

This instrument was prepared
by ~~and should be returned to:~~

Emily E. Smith-Sulfaro, Esq.
Ford Motor Credit Company
The American Road
P.O. Box 6044
Dearborn, Michigan 48121-6044

WHEN RECORDED SEND TO:
Tomeika J. Poe
Chicago Title Insurance Co.
171 N. Clark St., MLC 04ND
Chicago, IL 60601

Brief description for Index:

Inst # 1999-36236

08/30/1999-36236

09:28 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

011 MMS 33.50

**SUBORDINATION OF LEASE, NON-DISTURBANCE,
AND ATTORNMENT AGREEMENT
AND ACKNOWLEDGMENT OF ASSIGNMENT OF RENTS AND LEASES
AND
RELEASE OF PRIOR SUBORDINATION OF LEASE, NON-DISTURBANCE,
AND ATTORNMENT AGREEMENT
AND ACKNOWLEDGEMENT OF ASSIGNMENT OF RENTS AND LEASES**

THIS SUBORDINATION OF LEASE, NON-DISTURBANCE, AND
ATTORNMENT AGREEMENT AND ACKNOWLEDGMENT OF ASSIGNMENT OF
RENTS AND LEASES AND RELEASE OF PRIOR SUBORDINATION OF LEASE, NON-
DISTURBANCE, AND ATTORNMENT AGREEMENT AND ACKNOWLEDGEMENT OF
ASSIGNMENT OF RENTS AND LEASES (this "Agreement") is made as of this 13th day of
August, 1999, among FORD MOTOR CREDIT COMPANY, a Delaware corporation
(hereinafter referred to as "Lender"); SONIC-WILLIAMS CADILLAC, INC., an Alabama
corporation (hereinafter referred to as "TENANT"); and MMR HOLDINGS, L.L.C., a North
Carolina limited liability company (hereinafter referred to as "LANDLORD").

WITNESSETH:

WHEREAS, on or about April 23, 1999, LENDER made a loan (the "Loan") to
LANDLORD, which Loan is secured by a Mortgage and Assignment of Leases and Rents and
Security Agreement dated on or about April 23, 1999 (the "Original Deed of Trust"),
encumbering the demised premises (hereinafter the "Premises") and other premises described
therein, owned by LANDLORD and located in the County of Shelby, and State of Alabama,
as more particularly described in Schedule "A" attached hereto and made a part hereof;

WHEREAS, in connection with the Loan, LENDER, TENANT and LANDLORD entered into a Subordination of Lease, Non-Disturbance, and Attornment Agreement and Acknowledgment of Assignment of Rents and Leases dated on or about April 23, 1999, and recorded in Shelby County, Alabama, on May 17, 1999, in Instrument No. 1999-20586 (the "Original SNDA");

WHEREAS, on or about the date first above written, LENDER and LANDLORD have amended and restated the promissory note in connection with the Loan;

WHEREAS, in connection with the amendment and restatement of the promissory note, on or about the date first above written, LENDER and LANDLORD, have entered into that certain amendment to the Original Deed of Trust (the Original Deed of Trust, as amended by such amendment, being hereinafter referred to as the "Deed of Trust");

WHEREAS, on or about the date first above written, Landlord and Tenant have terminated the lease to which the Original SNDA related and have simultaneously entered into a new Lease Agreement dated August 3, 1999 (the "Lease"), demising the Premises, as more particularly described in the Lease;

WHEREAS, LENDER, LANDLORD and TENANT desire to terminate and release the Original SNDA;

WHEREAS, LANDLORD and TENANT acknowledge and agree that LENDER will not consummate the amendment and restatement of the promissory note and the amendment of the Original Deed of Trust unless TENANT executes this Agreement; and

WHEREAS, TENANT and LENDER desire to confirm their mutual understanding with respect to the Deed of Trust and Lease.

NOW, THEREFORE, in consideration of the premises, the covenants, conditions, provisions, and agreements set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, LENDER, TENANT, and LANDLORD mutually acknowledge, represent, and agree as follows:

(1) LEASE RECITALS: TENANT hereby represents and warrants that:

(a) TENANT has accepted possession of the Premises and is the sole owner of the leasehold estate and that the Lease is in good standing and is in full force and effect;

(b) Neither LANDLORD nor TENANT is in default in the performance of or compliance with any provision of the Lease;

(c) Neither LANDLORD nor TENANT has received any notice of default or termination of the Lease;

(d) The Lease is a complete recital of the agreement of LANDLORD and TENANT with respect to the leasing of the Premises; and

(e) The TENANT has not paid, and will not pay, and LANDLORD has not received any rent or other payment more than thirty (30) days in advance of the time stipulated for payment under the terms of the Lease.

(2) **SUBORDINATION:** TENANT hereby subordinates at all times its interests in the Lease and to the Premises under the Lease, to the lien, terms, conditions, and provisions of the Deed of Trust, and to any renewals, extensions, modifications, and replacements thereof, subject to the terms and conditions set forth in this Agreement.

(3) **NON-DISTURBANCE:** LENDER hereby agrees that so long as TENANT is not in default (beyond any period in the Lease given TENANT to cure such default) and shall promptly pay the rents and fully perform all of the terms, conditions, and provisions of the Lease then: (a) TENANT's use, enjoyment, possession and occupancy of the Premises during the Lease or any extension or renewal thereof shall not be disturbed by LENDER or any successor-in-interest to LENDER or other person claiming, directly or indirectly through LENDER; (b) LENDER shall not join TENANT as a party to any proceeding brought as a default by LANDLORD under the Deed of Trust for the purpose of terminating TENANT'S interest and estate under the Lease; (c) in the event LENDER succeeds to the interests of LANDLORD under the Lease, the Lease shall not be terminated and any subsequent sale shall be made subject to the Lease and the rights of TENANT thereunder.

(4) **ATTORNMEN**T: If the Premises shall be sold by reason of foreclosure or other proceeding, TENANT agrees that it will attorn to and recognize LENDER and the successors and assigns of LENDER as its landlord for the unexpired balance of the term of said Lease with the same force and effect as if LENDER were the landlord under the Lease. In such event, TENANT's attornment to LENDER shall be effective and self-operative without the execution of any other instrument on the part of TENANT or LENDER.

(5) **RIGHTS UNDER THE LEASE:** If LENDER succeeds to the interest of LANDLORD (or such other owner as may acquire its interest from LENDER or in a foreclosure proceeding), LENDER or such other owner shall be bound to TENANT under all the terms, covenants, and conditions of the Lease after LENDER'S or such other owner's succession to the interests of LANDLORD, and TENANT shall have the same remedies against LENDER or such other owner as TENANT would have had against LANDLORD if LENDER or such other owner had not succeeded to the interest of LANDLORD; however, LENDER and such other owner shall not be (a) liable for any act or omission of any prior landlord; (b) subject to any offsets, deductions, or defenses which TENANT might have against any prior landlord; (c) liable for any security deposit under the Lease not actually transferred and paid over to LENDER; (d) bound by or obligated to give TENANT a credit for any prepayment of rent or additional rent in excess of rent due for the then current month unless actually received by LENDER, provided however, this shall not constitute LENDER's consent to the prepayment

of rent; and (e) bound by any agreement, amendment, or modification of the Lease made without LENDER's written consent.

(6) **LANDLORD'S DEFAULT AND LENDER'S OPPORTUNITY TO CURE:**
TENANT shall notify LENDER in writing of the occurrence of any default by LANDLORD under the terms of the Lease and permit LENDER access to the Premises and a period of thirty (30) days from the date of such notice in which to cure said default prior to TENANT exercising any right or remedy provided to TENANT under the Lease, including abatement of rental payments, performance of LANDLORD's obligations, or termination of the Lease. Said thirty (30) day period shall be extended by the period of time in which LENDER is diligently pursuing the cure of a default which cannot reasonably be expected to be cured within said thirty (30) day period. With respect to defaults which are personal to LANDLORD, including, without limitation, bankruptcy, and thus not being capable of being cured by LENDER, or with respect to defaults which are not capable of being cured without possession of the Premises, then LENDER shall be deemed to be diligently pursuing a cure of any default, if within said thirty (30) day period, LENDER commences and pursues foreclosure proceedings for the Premises.

(7) **OTHER TENANT REPRESENTATIONS:** TENANT hereby agrees that:

(a) From time to time upon the request of LENDER, TENANT shall provide LENDER with such documents as may be necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement, including without limitation an estoppel certificate certifying that no default, claim, offsets, or events which with the passage of time could become a default or the basis of a claim or offset against LANDLORD;

(b) Upon receipt of written notice from LENDER that an Event of Default (as defined in the Deed of Trust) has occurred under the Deed of Trust, TENANT agrees to pay all rent and other amounts owing under the Lease to such accounts designated by LENDER, regardless of whether an event of default under the Lease has occurred and notwithstanding any contrary instructions or demands from LANDLORD. LENDER agrees that any such payment shall be credited against the rental obligations of TENANT, and LENDER agrees to indemnify and hold TENANT harmless from any claim or liability which may arise pursuant to the written directions of LENDER;

(c) If LENDER shall enter into possession of the Premises as a mortgagee-in-possession in accordance with its rights under the Deed of Trust but has not at the time acquired the interests of LANDLORD, TENANT shall be bound to LENDER as if LENDER were LANDLORD, provided that LENDER expressly assumes in writing all of the obligations of LANDLORD under the Lease arising thereafter, and the Lease and all of the terms, rights, and obligations of TENANT shall continue in full force and effect;

(d) TENANT will forward to LENDER copies of all written notices which TENANT delivers to LANDLORD under the terms of the Lease; and

(e) TENANT will not, without the prior written consent of LENDER, (i) pay rent more than thirty (30) days in advance of the due date provided for in the Lease; (ii) modify, extend, or renew the Lease, except as may be provided for in said Lease; and (iii) sublet or assign TENANT'S interest, except as may be provided for in the Lease.

(8) ATTORNEY'S FEES AND COSTS: In the event any legal action or proceeding is commenced to interpret or enforce the terms of or obligations arising out of this Agreement or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the nonprevailing party all reasonable attorney's fees, costs, and expenses incurred by the prevailing party and awarded by a court of competent jurisdiction.

(9) NOTICES: Any notices or other communications required or permitted to be given by this document or by any of the loan documents must be given in writing and must be personally delivered or mailed by prepaid certified, registered, or first class mail or delivered by a nationally recognized overnight courier to the party to whom such notice or communication is directed at the following addresses, or to such other addresses as the parties may for themselves designate in writing by notice hereunder. Any notice or other communication shall be deemed to have been given (whether actually received or not) on the day it is personally delivered or, if mailed, on the third day after it is mailed as aforesaid. Either party may change its address for purposes of this document by giving ten (10) days prior written notice of such change to the other party pursuant to the terms of this clause.

to LANDLORD:

c/o Capital Automotive REIT
1420 Spring Hill Road
Suite 525
McLean, VA 22102
Attn: Portfolio Manager

With a copy to:

c/o Capital Automotive REIT
1420 Spring Hill Road
Suite 525
McLean, VA 22102
Attn: General Counsel

to LENDER:

Ford Motor Credit Company
1000 Abernathy Road NE
Suite 180 Building 400
Atlanta, GA 30346

With a copy to:

Ford Motor Credit Company
The American Road
Dearborn, Michigan 48121
Attn: Emily E. Smith-Sulfaro, Esq.

to TENANT:

c/o Sonic Automotive, Inc.
5401 East Independence Blvd.
Charlotte, NC 28212
Attn: Mr. William R. Brooks

With a copy to:

Parker, Poe, Adams & Bernstein L.L.P.
2500 Charlotte Plaza
Charlotte, NC 28244
Attn: Charles B. Lee, Jr., Esq.

- (10) **LIMITATION OF LENDER'S LIABILITY:** In the event of any default or breach by LENDER with respect to any of the terms, covenants, and conditions of the Lease to be observed, honored, or performed by LENDER as LANDLORD, TENANT shall look solely to the estate and property of LENDER in the Premises (and the rents and profits therefrom) for the recovery of any judgment from LENDER. It is agreed that no property or assets of LENDER other than LENDER's interest in the Premises (and the rents and profits therefrom) shall be subject to execution or other procedures for satisfaction of TENANT'S remedies. LENDER shall not be required to respond in monetary damages from any of its properties or assets other than LENDER'S interests in the Premises (and the rents and profits therefrom).
- (11) **SEVERABILITY:** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision were not a part of this Agreement.
- (12) **PARTIES BOUND:** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns. For purposes of this Agreement, all references herein to LENDER shall include any subsequent holder of the Deed of Trust who has given notice to TENANT of its ownership of the Deed of Trust and who claims by, through, or under LENDER, whether by virtue of foreclosure, or sale or transfer in lieu of foreclosure, or pursuant to the exercise of any rights and remedies under the Deed of Trust or otherwise.
- (13) **GOVERNING LAW:** This Agreement shall be deemed to be a contract entered into and made pursuant to the laws of the State of Alabama and shall in all respects be governed, construed, and enforced in accordance with the laws of said State. In the event that LENDER brings any action in any court of record of said State or the United States of America, TENANT consents and confers personal jurisdiction over TENANT by said court and agrees that service of process may be made on TENANT by any means permitted by applicable law. TENANT waives the right to demand a trial by jury.
- (14) **TERMINATION OF ORIGINAL SNDA:** Effective from and after the date first above written, the Original SNDA is terminated and released and shall be of no further force or effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed, under seal, as of the day and year first above written.

ATTEST:

TENANT:

SONIC-WILLIAMS CADILLAC, INC., an
Alabama corporation

By:

Name:

Title:

Theodore M. Wright
Secretary

By:

Name:

Title:

B. Scott Smith
VP

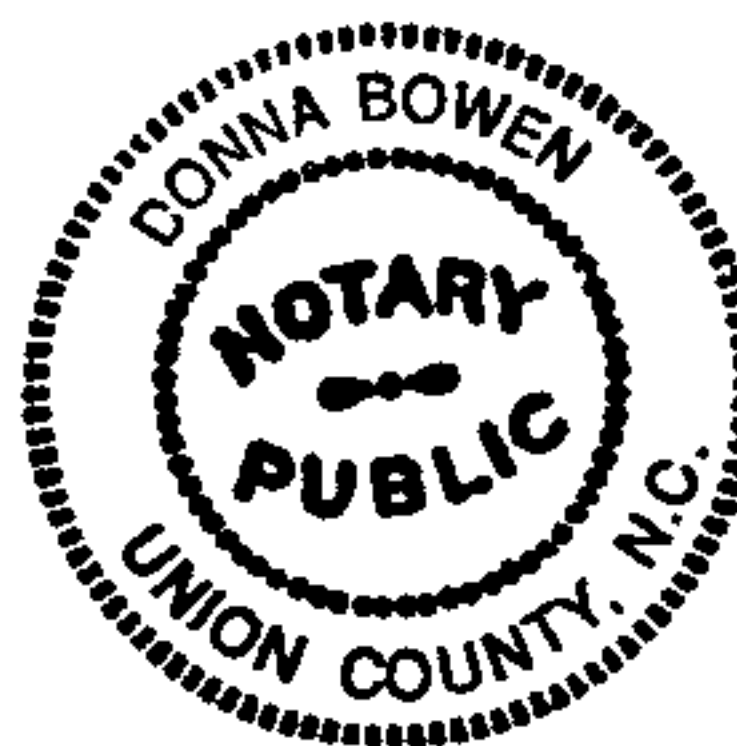
STATE OF NC)
) ss:
COUNTY OF Union)

On August 10, 1999, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared B. Scott Smith, known to me (or proved to me on the basis of satisfactory evidence) to be the VP of SONIC-WILLIAMS CADILLAC, INC., the Tenant therein named, an Alabama corporation, and acknowledged the execution thereof to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that he or she was authorized to execute the said instrument on behalf of said corporation.

WITNESS my hand and official seal.

Donna Bowen [SEAL]
Notary Public

My commission expires: 8-12-2003



LANDLORD:

MMR HOLDINGS, L.L.C., a North Carolina limited liability company

By: **CAR MMR L.L.C., a Delaware limited liability company, its Managing Member**

By: **Capital Automotive L.P., a Delaware limited partnership, its Managing Member**

By: **Capital Automotive REIT, a Maryland real estate investment trust, its General Partner**

By: Peter C. Staaf
Name: PETER C. STAAF
Title: Vice President and Treasurer

District of Columbia
STATE OF City of Washington) ss:
COUNTY OF)

On August 12, 1999, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared Peter C. Staaf, known to me (or proved to me on the basis of satisfactory evidence) to be the VP & Treasurer of Capital Automotive REIT, a Maryland real estate investment trust, the General Partner of Capital Automotive L.P., a Delaware limited partnership, the Managing Member of CAR MMR L.L.C., a Delaware limited liability company, the Managing Member of MMR HOLDINGS, L.L.C., the Landlord therein named, a North Carolina limited liability company, and acknowledged the execution thereof to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned and on oath stated that he or she was authorized to execute the said instrument on behalf of said limited liability company.

WITNESS my hand and official seal.

Wade M. Akers [SEAL]
Notary Public

My commission expires: October 1, 2001
My commission expires:

~~ATTEST:~~

LENDER:

FORD MOTOR CREDIT COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

By: WJ Beck IV
Name: William J. Beck IV
Title: National Account Manager
Ford Motor Credit Company

District of Columbia
~~STATE OF~~)
City of Washington) ss:
~~COUNTY OF~~)

On August 12, 1999, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared William J. Beck IV, known to me (or proved to me on the basis of satisfactory evidence) to be the Nat'l Acct. Mgr. of FORD MOTOR CREDIT COMPANY, the Lender therein named, a Delaware Corporation, and acknowledged the execution thereof to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that he or she was authorized to execute the said instrument on behalf of said corporation.

WITNESS my hand and official seal.

Wade M. Adams [SEAL]
Notary Public

My Commission Expires:
October 1, 2001

My commission expires: _____

SCHEDULE A

[SEE ATTACHED]

Lot 1-BB, according to a Resurvey of Lot 1-B of Resurvey of Lot 1-A, of Resurvey of Lot 1, B & S Subdivision,
as recorded in Map Book 13, Page 143, in the Office of the Judge of Probate, Shelby county, Alabama.

Inst # 1999-36236

08/30/1999-36236
09:28 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
011 MMS 33.50

Schedule A #51