

*Excerpted*

**UNOFFICIAL COPY** 00291885

PREPARED BY + RETURN TO:  
LESTER ROSEN  
ROSENTHAL + SCHANFIELD  
55 E. MONROE 46TH FL.  
CHGO, IL. 60603

2932/0156 03 001 Page 1 of 6  
2000-04-26 13:39:28  
Cook County Recorder 63.50



**ASSIGNMENT OF RENTS AND LEASES**  
(Commercial Real Estate)

THIS ASSIGNMENT, dated as of April 1, 2000 from KELLY NISSAN, INC, an Illinois corporation, whose address is 4300 West 95th Street, Oak Lawn, Illinois 60453 ("Borrower"), to and for the benefit of MANUFACTURERS BANK, an Illinois banking corporation, whose address is Ashland Avenue, Chicago, Illinois 60622-2298.

1. Borrower, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby bargain, sell, transfer, assign, convey, set over and deliver unto Lender all right, title and interest of the Borrower in, to and under any existing leases, together with any and all future leases hereinafter entered into by any lessor or lessee affecting the real estate described in Exhibit "A" attached hereto and made a part hereof (the "Property"), and all guarantees, amendments, extensions, modifications and renewals of such leases and any of them, all of which are hereinafter called the "Leases", and all rents, receipts, revenues, awards, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, on account of the use of the Property or otherwise arising out of or pertaining to the Property.

2. This Assignment is made for the purposes of securing:

(a) The payment of the indebtedness (including any amendments, extensions, modifications or renewals thereof) evidenced by those two certain Notes (together the "Notes") of Borrower of even date herewith, one (the "CML Note") in the principal sum of \$2,268,750.00 and the other (the "Term Note") in the principal sum of \$1,000,000.00, each issued under and secured by a certain Loan and Security Agreement (the "Loan Agreement") of even date herewith between Borrower, Lender and Arthur W. Kelly and Judith B. Kelly ("Guarantors") and further secured by a certain Mortgage (the "Mortgage") of even date herewith encumbering the Property, as hereafter amended, extended, modified or renewed, and other Loan Documents as defined in the Construction Loan Agreement (the "Loan Documents").

(b) The payment of all other sums, with interest thereon, becoming due and payable to Lender under the provisions of the Loan Agreement, the Mortgage and any other instrument constituting security for the Note, including without limitation, the other Loan Documents; and

(c) The performance and discharge of each and every term, covenant and condition of Borrower contained in Notes, the Loan Agreement, the Mortgage, and any other instrument constituting security for the Notes, including without limitation, the other Loan Documents.

3. Borrower covenants and agrees with Lender as follows:

(a) The ownership of the fee simple title to the Property is vested in Borrower.

(b) Borrower is presently in sole possession of the Property for the Intended Use provided for in the Mortgage; no leases of the Property ("Leases") are presently in effect with respect to the Property; and no Lease shall be entered into, or after having been entered into in conformity herewith, shall be materially altered, modified, amended, terminated, cancelled or surrendered nor any material terms or conditions thereof be waived, in each case without Lender's prior written consent.

00 - 01586

*SR*  
*7*

(c) Each Lease shall remain in full force and effect irrespective of any merger of the interest of lessor and any lessee under any of the Leases.

(d) Borrower has not accepted and will not accept any rents under any Lease for more than 30 days in advance of their due dates.

(e) Borrower upon request, from time to time, shall furnish to Lender a rent roll and lease abstract in such reasonable detail as Lender may request, certified by Borrower, of all Leases relating to the Property, and on demand, Borrower shall furnish to Lender executed copies of any and all such Leases.

4. Borrower further agrees as follows:

(a) This Assignment is absolute and is effective immediately. Notwithstanding the foregoing, until a default has occurred, and has not been cured, under the terms and conditions of the Notes, the Mortgage, the Loan Agreement or any Loan Document Borrower may receive, collect and enjoy the rents, income and profits accruing from the Property.

(b) Upon the occurrence of any Event of Default as defined in the Loan Agreement ("Event of Default"), Lender may, at its option, without notice to Borrower, receive and collect all such rents, income and profits as they become due, from the Property and the landlord's interest therein and under any and all Leases of all or any part of the Property. Lender shall thereafter continue to receive and collect all such rents, income and profits, as long as any Event of Default shall exist, and during the pendency of any foreclosure proceedings, and if there is a deficiency, during any redemption period.

(c) Borrower hereby irrevocably appoints Lender its true and lawful attorney with full power of substitution and with full power for Lender in its own name and capacity or in the name and capacity of Borrower, from and after any default not having been cured, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property or the leasehold interest therein, and at Lender's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in its own name or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits. Lessees of the Property are hereby expressly authorized and directed to pay any and all amounts due Borrower pursuant to the Leases directly to Lender or such nominee as Lender may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made.

(d) From and after the occurrence of any Event of Default, Lender shall be and is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of Lender or its designee to enter upon the Property, or any part thereof, with or without force and with process of law, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Borrower relating thereto, and may exclude the Borrower, its agents and servants, wholly therefrom. Borrower hereby grants full power and authority to Lender to exercise all rights, power and authority herein granted at any and all times after any default that has not been cured, without further notice to Borrower, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Property and the leasehold interest therein and of any indebtedness or liability of Borrower to Lender, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the cost of main-

taining, repairing, rebuilding and restoring the improvements on the Property or of making the same rentable, attorneys' fees incurred in connection with the enforcement of this Assignment, and of principal and interest payments due from Borrower to Lender on the Notes, the Loan Agreement, the Mortgage and the other Loan Documents, all in such order as Lender may determine according to provisions of the Notes, Loan Agreement, Mortgage and the other Loan Documents. Lender shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or growing out of the covenants and agreements of Borrower in the Leases. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property or any landlord's interest therein, or parts thereof, upon Lender, nor shall it operate to make Lender liable for the performance of any waste of the Property by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger, or for any environmental hazard on the Property.

(e) Waiver of or acquiescence by Lender in any default by the Borrower, or failure of the Lender to insist upon strict performance by the Borrower of any covenants, conditions or agreements in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

5. The rights and remedies of Lender under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Lender shall have under the Notes, Loan Agreement Mortgage or other Loan Documents, or at law or in equity.

6. If any term of this Assignment, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

7. All notices required or permitted to be given pursuant to this Assignment shall be sufficient and shall be deemed served if delivered in accordance with the provisions of the Loan Agreement relating to notices.

8. The terms "Borrower" and "Lender" shall be construed to include the heirs, personal representatives, successors and assigns thereof.

9. This Assignment may not be amended, modified or changed nor shall any waiver of any provision hereof be effective as against Lender, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

10 Upon cancellation of record of the Mortgage, this Assignment of Rents And Leases shall automatically and without further documentation or action on the part of the parties hereto, also be cancelled, terminated and be of no further or future force and effect.

11 This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the state of Illinois.

**9.4 WAIVER OF JURY TRIAL: BORROWER, HAVING BEEN FULLY ADVISED BY COUNSEL AS TO THE EFFECT OF THIS WAIVER, DOES HEREBY WAIVE ANY AND ALL**

RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS INSTRUMENT AND TO ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS HEREUNDER OR THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS SECURED HEREBY OR THEREBY, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. BORROWER REPRESENTS TO THE LENDER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

IN WITNESS WHEREOF, Borrower has executed this instrument all on and as of the day, month and year first above written.

**BORROWER:**

**Kelly Nissan, Inc., an Illinois corporation**

By: Arthur W. Kelly  
Arthur W. Kelly, President

G:\Manufacturers Bank\Kelly Nissan - Mortgage Term Loan\url.wpd

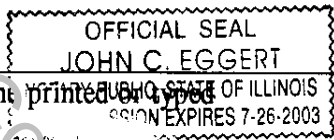
Property of Cook County Clerk's Office

State of Illinois )  
 ) SS  
County of Cook )

I, John C Eggert, a Notary Public in and for the County and State aforesaid, do hereby certify that Arthur W Kelly, the President of **Kelly Nissan, Inc.**, an Illinois corporation ("Corporation") who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer of the Corporation, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and the free and voluntary acts of the Corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of April, 2002.

John C Eggert  
Notary Public



My Commission Expires:

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

EXHIBIT A

00291885

889700-125

## LEGAL DESCRIPTION

### PARCEL 1A:

The East 69.25 feet of Lot 3 and that part of Lot 2 described as follows:  
Beginning at the Southwest corner of said Lot 2; thence East along the South line of Lot 2, 140.75 feet; thence North at right angles to the South line of Lot 2, 150 feet to a point; thence West parallel to the South line of Lot 2, 47 feet; thence North at right angles to the last described line 150 feet to a point in the North line of Lot 2 that is 93.75 feet East of the Northwest corner of Lot 2; thence West along the North line of Lot 2, 93.75 feet to the Northwest corner of Lot 2; thence South along the West line of Lot 2 to the point of beginning, all in Wiegel and Kilgallens 95th Street Subdivision of the North 300 feet of the South 350 feet of the East 3/4 of the Southwest 1/4 of the Southeast 1/4 of Section 3, Township 37 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois;

### PARCEL 1B:

The West 163 feet of the following described property taken as a tract: The North 25 feet of the South 375 feet (except the East 33 feet thereof and except the West 262.50 feet thereof) of the East 3/4 of the Southwest 1/4 of the Southeast 1/4 of Section 3, Township 37 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois;

### PARCEL 1C:

That part of Lot 2 in Wiegel and Kilgallens 95th Street Subdivision of the North 300 feet of the South 350 feet of the East 3/4 of the Southwest 1/4 of the Southeast 1/4 of Section 3, Township 37 North, Range 13 East of the Third Principal Meridian, described as follows:

Commencing at the Southwest corner of said Lot 2; thence East along the South line of Lot 2 for a distance of 140.75 feet to the point of beginning; thence North at right angles to the South line of Lot 2 for a distance of 150.00 feet to a point; thence West parallel with the South line of Lot 2 for a distance of 47.00 feet to a point; thence North 150 feet to a point of the North line of Lot 2 that is 93.75 feet East of the Northwest corner of said Lot 2; thence East along the North line of Lot 2 for a distance of 87.00 feet to a point; thence South for a distance of 300 feet to a point on the South line of Lot 2, said point being 180.75 feet East of the Southwest corner of said Lot 2; thence West along the South line of Lot 2 for a distance of 40.00 feet to the point of beginning, in Cook County, Illinois;

### PARCEL 1D:

The West 86.98 feet of the North 25 feet of the South 375 feet (except the East 33 feet thereof and except the West 425.50 feet thereof) of the East 3/4 of the Southwest 1/4 of the Southeast 1/4 of Section 3, Township 37 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Address: 4300 W. 95TH ST.  
OAK LAWN, IL. 60453

24-03-408-010

24-03-400-037

24-03-408-013

24-03-400-040