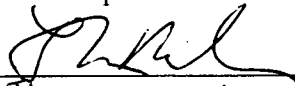
**LANDLORD:**

LITHIA REAL ESTATE, INC.,  
an Oregon corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

TOYOTA MOTOR CREDIT CORPORATION,  
a California corporation

By:   
Name: Thomas Miller  
Title: National Accounts Manager



Notary Acknowledgement for Lender:

**ACKNOWLEDGMENT**

State of California

County of Los Angeles

On Sept. 29, 2014 before me, Tiffany L. Collins, Notary Public, personally appeared Thomas Miller, who proved to me on the basis of satisfactory evidence to be the ~~person(s)~~ whose ~~name(s)~~ is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized ~~capacity(ies)~~, and that by ~~his/her/their signature(s)~~ on the instrument the ~~person(s)~~, or the entity upon behalf of which the ~~person(s)~~ acted, executed the instrument.

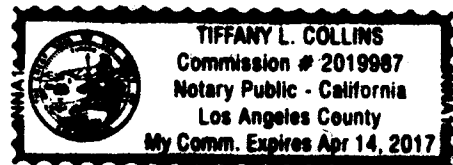
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature

Tiffany L. Collins







Notary Acknowledgement for Tenant:

**ACKNOWLEDGEMENT**

STATE OF Oregon )  
COUNTY OF Jackson ) ss.

On September 26, 2014, before me, the undersigned notary public in and for said County and State, personally appeared John North,

☒ personally known to me [or]  
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies) and that, by his signature(s) on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted executed the instrument.

WITNESS my hand and official seal.

Margie R Davis

My commission expires on

3.18.2016





Notary Acknowledgement for Landlord:

**ACKNOWLEDGEMENT**

STATE OF Oregon )  
COUNTY OF Jackson ) ss.

On September 26, 2014, before me, the undersigned notary public in and for said County and State, personally appeared John North,

☒ personally known to me [or]  
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies) and that, by his signature(s) on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted executed the instrument.

WITNESS my hand and official seal.

Margie R Davis

My commission expires on

3.18.2016





**Exhibit A**

Legal Description

Lot 2 in Block 5 of TRACT 1080 – WASHBURN PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Assessor's Map No. 3909-003CB-01100-000

Property ID: 527335