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This Instrument Prepared by and  
After Recording Return to:  
Joseph Q. McCoy  
Schwartz, Cooper, Greenberger &  
Krauss, Chartered  
180 N. LaSalle St., Suite 2700  
Chicago, Illinois 60601



Doc#: 0514039072  
Eugene "Gene" Moore Fee: \$98.50  
Cook County Recorder of Deeds  
Date: 05/20/2005 02:26 PM Pg: 1 of 38

**The Talon Group#** 1097161 ✓

## MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("Mortgage") dated as of May 20, 2005 from **KELLY NISSAN, INC.**, an Illinois corporation ("Mortgagor"), with a mailing address of Kelly Nissan, Inc. 4300 W. 95<sup>th</sup> St., Oak Lawn, IL 60453, for the benefit of **MB FINANCIAL BANK, N.A.**, a national banking association, its successors and assigns ("Mortgagee"), with a mailing address of 2 South LaSalle Street, Chicago, Illinois 60603.

### WITNESSETH THAT:

WHEREAS, Mortgagor is the owner of fee simple title to certain real estate located in Oak Lawn, Cook County, Illinois and legally described in Exhibit "A" attached hereto (the "Property");

WHEREAS, Mortgagee has agreed to make a loan to Mortgagor in the principal amount of \$2,400,000.00 (the "Loan"). The Loan shall be evidenced by a term promissory note (the "Note") of even date herewith in favor of Mortgagee in the Principal amount of \$2,400,000.00 of even date herewith.

WHEREAS, this Mortgage, the Note and all other instruments and documents evidencing or securing the indebtedness evidenced by the Note are hereinafter collectively referred to as the "Loan Documents."

NOW, THEREFORE, to secure (i) the payment when and as due and payable of the principal of and interest on the Note or so much thereof as may be advanced from time to time; (ii) the payment of all other indebtedness which this Mortgage by its terms secures; and (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Note and the other Loan Documents, including, without limitation, the obligations contained in an Environmental Indemnity Agreement of even date herewith from Mortgagor and the Guarantors (all of such indebtedness, obligations and liabilities identified in (i), (ii), and (iii) above being hereinafter referred to as the "indebtedness hereby secured"), the Mortgagor does hereby grant, sell, convey, mortgage and assign unto the Mortgagee, its successors and assigns and does hereby grant to Mortgagee, its successors and assigns a security interest in all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV,

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V, VI, VII and VIII below all of same being collectively referred to herein as the "Mortgaged Premises":

## GRANTING CLAUSE I

That certain Real Estate lying and being in the County of Cook and State of Illinois, more particularly described in Exhibit "A" attached hereto and made a part hereof.

## GRANTING CLAUSE II

All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration and repair of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, and, all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever owned by Mortgagor and now or hereafter attached to or contained in or used in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including but not limited to, all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and other equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property owned by Mortgagor and used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code of Illinois, in effect from time to time (the "Code"), for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the indebtedness hereby secured. The addresses of Mortgagor (debtor) and Mortgagee (secured party) appear at the beginning hereof.

## GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil and water rights belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located hereon and the reversions, rents, issues, revenues and profits thereof,

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including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent or for security) under any and all leases and renewals thereof or under any contracts or options for the sale of all or any part of said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees that until an Event of Default (as hereinafter defined) shall occur giving Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive (but not more than 30 days in advance), distribute and enjoy such rents.

## GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvements now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively "Condemnation Awards").

## GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter by instrument or writing of any kind, be subjected to the lien hereof.

## GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

## GRANTING CLAUSE VII

To the extent assignable, all of the Mortgagor's "general intangibles" (as defined in the Code) now owned or hereafter acquired and related to the Mortgaged Premises, including, without limitation, all right, title and interest of the Mortgagor in and to: (i) all agreements, leases, licenses and contracts to which the Mortgagor is or may become a party relating to the Mortgaged Premises or improvements thereon; (ii) all obligations or indebtedness owing to the

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Mortgagor (other than accounts) or other rights to receive payments of money from whatever source arising relating to the Mortgaged Premises; (iii) all real estate tax refunds and real estate tax refund claims; (iv) all intellectual property; and (v) all choses in action and causes of action.

To the extent assignable, all of Mortgagor's "accounts" (as defined in the Code) now owned or hereafter created or acquired as relates to the Mortgaged Premises, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) accounts receivable, contract rights, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services, (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property, (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing, (iv) monies due to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect hereto (whether or not yet earned by performance on the part of the Mortgagor), (v) unperfected securities, and (vi) proceeds of any of the foregoing and all collateral security and guarantees of any kind given by any person or entity with respect to any of the foregoing. To the extent assignable, all warranties, guarantees, permits and licenses received by Mortgagor in respect to the Mortgaged Premises.

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged and assigned, and in which a security interest is granted, unto Mortgagee, its successors and assigns, forever; provided, however, that this instrument is upon the express condition that if the principal of and interest on the Note shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed, then this instrument and the estate and rights hereby granted shall cease, determine and be void and this instrument shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. Payment of the Indebtedness. The indebtedness hereby secured will be promptly paid as and when the same becomes due.
2. Representation of Title and Further Assurances. Mortgagor will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this instrument and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be. At the time of delivery of these presents, the Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Premises which constitutes real property subject only to the matters set forth in Exhibit "B" attached hereto and hereby made a part hereof (the "Permitted Exceptions"), and Mortgagor has good right, full power and lawful authority to convey, mortgage and create a security interest in the same, in the manner and form aforesaid; except as set forth in Exhibit "B" hereto, the same is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, including the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature, and the Mortgagor shall

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and will forever defend the title to the Mortgaged Premises against the claims of all persons whomsoever, other than claims under the Permitted Exceptions.

3. Intentionally Deleted.

4. Representations, Covenants and Agreement. In order to induce Mortgagee to execute this Agreement and to make the Loan, the Mortgagor further represents and warrants as follows:

- (a) Mortgagor. The Mortgagor is a corporation, duly organized and validly existing and in good standing under the laws of the State of Illinois and fully qualified to do business in the State of Illinois. The By-laws ("By-laws") creating Mortgagor and the Certificate of Formation of Mortgagor are in effect, unamended and are the true, correct and complete documents relating to Mortgagor's creation and governance. Mortgagor and its members have fully complied with all applicable securities and other laws, ordinances and regulations in connection with the formation of Mortgagor and the sale and offer for sale of interests therein;
- (b) By-laws. The By-laws and the Certificate of Formation of Mortgagor shall not, without the prior written consent of Mortgagee, be amended or modified at all times prior to repayment of the Loan.
- (c) Continuing Existence. Mortgagor, without the prior written consent of Mortgagee, shall not (i) permit itself to be dissolved or its existence terminated, or (ii) amend or modify its organizational documents if such amendment or modification could have a material adverse effect on Mortgagor's ability to perform its obligations under any of the Loan Documents.
- (d) Solvency. Mortgagor represents and warrants to Mortgagee that it is able to pay its debts as such debts become due, and it has capital sufficient to carry on its present businesses and transactions and all businesses and transactions in which it is about to engage. Mortgagor (i) is not bankrupt or insolvent, (ii) has not made an assignment for the benefit of its creditors, (iii) has not had a trustee or receiver appointed, (iv) has not had any bankruptcy, reorganization or insolvency proceedings instituted by or against, or (v) shall not be rendered insolvent by its execution, delivery or performance of the Loan Documents or by the transactions contemplated thereunder.
- (e) Title: Mortgagor owns good and marketable fee simple title to the Real Estate. The Real Estate is free and clear of all liens, claims and encumbrances except the Permitted Exceptions;
- (f) Authority: Mortgagor has full power and authority to execute and deliver this Agreement and the other Loan Documents to be executed and delivered by Mortgagor pursuant to this Agreement and subject to obtaining all necessary Governmental Approvals to perform its obligations hereunder and thereunder.

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Upon the execution and delivery thereof, this Agreement and all such Loan Documents will be valid, binding and enforceable upon Mortgagor in accordance with its respective terms. Execution and delivery of this Agreement and the other Loan Documents to be executed and delivered by Mortgagor, do not and will not contravene, conflict with, violate or constitute a default under the partnership agreement or certificate of limited partnership governing Mortgagor or any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which Mortgagor is a party or is bound or which is binding upon or applicable to the Property or any portion thereof;

- (g) Conditions: There is not any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending or to the best of Mortgagor's knowledge threatened, materially and adversely affecting Mortgagor, the Property or the use or operation thereof, or which would prevent Mortgagor from complying with or performing its obligations under this Agreement or any of the other Loan Documents within the time limits set forth therein for such compliance or performance, or which would prevent Mortgagor from operating the Property on a regular basis and to the best of Mortgagor's knowledge, no basis for any such matter exists;
- (h) Financial Statements: All financial statements submitted to Mortgagee relating to Mortgagor and Guarantor are true and correct, have been prepared on a consistent basis that, fairly present the financial condition of the person or entity to which they pertain and the other information therein described and do not contain any untrue statement of a material fact or omit to state a fact material to the financial statements submitted or this Agreement. No material adverse change has occurred in the financial condition of Mortgagor or Guarantor since the dates of said financial statements;
- (i) Compliance of Laws: The Property and the use, occupancy and operation of the Property will be in compliance with all laws, statutes, ordinances, rules, orders or regulations of any kind whatsoever (including without limitation, those relating to environmental protection, water use, zoning, building, fire, health or safety), any contractual arrangements with third parties or any covenants, conditions, easements, rights of way or restrictions of record and neither Mortgagor nor, any agent of Mortgagor has received any notice, written or otherwise, alleging any such violation. The Property is in full compliance with current zoning requirements, including without limitation, those relating to setbacks, height, floor area ratio, and percentage of land coverage and will not be a non-conforming or special use. No right to any off-site facilities will be necessary to insure compliance by the Property with all environmental protection, public highway, water use, zoning, building, fire, health, safety or similar statutes, laws, ordinances, codes, rules, regulations, orders and decrees.

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- (j) Environmental Laws: Except as described in any environmental report delivered to Mortgagee, (i) the Property and the use and operation thereof are currently in compliance and will remain in compliance with all applicable Environmental Laws, health and safety laws, rules and regulations; (ii) to the best of Mortgagor's knowledge, the Real Estate has never been used for a sanitary land fill, dump or for the disposal, generation or storage of Hazardous Materials; (iii) no Hazardous Materials have been deposited or are located in, under or upon the Real Estate or property adjacent thereto and no part of the Real Estate is presently contaminated by any Hazardous Materials; and (iv) no underground storage tanks are located on the Real Estate, nor, to the best of Mortgagor's knowledge have any underground storage tanks been removed from the Real Estate in any manner other than in full compliance with all applicable Environmental Laws. Except as described in the Environmental Report, no written notice has been received by Mortgagor or the Guarantors or their agents, of any Hazardous Materials in, under or upon the Real Estate or of any violation of any environmental protection laws or regulations with respect to the Real Estate and, to the best of Mortgagor's knowledge, no facts exist which would provide a basis for any such violation with respect to the Real Estate or any parcels adjacent thereto. Mortgagor has implemented any recommendations set forth in the Environmental Report for environmental remediation of the Real Estate and all such remediation work has been and will be performed in accordance with all applicable Environmental Laws;
- (k) Rivers: No part of the Real Estate contains "waters of the United States," as defined in 33 CFR 328, and the Property will not include the discharging of dredged or fill material into waters of the United States as such activity is described and regulated by Section 404 of the Clean Water Act 33 U.S.C. '1344;
- (l) Taxes: Except for the current, non-delinquent taxes, there are no taxes, assessments or liens pending or threatened against the Real Estate for any present or past due taxes or for paving, sidewalk, curbing, sewer or any other street improvements of any kind;
- (m) Homestead: No portion of the Real Estate is or will be used as the residential homestead of Mortgagor or any Affiliate of Mortgagor without the prior written consent of Mortgagee;
- (n) Residential or Agricultural Real Estate: The Real Estate does not constitute residential or agricultural real estate within the meaning of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq.;
- (o) Leases: Mortgagor will not enter into any Lease of any portion of the Property without the advance written consent of Mortgagee; and
5. Maximum Indebtedness. The total indebtedness secured by the Note and any other document or instrument now or hereafter given as security for the indebtedness hereby

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secured shall not in any event exceed \$4,800,000.00. Upon the occurrence of an Event of Default, the Mortgagee may (but need not) declare the entire principal indebtedness and interest thereon due and payable and pursue all other remedies conferred upon Mortgagee by this Mortgage or by law upon a default. All monies so expended shall be so much additional indebtedness secured by this Mortgage and shall be payable on demand with interest at the Default Interest Rate (as defined in Section 39 hereof). Mortgagee may exercise either or both of the aforesaid remedies.

6. Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, conducted in good faith and with due diligence and if Mortgagor shall have furnished such security, if any, as may be required in the proceedings or required by Mortgagee's title insurer to insure over the lien of such taxes.

7. Payment of Taxes on Note, Mortgage or Interest of Mortgagee. Mortgagor agrees that if any tax, assessment or imposition upon this Mortgage or the indebtedness hereby secured or the Note or the interest of Mortgagee in the Mortgaged Premises or upon Mortgagee by reason of any of the foregoing (including, without limitation, corporate privilege, franchise and excise taxes, but excepting therefrom any income tax on interest payments on the principal portion of the indebtedness hereby secured imposed by the United States or any State) is levied, assessed or charged, then, unless all such taxes are paid by Mortgagor to, for or on behalf of Mortgagee as they become due and payable (which Mortgagor agrees to do upon demand of Mortgagee, to the extent permitted by law), or Mortgagee is reimbursed for any such sum advanced by Mortgagee, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee upon thirty (30) days' notice to Mortgagor, notwithstanding anything contained herein or in any law heretofore or hereafter enacted, including any provision thereof forbidding Mortgagor from making any such payment. Mortgagor agrees to provide to Mortgagee, upon request, official receipts showing payment of all taxes and charges which Mortgagor is required to pay hereunder.

8. Tax and Insurance Deposits. Upon the Mortgagee's request, Mortgagor covenants and agrees to deposit with Mortgagee on the first day of each month thereafter, until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of the annual taxes and assessments (general and special) on the Mortgaged Premises (unless said taxes are based upon assessments which exclude improvements thereon now constructed or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). In addition, upon Mortgagee's request, Mortgagor shall deposit an amount that, in Mortgagee's reasonable judgment, when added to the monthly deposits to be made by Mortgagor will result in



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sufficient funds to pay the next installment of taxes and assessments when due. If prior deposits are insufficient, Mortgagor shall deposit with Mortgagee an amount of money which, together with the aggregate of the monthly deposits made or to be made above as of one month prior to the date on which the total annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full the total annual taxes and assessments reasonably estimated by Mortgagee to become due and payable with respect to the Mortgaged Premises for the current calendar year. Such deposits are to be held in an interest bearing account pledged to Mortgagee and are to be used for the payment of taxes and assessments (general and special), respectively, on the Mortgaged Premises next due and payable when they become due. Mortgagee may, at its option, itself pay such taxes and assessments when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor in a time and manner to allow for payment of such taxes and assessments prior to the due date. If the funds so deposited are insufficient to pay any such taxes and assessments (general or special) for any year when the same shall become due and payable, Mortgagor shall within fifteen (15) days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes and assessments (general and special). If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on the next due deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee.

9. Mortgagee's Interest In and Use of Deposits. Upon the occurrence of an Event of Default under this Mortgage, the Note or any other document securing the Note, the Mortgagee may at its option, without being required to do, apply any monies at the time on deposit pursuant to Section 8 hereof to the performance of any of Mortgagor's obligations hereunder or under the Note, in such order and manner as Mortgagee may elect. When the indebtedness hereby secured has been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes and assessments any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of which they were deposited, accompanied by the bills for such taxes and assessments. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

10. Recordation and Payment of Taxes and Expenses Incident Thereto. Upon Mortgagee's request, Mortgagor will cause this Mortgage, all mortgages supplemental hereto and any financing statement or other notices of a security interest required by Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refileing of a mortgage, security interest, assignment or other lien or charge upon the Mortgaged Premises, or any part thereof, in order fully to preserve and protect the rights of Mortgagee hereunder, and, without limiting the foregoing, Mortgagor will pay or reimburse Mortgagee for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or re-recordation, including any documentary stamp tax or tax imposed upon the privilege of having this instrument or any instrument issued pursuant hereto recorded.

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11. Insurance. Mortgagor will, at its expense, maintain such insurance as required by Mortgagee. The proceeds of such insurance shall be applied as provided in Section 12(c) hereof. In the event of foreclosure, Mortgagor authorizes and empowers Mortgagee to effect insurance upon the Mortgaged Premises in the amounts aforesaid, for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor, to cancel any or all existing insurance policies.

12. Damage to and Destruction of the Improvements.

(a) Notice. In the case of any material damage to or destruction of any improvements which are or will be constructed on the Mortgaged Premises or any part thereof, Mortgagor shall promptly give notice thereof to Mortgagee generally describing the nature and extent of such damage or destruction. Material damage shall mean damages in excess of \$25,000.00.

(b) Restoration. Upon the occurrence of any damage to or destruction of any improvements on the Mortgaged Premises, provided Mortgagee permits the proceeds of insurance to be used for repairs, replacements, restoration and rebuilding, Mortgagor shall cause same to be restored, replaced or rebuilt as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such restoration, replacement or rebuilding shall be effected promptly and Mortgagor shall notify the Mortgagee if it appears that such restoration, replacement or rebuilding may unduly delay completion of such improvements. Any amounts required for repairs in excess of insurance proceeds shall be paid by Mortgagor.

(c) Application of Insurance Proceeds. Net insurance proceeds received by the Mortgagee under the provisions of this Mortgage or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the Mortgaged Premises or any part thereof shall be applied by the Mortgagee at its option as and for a prepayment on the Note (whether or not the same is then due or otherwise adequately secured) or shall be disbursed for restoration of such improvements (in which event the Mortgagee shall not be obligated to supervise restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Note). If Mortgagee elects to permit the use of the insurance proceeds to restore such improvements it may do all necessary acts to accomplish that purpose including using funds deposited by Mortgagor with it for any purpose and advancing additional funds, all such additional funds to constitute part of the indebtedness secured by the Mortgage. If Mortgagee elects to make the insurance proceeds available to Mortgagor for the purpose of effecting such a restoration, or, following an Event of Default, elects to restore such improvements, any excess of insurance proceeds above the amount necessary to complete such restoration shall be applied as and for a prepayment on the Note. Notwithstanding the foregoing provisions Mortgagee agrees that net insurance proceeds shall be made available for the restoration of the portion of the Mortgaged Premises damaged or destroyed if written application for such use is made within thirty (30) days after receipt of such proceeds and the following conditions are satisfied: (i) no Event of Default, or event which if uncured within any applicable cure period, would constitute an Event of Default, shall have occurred or be continuing hereunder (and if such an event shall occur during restoration Mortgagee may, at its election, apply any insurance proceeds then remaining in its hands to the reduction of the indebtedness evidenced by the Note and the other indebtedness hereby secured), (ii) the cost of repairs, in Mortgagee's reasonable judgment, is less than \$100,000.00, (iii) Mortgagor shall have submitted

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to Mortgagee plans and specifications for the restoration which shall be satisfactory to it in Mortgagee's reasonable judgment, (iv) Mortgagor shall have submitted to Mortgagee evidence satisfactory to Mortgagee (including, at Mortgagee's election, fixed price contracts with good and responsible contractors and materialmen covering all work and materials necessary to complete restoration), that the cost to complete restoration is not in excess of the amount of insurance proceeds available for restoration, or, if a deficiency shall exist, Mortgagor shall have deposited the amount of such deficiency with Mortgagee, (v) Mortgagor shall have obtained a waiver of the right of subrogation from any insurer under such policies of insurance and (vi) no party which has executed a lease for any portion of the Property, may terminate their lease. Any insurance proceeds to be released pursuant to the foregoing provisions shall be disbursed from time to time as restoration progresses to pay for restoration work completed and in place. Mortgagee may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens or claims for lien. All necessary and reasonable title insurance charges and other costs and expenses paid to or for the account of Mortgagee in connection with the release of such insurance proceeds shall constitute so much additional indebtedness secured by this Mortgage to be payable upon demand and if not paid upon demand shall bear interest at the Default Interest Rate (as defined in Section 39 hereof). Mortgagee may deduct any such costs and expenses from insurance proceeds at any time held by Mortgagee. No interest shall be payable to Mortgagor upon insurance proceeds held by Mortgagee.

(d) Adjustment of Loss. Unless an Event of Default exists, Mortgagor is hereby authorized and empowered to adjust or compromise any loss under any insurance policies covering or relating to the Mortgaged Premises. Each insurance company is hereby authorized and directed to make payment (i) of 100% of all such losses of more than \$50,000 directly to Mortgagee alone and (ii) of 100% of all such losses of said amount or less directly to Mortgagor alone, and in no case to Mortgagor and Mortgagee jointly. After deducting from such insurance proceeds any expenses incurred by Mortgagee in the collection and settlement thereof, including without limitation reasonable attorneys' and adjusters' fees and charges, Mortgagee shall apply the net proceeds as provided in Section 12(c). Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure except for its gross negligence or willful misconduct.

### 13. Eminent Domain.

(a) Notice. Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings.

(b) Assignment of Claim, Power of Attorney to Collect, Etc. Any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Mortgaged Premises by any governmental body for taking or affecting the whole or any part of said Mortgaged Premises, the improvements on the Mortgaged Premises or any easement therein

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or appurtenance thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the award for payment thereof) are hereby assigned by Mortgagor to Mortgagee to the extent of the existing principal balance, interest thereon and other outstanding charges owed by Mortgagor to Mortgagee and Mortgagor hereby irrevocably constitutes and appoints Mortgagee its true and lawful attorney in fact with full power of substitution for it and in its name, place and stead to collect and receive the proceeds of any such award granted by virtue of any such taking and to give proper receipts and acquittances therefor. Mortgagee shall not settle any condemnation award with the condemning party without the consent of the Mortgagor. Mortgagor shall have the right to participate in any proceedings which determine the award to be granted.

(c) Effect of Condemnation and Application of Awards. In the event that any proceedings are commenced by any governmental body or other person to take or otherwise affect the Mortgaged Premises, the improvements thereon or any easement therein or appurtenance thereto, the proceeds of any award made in such proceedings shall be distributed in the same manner as proceeds of insurance under paragraph 12(c).

14. Construction, Repair, Waste, Etc. Mortgagor covenants and agrees (i) that no building or other improvement on the Mortgaged Premises and constituting a part thereof shall be materially altered, removed or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the consent of Mortgagee; and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, the same will be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those discarded, free from any security interest in or encumbrance thereon or reservation of title thereto; (ii) to not intentionally permit, commit or suffer waste, impairment or deterioration of the Mortgaged Premises or any part thereof; (iii) to keep and maintain said Mortgaged Premises and every part thereof in good and first class repair and condition (ordinary wear and tear excepted); (iv) to effect such repairs as Mortgagee may reasonably require and from time to time to make all needful and proper replacements and additions so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good and first class condition, fit and proper for the respective purposes for which they were originally erected or installed; (v) to comply with all statutes, orders, requirements or decrees relating to said Mortgaged Premises by any Federal, State or Municipal authority; (vi) to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Premises or any part hereof and not to initiate any changes to or terminations of any of the foregoing or of zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Mortgagee; and (vii) to make no alterations in or improvements or additions to the Mortgaged Premises without Mortgagee's written permission except as required, permitted or contemplated by governmental authority.

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15. Liens and Encumbrances. Except as otherwise permitted herein, or under any of the Loan Documents, Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created, or to remain, and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge or conditional sale or other title retention agreement with respect to the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for the Permitted Exceptions, this instrument and the lien of all other documents given to secure the indebtedness hereby secured; provided, however, that Mortgagor may contest the validity and amount of any mechanic's lien, charge or encumbrance (other than the lien of this Mortgage or of any other document securing payment of the Note) upon giving Mortgagee timely notice of its intention to contest the same and either (a) maintaining with Mortgagee a deposit of cash or negotiable securities satisfactory to Mortgagee in an amount sufficient in the reasonable opinion of Mortgagee to pay and discharge or to assure compliance with the matter under contest in the event of a final determination thereof adversely to Mortgagor or (b) obtaining title insurance coverage over such lien on Mortgagee's title insurance policy by endorsements reasonably acceptable to Mortgagee. Mortgagor agrees to prosecute and contest such lien diligently and by appropriate legal proceedings which will prevent the enforcement of the matter under contest and will not impair the lien of this Mortgage or interfere with the normal conduct of business on the Mortgaged Premises. On final disposition of such contest, any cash or securities in Mortgagee's possession not required to pay or discharge or assure compliance with the matter contested shall be returned to Mortgagor without interest.

16. Right of Mortgagee to Perform Mortgagor's Covenants, Etc. If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter upon prior written notice to Mortgagor and failure of Mortgagor to make such payment or perform such act within any applicable cure period provided herein make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Interest Rate, shall constitute so much additional indebtedness hereby secured and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof.

17. After-Acquired Property. Any and all property hereafter acquired which is of the kind or nature herein provided and related to the premises described in Granting Clause I hereof, or intended to be and become subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act on the part of Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as Mortgagee may reasonably require for

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the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

18. Inspection by Mortgagee. Mortgagee and its agents shall have the right to inspect the Mortgaged Premises at all reasonable times upon reasonable prior notice to Mortgagor, and access thereto shall be permitted for that purpose.

19. Subrogation. Mortgagor acknowledges and agrees that Mortgagee shall be subrogated to any lien discharged out of the proceeds of the loan evidenced by the Note or out of any advance by Mortgagee hereunder, irrespective of whether or not any such lien may have been released of record.

20. Transfer of the Mortgaged Premises.

(a) In determining whether or not to make the loan secured hereby, Mortgagee has examined the credit-worthiness of Mortgagor, found it acceptable and relied and continues to rely upon same as the means of repayment of the loan. Mortgagor is well-experienced in borrowing money and owning and operating property such as the Mortgaged Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rate or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Mortgaged Premises, (a) may divert funds which would otherwise be used to pay the Note secured hereby, (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security, (c) would detract from the value of the Mortgaged Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure as a foreclosure by Mortgagee would be necessary to clear the title to the Mortgaged Premises.

(b) In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Mortgagor and in the value of the Mortgaged Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Mortgaged Premises free of subordinate financing liens, Mortgagor agrees that if this Section be deemed a restraint on alienation, that it is a reasonable one, Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, mortgage, lease, pledge, encumbrance or other transfer of, or the granting of any option in, or any contract for any of the foregoing (on an installment basis or otherwise) pertaining to:

- (i) the Mortgaged Premises, any part thereof, or any interest therein; or
- (ii) any shares in Mortgagor;

whether involuntary or by operation of law or otherwise, without the prior written consent of Mortgagee having been obtained to such sale, assignment, conveyance, mortgage, lease, option,

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pledge, encumbrance or other transfer (any such sale, assignment, conveyance, mortgage, lease, pledge, encumbrance or other transfer being referred to herein as a "Prohibited Transfer"). Mortgagor agrees that in the event the ownership of the Mortgaged Premises or the entity described in subparagraph (ii), any interest therein or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the Note, and any other document evidencing the indebtedness hereby secured, without in any way vitiating or discharging Mortgagor's liability hereunder or under any other document evidencing the indebtedness hereby secured. No sale of the Mortgaged Premises, forbearance to any person with respect to this Mortgage, or extension to any person of the time for payment of the Note given by Mortgagee shall operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by Mortgagee. Without limitation of the foregoing, in any event in which the written consent of Mortgagee is required in this Section 20, Mortgagee may condition its consent upon any combination of (i) the payment of compensation to be determined by Mortgagee, (ii) the increase of the interest rate payable under the Note, (iii) the shortening of maturity of the Note, and (iv) other modifications of the terms of the Note or the other instruments evidencing the indebtedness hereby secured.

(c) Without limitation of the foregoing, (i) in any event in which Mortgagee's consent is requested in accordance with the terms of this Section 20, Mortgagor shall pay all expenses incurred by Mortgagee, including reasonable attorneys' fees, in connection with the processing of such request, and (ii) the consent of Mortgagee to any transfer of the Mortgaged Premises shall not operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part.

21. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) Default in making payment when due (whether by lapse of time, acceleration or otherwise) of the principal under the Note, or within five (5) days from the date when due of the interest under the Note or of any other indebtedness hereby secured;

(b) Any violation of Sections 11 or 20 hereof;

(c) Default in the observance or performance of any other covenant, condition, agreement or provisions hereof or of the Note or any additional collateral document which is not remedied within thirty (30) days after written notice thereof to Mortgagor by Mortgagee; or

(d) Any Event of Default shall occur under any of the other Loan Documents.

22. Remedies. When any Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument) and in addition to such other rights as may be available under applicable law, but subject at all times to any mandatory legal requirements:

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- (a) Acceleration. The Note and all unpaid indebtedness of Mortgagor hereby secured, including interest then accrued thereon, shall, at Mortgagee's option, be accelerated and be forthwith due and payable without other notice or demand of any kind.
- (b) Uniform Commercial Code. Mortgagee shall have the rights and remedies set forth in Section 50 hereof.
- (c) Foreclosure. Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness hereby secured in the decree of sale, all reasonable expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, et seq., as from time to time amended (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Premises. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged Premises, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional indebtedness hereby secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate until paid.
- (d) Appointment of Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.



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(e) Taking Possession, Collecting Rents, Etc. Upon demand by Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Premises, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Premises made subsequent to this Mortgage without Mortgagee's prior written consent;

(iv) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Premises, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the applicable maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Premises as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Premises, to the payment of taxes,

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premiums and other charges applicable to the Mortgaged Premises, or in reduction of the indebtedness hereby secured in such order and manner as Mortgagee shall select.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Mortgagor promises to pay upon demand together with interest at the rate applicable to the Note at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Interest Rate.

## 23. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 22(c) or 25 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

24. Waiver of Right to Redeem - Waiver of Appraisalment, Valuation, Etc. Mortgagor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction

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to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Note and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that, upon acquisition of the Mortgaged Premises, the Mortgaged Premises will not constitute agricultural real estate, as defined in Section 5/15-1201 of the Act, or residential real estate, as defined in Section 5/15-1219 of the Act. To the fullest extent permitted by law, Mortgagor (a) pursuant to Section 5/15-1601(b) of the Act, hereby voluntarily and knowingly waives any and all rights of redemption on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, and (b) voluntarily and knowingly waives any and all rights or reinstatement.

25. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, and all of which expenditures shall become so much additional indebtedness hereby secured which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Interest Rate.

26. Insurance After Foreclosure. Wherever provision is made in the Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale. Upon confirmation of sale, Mortgagee shall be empowered to assign all policies of insurance to the purchaser at the sale.

27. Indemnity. To the fullest extent permitted by law, Mortgagor shall indemnify, save and keep Mortgagee harmless from any damage, claims or causes of action brought by third parties arising out of or related to a known or alleged design or construction defect in any improvements now or hereafter located on the Property, or otherwise arising out of or related to Mortgagor's operations and management or other activities of or in connection with the Mortgaged Premises. Mortgagor hereby acknowledges that Mortgagee shall not be deemed to

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have assumed any responsibility or liability in respect to the Mortgaged Premises on account of any inspections thereof by Mortgagee or Mortgagee's receipt or review of information and materials furnished by Mortgagor.

28. Additional Assurances. Mortgagor shall execute and deliver or cause to be executed and delivered to Mortgagee now, and at any time or times hereafter, all documents, instruments, letters of direction, notices, authorizations, reports, acceptances, receipts, consents, waivers, affidavits and certificates as Mortgagee may reasonably request, in form reasonably satisfactory to Mortgagee, to perfect and maintain perfected the liens granted by Mortgagor to Mortgagee upon the Mortgaged Premises or other collateral securing the obligation of the Mortgagor pursuant to the terms of this Mortgage and the Loan Documents or in order to consummate fully all of the transactions contemplated hereunder; and in connection therewith, Mortgagor hereby irrevocably makes, constitutes and appoints Mortgagee and any of its officers, employees or agents, as its true and lawful attorney with power to sign the name of Mortgagor to any such document, instrument, letter of direction, notice, report, acceptance, receipt, consent, waiver, affidavit or certificate if Mortgagor has not complied with Mortgagee's request to execute such document within ten (10) days from date of written request.

29. Modification to Documents. Mortgagor shall not, without the prior written consent of Mortgagee, amend or modify the partnership agreement of Mortgagor, and the general partner thereof shall not sell, assign, transfer, pledge, encumber or otherwise dispose of all or any portion of its interest therein.

30. Mortgagee Party to Suits. If Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee shall incur any costs or expenses in preparation for the commencement of any foreclosure proceeding or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Mortgagor agrees to pay to Mortgagee, within five (5) days of demand, all reasonable costs, charges, expenses and attorneys' fees incurred by Mortgagee in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the Default Interest Rate.

31. Information Concerning Mortgagor. So long as the obligations of Mortgagor remain unpaid, Mortgagor will promptly supply Mortgagee with such information concerning its affairs and property as Mortgagee may reasonably request from time to time hereafter; promptly notify Mortgagee of any condition or event which constitutes a breach or Event of Default of any term, condition, warranty, representation or provision of this Mortgage or any of the Loan Documents and of any material adverse change in the financial condition of Mortgagor or Guarantors.

32. Protective Advances. All reasonable advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the

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pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Section 5/1504 (a)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(g) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act;

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (a) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (b) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (c) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining

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land owners or instruments creating covenants or restrictions for the benefit of or affecting the mortgaged real estate; (d) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the mortgaged real estate; (e) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Interest Rate.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (i) determination of the amount of indebtedness secured by this Mortgage at any time;
- (ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (iv) application of income in the hands of any receiver or Mortgagee in possession; and
- (v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

33. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Premises or of any sale of property pursuant to Section 22(c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 22(b), 22(c) and 25 hereof; Second, to all other items which under the terms hereof constitute indebtedness hereby secured in addition to that evidenced by the Note with interest thereon as herein provided; Third, to all interest on the Note; Fourth, to all principal on the Note with any overplus to whomsoever shall be lawfully entitled to same.

34. Mortgagee's Remedies Cumulative - No Waiver. No remedy or right of Mortgagee shall be exclusive but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or provided in any other Loan Document. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default

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or acquiescence therein, nor shall it affect any subsequent default of the same or different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

35. Modifications Not To Affect Lien. Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may in its discretion release any part of the Mortgaged Premises or any person liable for any of the indebtedness hereby secured, may extend the time of payment of any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released, and may agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest applicable thereto).

36. Notices. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service or by facsimile transmission, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

To Agent:	MB FINANCIAL BANK, N.A. 6111 N. River Road Rosemont, Illinois 60018 Attention: Maureen Janes Facsimile No.: 847-653-0083
With a copy to:	Schwartz, Cooper Greenberger Krauss Chartered 180 North LaSalle Street Suite 2700 Chicago, Illinois 60601 Attention: Joseph Q. McCoy Facsimile No.: 312-264-2413
To Mortgagor:	Kelly Nissan, Inc. 4300 W. 95 <sup>th</sup> Street Oak Lawn, Illinois 60453

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With copy to:           Hardt & Stern  
                                  311 S. Wacker Drive  
                                  Chicago, Illinois 60606  
                                  Attention: John Stern  
                                  Phone No.: 312-362-1600  
                                  Facsimile No.: 312-362-0384

or to each such party at such other addresses as such party may designate in a written notice to the other parties.

37. Partial Invalidity. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

38. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

39. Default Interest Rate. For purposes of this Mortgage, "Default Interest Rate" shall mean 4% over the "Interest Rate" as defined in the Note.

40. Headings. The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

41. Changes, Etc. This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

42. Governing Law. This Mortgage shall be governed by and construed under the laws of the State of Illinois.

43. Intentionally Omitted.

44. Future Advances. Mortgagee shall have the right, but not the obligation, to advance additional funds in excess of \$2,400,000.00 to Mortgagor; and any sum or sums which may be so loaned or advanced by Mortgagee to Mortgagor within ten (10) years from the date hereof, together with interest thereon at the rate agreed upon at the time of such loan or advance, shall be equally secured with and have the same priority as the original indebtedness and be subject to all the terms and provisions of this Mortgage. Subject to the preceding sentence, this Mortgage is further made to secure payment of all other amounts, with interest thereon, becoming due and payable to Mortgagee under the terms of the Note, this Mortgage, or any other instruments securing the Note; provided, however, that the indebtedness hereby secured shall in no event exceed \$4,800,000.00;



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45. Waiver of Jury Trial. MORTGAGEE AND MORTGAGOR ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

46. Variable Rate Mortgage. This Mortgage is a variable rate mortgage, with changes in the rate of interest, said changes calculated pursuant to the formula in the Note.

47. Loan. The Note evidences a debt created by one or more disbursements made by Mortgagee to Mortgagor to finance the cost of certain improvements upon the Real Estate. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the Indebtedness immediately due and payable, and all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate.

48. Security Agreement. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Mortgage or on Exhibit C attached hereto, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "supporting obligations" (as defined in the Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral and has rights in and the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(b) The Collateral is to be used by Mortgagor solely for business purposes.

(c) The Collateral will be kept at the Real Estate and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of

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Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

(d) The only persons having any interest in the Premises are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby.

(e) No Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable. Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Mortgage.

(f) Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain

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the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Mortgagee so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Paragraph 13, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

(h) This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located.

(i) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

(j) Mortgagor represents and warrants that:

- (i) Mortgagor is the record owner of the Premises;
- (ii) Mortgagor's chief executive office is located in the State of Illinois;
- (iii) Mortgagor's state of incorporation is the State of Illinois;

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(iv) Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage; and

(v) Mortgagor's organizational identification number is 5427-953-1.

(k) Mortgagor agrees that:

(i) Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;

(ii) Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) Until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its company name without giving the Mortgagee at least 30 days' prior written notice in each instance.

51. Single Asset Entity. Mortgagor shall not hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than the Mortgaged Premises, or become a shareholder of or a member or partner in any entity which acquires any property other than the Mortgaged Premises, until such time as the Indebtedness has been fully repaid. Mortgagor covenants:

(a) To maintain its assets, accounts, books, records, financial statements, stationery, invoices, and checks separate from and not commingled with any of those of any other person or entity;

(b) To conduct its own business in its own name, pay its own liabilities out of its own funds, allocate fairly and reasonably any overhead for shared employees and office space, and to maintain an arm's length relationship with its affiliates;

(c) To hold itself out as a separate entity, correct any known misunderstanding regarding its separate identity, maintain adequate capital in light of its contemplated business operations, and observe all organizational formalities;

(d) Not to guarantee or become obligated for the debts of any other entity or person or hold out its credits as being available to satisfy the obligations of others, including not acquiring obligations or securities of its partners, members or shareholders;

(e) Not to pledge its assets for the benefit of any other entity or person or make any loans or advances to any person or entity;

(f) Not to enter into any contract or agreement with any party which is directly or indirectly controlling, controlled by or under common control with Mortgagor (an "Affiliate"), except with Mortgagee's prior written consent; provided that so long as

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no Event of Default has occurred and is continuing, Mortgagor may enter into such contracts or agreements without Mortgagee's consent so long as any such contract or agreement provides that upon a mortgage foreclosure or other taking of possession of the Mortgaged Premises by Mortgagee, such contract or agreement may be terminated by Mortgagee without penalty;

(g) Neither Mortgagor nor any constituent party of Mortgagor will seek the dissolution or winding up, in whole or in part, of Mortgagor, nor will Mortgagor merge with or be consolidated into any other entity;

(h) Mortgagor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any constituent party of Mortgagor, Affiliate, any guarantor of the Note or any other person;

(i) Mortgagor now has and will hereafter have no debts or obligations other than normal accounts payable in the ordinary course of business, this Mortgage, and the Loan; and any other indebtedness or other obligation of Mortgagor has been paid in full prior to or through application of proceeds from the funding of the Loan.

[signature page follows]

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IN WITNESS WHEREOF, the undersigned has caused these presents to be signed as of the day and year first above written.

**MORTGAGOR:**

**KELLY NISSAN, INC.**, an Illinois corporation

By: AW Kelly  
Name: AW Kelly  
Its: PRES.

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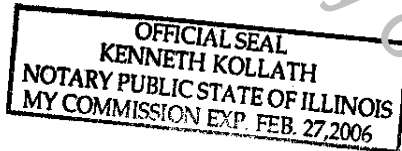
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I HEREBY CERTIFY that on this 20 day of May, 2005, before me personally appeared AWKELY, as PREI of Kelly Nissan, Inc., to me known to be the same person who signed the foregoing instrument as his free act and deed as such manager for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited liability company.

WITNESS my signature and official seal at CHRYSLER, in the County of Cook and State of Illinois, the day and year last aforesaid.

(NOTARY SEAL)



[Signature]  
Notary Public  
My Commission Expires: 2/27/06

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## EXHIBIT "A"

LEGAL DESCRIPTION  
(see attached legal description)

PINS:

24-03-408-010

24-03-400-037

24-03-408-013

24-03-400-040

Commonly known as: 4300 West 95<sup>th</sup> Street,  
Oak Lawn, IL 60453

See attached legal description for the legal description of the property

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**Parcel 1:**

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 said Lot 2; thence West along the North line of said 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 Kilgallen's 95th Street Subdivision of the North 300 feet of the South 350 feet of the East Three Quarters of the Southwest Quarter of the Southeast Quarter of Section 3, Township 37 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

**Parcel 2:**

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 Three Quarters of the Southwest Quarter of the Southeast Quarter of Section 3, Township 37 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

**Parcel 3:**

That part of Lot 2 in Wiegel and Kilgallen's 95th Street Subdivision of the North 300 feet of the South 350 feet of the East Three Quarters of the Southwest Quarter of the Southeast Quarter of Section 3, Township 37 North, Range 13, East of the Third Principal Meridian, described as follows: Commencing at the Southwest Corner of 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 on 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 Quarter 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.

**Parcel 4:**

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 Three Quarters of the Southwest Quarter of the Southeast Quarter of Section 3, Township 37 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

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## EXHIBIT "B"

### PERMITTED EXCEPTIONS

The following are the permitted exceptions from Pro Forma Loan Policy File No. 1097161 issued by The Talon Group as agent for First American Title Insurance Company: Schedule B – Part I - Exception Numbers 1-6.

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## EXHIBIT C

### COLLATERAL

All of Mortgagor's "fixtures" (as defined in the UCC), trade fixtures, business fixtures and other fixtures and facilities and equipment located in or on the premises legally described on Exhibit "A" attached hereto and made a part hereof (the "Real Estate") now or hereafter attached or affixed to or used in or about the Real Estate or the buildings and other improvements now erected or hereafter to be erected on the Real Estate (collectively the "Improvements"); and the accessions and appurtenances thereto or renewals or replacements of or substitutions for any of the foregoing including all building materials and equipment now or hereafter delivered to the Real Estate and intended to be installed or incorporated therein and all apparatus, fixtures, equipment and articles which relate to the use, occupancy and enjoyment of the Real Estate;

All of Mortgagor's right, title and interest in and to all articles or parts now or hereafter affixed to the property described in the foregoing paragraph or used in connection with such property, any and all replacements for such property, and all other property of a similar type or used for similar purposes now or hereafter in or on the Real Estate;

All of Mortgagor's right, title and interest in all personal property used or to be used in connection with the operation of the Real Estate and located on the Real Estate;

All of the Mortgagor's "general intangibles" (as defined in the UCC) now owned or hereafter acquired and related to the Real Estate, including, without limitation, all right, title and interest of the Mortgagor in and to: (i) all agreements, leases, licenses and contracts to which the Mortgagor is or may become a party relating to the Real Estate or Improvements in which a security interest has been granted pursuant to the Security Agreement; (ii) all obligations or indebtedness owing to the Mortgagor (other than Accounts) or other rights to receive payments of money from whatever source arising relating to the Real Estate; (iii) all real estate tax refunds and real estate tax refund claims relating to the Real Estate; and (iv) all choses in action and causes of action relating to the Real Estate;

All of the Mortgagor's "equipment" as relates to the Real Estate (as defined in the UCC) now owned or hereafter acquired, including, without limitation, all machinery, motor vehicles, trucks, trailers and all parts thereof and all other personal property (other than inventory) and all additions and accessions thereto and replacements therefor;

All of Mortgagor's "accounts" (as defined in the UCC) now owned or hereafter created or acquired as relates to the Real Estate, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) accounts receivable, contract rights, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services, (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property, (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing, (iv) monies due to or to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet

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earned by performance on the part of the Mortgagor), (v) uncertified securities, and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing;

All of the Mortgagor's "documents" (as defined in the UCC) or other receipts as relates to the Real Estate, evidencing or representing goods now owned or hereafter acquired, including, without limitation, all bills of lading, dock warrants, dock receipts, warehouse receipts and orders for the delivery of goods, and any other document which in the regular course of business or financing is treated as adequately evidencing that the person or entity in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

All of the Mortgagor's "contract rights", "instruments", "chattel paper" or "letters of credit", "certificated" and "uncertificated securities" (each as defined in the UCC) and any replacements therefor as relates to the Real Estate and other writings which evidence a right to the payment of money and which are not themselves security agreements or leases and are of a type which in the ordinary course of business are transferred by delivery with any necessary endorsement or assignment, including, without limitation, all checks, drafts, notes, bonds, debentures, government securities, certificates of deposit, options and warrants in which the Mortgagor now has or hereafter acquires any rights;

All deposit accounts of the Mortgagor related to the Real Estate maintained with any bank or financial institution other than the Mortgagee;

All depository and escrow accounts of the Mortgagor established with the Mortgagee, all cash deposited therein from time to time and other monies and property of the Mortgagor in the possession or under the control of the Mortgagee or any other lender or party, including deposits with public or private utility companies with respect to utility services furnished to the Real Estate;

All of Mortgagor's right, title and interest in the rents, issues, deposits, profits, revenues, leases and other use and occupancy agreements and all other income of any nature now due or which may become due or to which Mortgagor may now or hereafter become entitled to related to the Real Estate, whether heretofore or hereafter made or agreed to by any person or entity (including without limitation those rents, issues, deposits, profits, leases or other agreements assigned to Mortgagee under the Mortgage and Security Agreement with Assignment of Rents made by Mortgagor in favor of Mortgagee of even date herewith creating the security interests hereby perfected or by the other "Loan Documents," as that term is defined in said Mortgage);

All monies now or hereafter on deposit with Mortgagor for the payment of security deposits to lessees under leases of the Real Estate;

All awards or payments, including interest thereon, which may be made with respect to the Real Estate, whether from the right of the exercise of eminent domain (including any transfer made in lieu of the exercise of said right) or for any other injury to or decrease in value of the Real Estate;

All funds, accounts, instruments, documents, general and tangible, and notes or chattel paper arising from or by virtue of any transactions related to the real estate;

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All rights in and proceeds from present and future fire or hazard insurance policies covering improvements now or hereafter located on the Real Estate or described in the Mortgage thereon; together with all records and books of account now or hereafter maintained by Mortgagor, its successors and assigns in connection with the Real Estate or any business conducted thereon;

All damages, royalties and revenue of every kind, nature and description whatsoever that Mortgagor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Real Estate;

Any and all accounts, contract rights, chattel paper, sales contracts, insurance contracts, income, payments, profits and other rights to the payment of money, and all proceeds of all of the foregoing, whether now existing or hereafter arising from the sale, lease or other disposition by Mortgagor, its successor and assigns of the Real Estate;

All plans and specifications relating to the construction of improvements on the Real Estate (if any) and all unexpired claims, warranties, guaranties, indemnifications and sureties, if any, arising from or received in connection with the installation, construction, improvement, maintenance or equipment of or on the Real Estate or the Improvements thereon;

Any and all "Equipment", "Inventory", "Accounts", "Contract Rights", "Chattel Paper", "General Intangibles", "Fixtures", "Documents" and "Instruments" as defined in the UCC owned by Mortgagor in connection with the Real Estate;

All contracts, licenses and permits and other rights and privileges, now or hereafter existing, directly or indirectly related to, or connected with, the Real Estate or the Improvements thereon; and

All proceeds from the sale, transfer, or pledge of any or all of the foregoing property.

For purposes of this Exhibit "B" to Financing Statement the following terms have the meanings set forth below:

"Proceeds" means all "proceeds" (as defined in the UCC) of, and all other profits, rentals or receipts, in whatever form, arising from the collection, sale, lease, exchange, assignment, licensing or other disposition of, or realization upon, any property described in this Exhibit "B", including, without limitation, all claims of the Mortgagor against third parties for loss of damage to or destruction of, or for proceeds payable under, or unearned premiums with respect to, policies of insurance with respect to any property described in this Exhibit "B", and any condemnation or requisition payments with respect to any property described in this Exhibit "B", in each case whether now existing or hereafter arising.

"UCC" means the Uniform Commercial Code as in effect on the date hereof in the State of Illinois, provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of a security interest in any property described in this Exhibit "B" or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect on or after the date hereof in any other jurisdiction, "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof

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relating to such perfection or effect of perfection or non-perfection or availability of such remedy.

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