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Recording requested by, and
when recorded return to:

DLA Piper Rudnick Gray Cary
U.S. LLP
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601
Attn: Adam W. Johnson, Esq.



Doc#: 0520635331
Eugene "Gene" Moore Fee: \$84.00
Cook County Recorder of Deeds
Date: 07/25/2005 10:03 AM Pg: 1 of 31

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

This Mortgage, Assignment of Rents and Leases, Security Agreement, and Fixture Filing ("Mortgage"), dated as of July 20 2005, is executed by KELLY NISSAN, INC., an Illinois corporation ("Mortgagor"), as mortgagor, whose address is 4300 West 95th Street, Oak Lawn, Illinois 60453 to and for the benefit of NISSAN MOTOR ACCEPTANCE CORPORATION, a California corporation ("Mortgagee"), as mortgagee, whose address is 990 West 190th Street, Torrance, California, 90502, Attention: Commercial Credit Department. Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Note (defined below).

ARTICLE 1 GRANT OF SECURITY

1.1. **Grant of Security.** FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited, the receipt and adequacy of which are hereby acknowledged, Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, and hereby assigns to Mortgagee (and grants to Mortgagee, pursuant to the Illinois Uniform Commercial Code, a security interest in and to, and a lien upon), all as security for the Secured Obligations described below, all rights, titles, interests, estates, powers and privileges that Mortgagor now has or may hereafter acquire in or to the following property and interests therein (collectively, the "Property"), all of which are hereby pledged primarily and on a parity with the Land (as defined below) and not secondarily:

(a) That certain real property ("Land") in the County of Cook, State of Illinois, more particularly described on Exhibit "A" attached hereto;

(b) All buildings and other improvements now or hereafter located on the Land, including, but not limited to, the Fixtures (as defined below) and any

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and all other equipment, machinery, appliances and other articles attached to such buildings and other improvements (collectively, the "Improvements");

(c) All rights, rights-of-way, easements, licenses, profits, privileges, tenements, hereditaments and appurtenances now owned or hereafter acquired by Mortgagor and used in connection with the Land and the Improvements or as a means of access to either or both, including, without limitation, all rights pursuant to any trackage agreement;

(d) All of Mortgagor's right, title and interest now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Land, and any and all sidewalks, alleys and strips and portions of land adjacent to or used in connection with the Land and Improvements;

(e) All oil, gas and other mineral rights in or relating to the Land, and all royalty, leasehold and other rights of Mortgagor in or relating thereto;

(f) All water, water rights and riparian rights (including, without limitation, shares or stock evidencing the same) in or relating to the Land;

(g) All leases and subleases relating to all or any part of the Land and the Improvements or any interest therein, now or hereafter existing or entered into, including without limitation all deposits, advance rentals and other payments of a similar nature but not including the Rents, as defined and separately assigned in Article 4;

(h) All options to purchase or lease all or any part of the Land or Improvements or any interest therein (and any greater estate in the Land or Improvements now owned or hereafter acquired pursuant thereto);

(i) All other estates, easements, licenses, interests, rights, titles, claims or demands, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Land and the Improvements, including, without limitation, (1) any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of all or any part of the Property, including without limitation any award resulting from a change of grade of streets and any award for severance damages, and (2) any and all proceeds of any insurance covering or in connection with the Property, whether or not such insurance is required by the Loan Documents; and

(j) All fixtures (collectively, the "Fixtures") now or hereafter located on, attached to, installed in or used in connection with the Land and the Improvements, including without limitation all partitions, generators, screens, awnings, boilers, furnaces, pipes, plumbing, elevators, cleaning equipment, call and sprinkler systems, fire extinguishing machinery and equipment, water tanks, heating, ventilating, air conditioning and air cooling machinery and equipment, gas and electric machinery and equipment, and other equipment, machinery and appliances and other fixtures of every kind and nature;

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(k) All personal property, whether now existing or hereafter acquired or arising and wherever located (collectively, the "Personal Property"), including, without limitation, building materials, inventory (including, without limitation, supplies, raw materials, work in process and finished goods), equipment (including, without limitation, machinery, vehicles, furniture, furnishings, fixtures and all accessories, tools, fittings and parts), fixtures, goods, accounts, contract rights and general intangibles (including, without limitation, patents, trademarks, trade names, copyrights and tax refunds and all returns and repossessions), documents, instruments, chattel paper, securities, money and deposit accounts, investment property, and books and records; and

(l) All greater right, title and interest hereafter acquired by Mortgagor in or to any of the forgoing property, all present and future accessions, additions, attachments, replacements and substitutions of or to any of the foregoing, and all cash and non-cash proceeds and products of any or all of the foregoing.

TO HAVE AND TO HOLD the Property, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses set forth hereintogether with all rights to possession of the Property after the occurrence of an Event of Default; Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois.

ARTICLE 2 OBLIGATIONS SECURED

2.1. **Obligations Secured.** This Mortgage, and the liens and security interests created hereby, are made for the purpose of securing the following obligations (collectively, the "Secured Obligations"):

(a) the payment and performance by Mortgagor of all indebtedness and other obligations evidenced by or under that certain Promissory Note ("Note") dated as of even date herewith, made by Mortgagor to the order of Mortgagee, in the stated principal amount of \$3,300,000, together with interest on such indebtedness according to the terms of the Note and which has a maturity date of the earlier to occur of (x) June 30, 2015 or (y) the date on which Mortgagor (as defined in the Note) ceases to finance all new Nissan vehicle inventory with Mortgagee;

(b) the payment and performance of all indebtedness and other obligations of Mortgagor to Mortgagee contained in all documents executed in connection with the Note and this Mortgage (collectively, the "Loan Documents");

(c) the payment and performance of all indebtedness and other obligations as the then record owner of the Land may undertake to pay and perform for the benefit of Mortgagee, or its successors or assigns, when such

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indebtedness and obligations are contained in a document which recites that the obligations thereunder are secured by this Mortgage;

(d) the payment by Mortgagor of all amounts advanced by or on behalf of Mortgagee to improve, protect or preserve the Property or the security of this Mortgage, with interest thereon as provided herein;

(e) the payment and performance of all amendments, modifications, extensions, renewals and replacements of or for any of the foregoing (including, without limitation, (i) amendments or modifications of the required principal payment dates or interest payment dates, or both, as the case may be, accelerating or deferring such interest payment dates in whole or in part, or (ii) amendments, modifications, extensions or renewals at a different rate of interest), whether or not any such amendment, modification, extension, renewal or replacement is evidenced by a new or additional promissory note or other document;

(f) all obligations of Mortgagor in connection with the Wholesale Financing Agreement (as defined in the Note); and

(g) all obligations of Mortgagor, any Guarantor or any affiliate thereof in connection with any other financing now or hereafter extended by Mortgagee.

ARTICLE 3 COVENANTS OF MORTGAGOR

3.1. **Payment of Secured Obligations.** Mortgagor shall pay when due all of the Secured Obligations that constitute obligations of Mortgagor.

3.2. **Maintenance, Repair, Alterations.** Mortgagor shall maintain and preserve the Property in good condition and repair; Mortgagor, except upon the prior written consent of Mortgagee, shall not remove, demolish or materially alter any of the Improvements, other than to make repairs in the ordinary course of business of a non-structural nature which serve to preserve or increase the value of the Property; Mortgagor shall complete promptly and in a good and workmanlike manner any Improvement which may be now or hereafter constructed on the Land, shall promptly restore in like manner any Improvement which may be damaged or destroyed thereon from any cause whatsoever, and shall pay when due all claims for labor performed and materials furnished therefor; Mortgagor shall comply with all laws, ordinances, rules, regulations, orders, covenants, conditions or restrictions now or hereafter affecting the conduct or operation of Mortgagor's business or all or any part of the Property or requiring any alteration or improvement to be made thereon; Mortgagor shall not commit, suffer or permit any act to be done in, upon or to all or any part of the Property in violation of any such laws, ordinances, rules, regulations, orders, covenants, conditions or restrictions now or hereafter affecting the Property; Mortgagor shall not commit or permit any waste or deterioration of the Property, and shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; Mortgagor shall not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Property or which otherwise would impair the security of Mortgagee in the Property; Mortgagor

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shall comply with the provisions of all leases, if any, constituting a portion of the Property; Mortgagor shall not abandon the Property or any portion thereof or leave the Property unprotected, unguarded, vacant or deserted; Mortgagor shall not initiate, join in or consent to any change in any zoning ordinance, general plan, specific plan, private restrictive covenant or other public or private restriction limiting the uses which may be made of the Property by Mortgagor or by the owner thereof without the prior written consent of Mortgagee; Mortgagor shall secure and maintain in full force and effect all permits necessary for the use, occupancy and operation of the Property; except as otherwise prohibited or restricted by the Loan Documents, or any of them, Mortgagor shall do any and all other acts which may be reasonably necessary to protect or preserve the value of the Property and the rights of Mortgagee with respect thereto.

3.3. Insurance.

3.3.1 **Policies Required.** Mortgagor shall at all times maintain in full force and effect, at Mortgagor's sole cost and expense, with insurers reasonably approved by Mortgagee, the following policies of insurance in form and substance reasonably satisfactory to Mortgagee:

(a) workers' compensation insurance and any other insurance required by law in connection with the Property;

(b) (i) if the Improvements are not yet complete, builder's risk-all risk insurance covering 100% of the replacement cost of all Improvements, Fixtures and tangible Personal Property, during the course of construction in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Property is located (including loss by flood if the Property is in an area designated as subject to the danger of flood); and (ii) following completion of the Improvements, fire and hazard "all risk" insurance covering 100% of the replacement cost of all Improvements, Fixtures and tangible Personal Property in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Property is located (including loss by flood if the Property is in an area designated as subject to the danger of flood);

(c) commercial general comprehensive public liability insurance against claims for bodily injury, death and property damage occurring in, on or about the Property, in such amounts as may be required by Beneficiary, but in no event less than \$1,000,000 for property damage and \$1,000,000 per occurrence. Such policy shall include an additional insured endorsement naming Beneficiary; in amounts reasonably required by Beneficiary from time to time, and in no event less than \$1,000,000.00 combined single limit;

(d) all rental loss insurance and business interruption insurance that Mortgagee reasonably requires (including insurance against income loss during a period of restoration of at least one year); and

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(e) all other insurance reasonably required by Mortgagee from time to time.

All such insurance shall provide that it may not be cancelled or modified without 30 days' prior written notice to Mortgagee. The policies required under subparagraphs (b) and (d) shall include a "lender's loss payable endorsement" (Form 438BFU) in form and substance satisfactory to Mortgagee, assuring Mortgagee that all proceeds shall be paid to Mortgagee as encumbrancer. Mortgagee shall be an additional named insured in the policies required under subparagraph (c). No such insurance shall include deductible amounts to which Mortgagee has not previously consented in writing. Certificates of insurance for the above policies (and/or original policies, if required by Mortgagee) shall be delivered to Mortgagee from time to time upon demand. All policies insuring against damage to the Improvements, Fixtures and tangible Personal Property shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than 30 days prior to the expiration of each policy, Mortgagor shall deliver to Mortgagee evidence of renewal or replacement of such policy reasonably satisfactory to Mortgagee.

3.3.2 Claims. Mortgagor shall give Mortgagee immediate notice of any casualty to any portion of the Property, whether or not covered by insurance. If covered, Mortgagor hereby authorizes Mortgagee, if Mortgagee so elects, to make proof of loss, to appear in and prosecute any action arising from any applicable policy and, while any Event of Default exists, to settle, adjust or compromise any claim under any such policy. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney-in-fact for all such purposes. Mortgagor shall not settle, adjust or compromise any such claim without the prior written approval of Mortgagee.

3.3.3 Delivery of Proceeds to Mortgagee. In the event that, notwithstanding the "lender's loss payable endorsement" requirement set forth above, the proceeds of any casualty insurance policy described herein are paid to Mortgagor, Mortgagor shall deliver such proceeds to Mortgagee immediately upon receipt.

3.3.4 Application of Casualty Insurance Proceeds. Any proceeds collected (the "Proceeds") under any casualty insurance policy described in this Mortgage shall be disbursed to Mortgagor as provided below, but only upon fulfillment of each of the following conditions (the "Restoration Conditions") within sixty (60) days following the occurrence of the damage for which the Proceeds are collected:

(a) Mortgagor shall demonstrate to Mortgagee's reasonable satisfaction that (i) the Proceeds (together with amounts deposited by Mortgagor pursuant to subparagraph (b)) will be adequate to accomplish the repair and reconstruction of the Improvements, the Fixtures and the tangible Personal Property and to restore the fair market value of the Property to at least the value it had immediately prior to sustaining the damage, (ii) that the repair and reconstruction of the Improvements can be completed by a date to be determined by Mortgagee (but no later than one year from the date of the damage or destruction), and (iii) that the leases in effect as of the date of the damage or destruction will remain in full force and effect prior to and after completion of construction and that the tenants thereunder will be obligated to occupy their

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respective premises and commence paying rent upon completion (without any abatement or reduction of any kind). Such demonstration shall include, without limitation, delivery to Mortgagee of (iv) plans and specifications reasonably satisfactory to Mortgagee, (v) a guaranteed maximum cost construction contract in form and content, and with a contractor, reasonably satisfactory to Mortgagee, (vi) all necessary building permits and similar governmental approvals, and (vii) all tenant estoppels required by Mortgagee.

(b) To the extent that the Proceeds are insufficient to accomplish the restoration required above and to service all Secured Obligations during the course of construction, Mortgagor shall deliver to Mortgagee, within five (5) days of demand, funds (the "Shortfall Funds") in the amount of such shortfall, which funds shall be assigned to Mortgagee as security for Mortgagor's obligations hereunder and held and disbursed in the same manner as the Proceeds.

(c) Mortgagor shall execute such documents as Mortgagee requires to evidence and secure Mortgagor's obligation to use all amounts disbursed for the diligent restoration of the Property.

(d) No Event of Default or other event or condition that, with the giving of notice or the passage of time, or both, could become an Event of Default, shall exist.

3.3.4.1 All Proceeds and Shortfall Funds to be disbursed to Mortgagor shall be held by Mortgagee and disbursed in accordance with the construction loan disbursement procedures then required by Mortgagee. Any amounts remaining undisbursed following completion of such restoration shall be returned to Mortgagor up to the amount of any Shortfall Funds deposited by Mortgagor, and any other amounts remaining shall be applied by Mortgagee against one or more of the Secured Obligations, as Mortgagee elects in its absolute discretion.

3.3.4.2 In the event that Mortgagor fails to fulfill the Restoration Conditions within sixty (60) days following the date on which the damage occurs, the Proceeds shall be applied by Mortgagee against one or more of the Secured Obligations, and the selection of which such obligations to apply the Proceeds against shall be made by Mortgagee in its sole and absolute discretion. Mortgagor hereby grants to Mortgagee a security interest in and to (i) all casualty insurance policies from time to time maintained by Mortgagor with respect to the Property, irrespective of whether such policies are required to be obtained or maintained in force pursuant to the terms of this Mortgage or any other Loan Document, including, without limitation, the right to receive payments of proceeds of such policies, and (ii) the Proceeds, as security for the Secured Obligations, and agrees that Mortgagee shall have all of the rights and remedies of a secured party under the Illinois Uniform Commercial Code and other applicable law with respect to the foregoing collateral and such

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security interest.

3.3.5 **Restoration**. Nothing in this Section 3 shall be construed to excuse Mortgagor from repairing and restoring all damage to the Property in accordance with other Loan Document provisions, regardless of whether insurance proceeds are available or sufficient.

3.3.6 **Assignment of Policies**. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of Mortgagor in and to all policies of insurance required by Section 3.3.1, above, and all unearned premiums paid thereon, shall, without further act, pass to the purchaser or grantee of the Property.

3.3.7 **Waiver of Subrogation**. Mortgagor hereby waives all right to recover against Mortgagee (or any officer, employee, agent or representative of Mortgagee) for any loss incurred by Mortgagor from any cause insured against or required by any Loan Document to be insured against; provided, however, that this waiver of subrogation shall not be effective with respect to any insurance policy if the coverage thereunder would be materially reduced or impaired as a result. Mortgagor shall use its best efforts to obtain only policies that permit the foregoing waiver of subrogation.

3.4. **Condemnation and Other Awards**. Upon learning of the condemnation or other taking for public or quasi-public use of, or of the institution or the threatened institution of any proceeding for the condemnation or other taking for public or quasi-public use of, all or any part of the Property, Mortgagor shall immediately notify Mortgagee of such fact. Mortgagor shall take all actions reasonably required by Mortgagee in connection therewith to defend and protect the interests of Mortgagor and/or Mortgagee in the Property. At Mortgagee's option, Mortgagee or Mortgagor may be the nominal party in such proceeding but in any event Mortgagee shall be entitled, without regard to the adequacy of its security, to participate in and to control the same and to be represented therein by counsel of its choice. Mortgagor hereby grants to Mortgagee, as security for the Secured Obligations, a security interest in and to all compensation, awards, damages and other amounts payable to Mortgagor in connection with any condemnation or other taking of all or any part of the Property for public or semi-public use (including, but not limited to, the proceeds of any settlement, regardless of whether or not condemnation or other taking proceedings are instituted in connection therewith), and agrees that Mortgagee shall have all of the rights and remedies of a secured party under the Illinois Uniform Commercial Code with respect to the foregoing collateral and such security interest. Upon receipt, Mortgagor shall immediately deliver all such compensation, awards, damages and other amounts to Mortgagee. All such proceeds shall first be applied to reimburse Mortgagee for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection of such award or settlement. The balance of such proceeds shall be applied by Mortgagee against the Secured Obligations in such order as Mortgagee may determine; provided, however, in Mortgagee's sole and absolute discretion, Mortgagee may disburse such proceeds to Mortgagor for repairs and reconstruction in accordance with the rights, procedures, and other provisions, and subject to the conditions precedent, set forth in Section 3.3, above, for the application of casualty insurance proceeds (including, but not limited to the deposit of Shortfall Funds). Application or release of

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such proceeds as provided herein shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3.5. **Taxes and Impositions.** Mortgagor shall pay, at least ten (10) days prior to delinquency, all of the following (collectively, the "Impositions"):

(a) All general and special property taxes and assessments imposed on any of the Property;

(b) All other taxes and assessments and charges of every kind that are assessed upon any of the Property and that create or may create a lien upon any of the Property, including, without limitation, non-governmental levies and assessments pursuant to applicable covenants, conditions or restrictions;

(c) All license fees, taxes and assessments imposed on Mortgagee (other than Mortgagee's income or franchise taxes) which are measured by or based (in whole or in part) upon the amount of the obligations secured by the Property; and

(d) All premiums of insurance policies in connection with the Property required pursuant to this Mortgage.

If permitted by law, Mortgagor may pay the Imposition described in subparagraphs (a) or (b), above, in installments (together with any accrued interest). Mortgagor shall not be required to pay any Imposition described in subparagraphs (a) or (b), above, so long as (i) its validity is being actively contested in good faith and by appropriate proceedings, (ii) Mortgagor has demonstrated to Mortgagee's reasonable satisfaction that leaving such Imposition unpaid pending the outcome of such proceedings could not result in conveyance of the Property in satisfaction of such Imposition or otherwise impair Mortgagee's interest under this Mortgage, and (iii) Mortgagor has furnished Mortgagee with a bond or other security satisfactory to Mortgagee in an amount not less than 100% of the applicable claim (including interest and penalties). At Mortgagee's request, Mortgagor shall deliver to Mortgagee, no later than ten (10) days prior to the due date of any Imposition, evidence of payment reasonably satisfactory to Mortgagee. In addition, upon demand by Mortgagee from time to time, Mortgagor shall furnish to Mortgagee a tax reporting service for the Property of a type and duration, and with a company, reasonably satisfactory to Mortgagee.

3.6. **Utilities.** Mortgagor shall promptly pay all gas, electricity, water, sewer and other utility charges which are incurred for the benefit of the Property or which may become a lien against the Property and all other assessments and other charges of a similar nature, public or private, relating to the Property or any portion thereof, regardless of whether or not any such charge is or may become a lien thereon.

3.7. **Liens.** Mortgagor shall not cause, incur, suffer or permit to exist or become effective any lien, encumbrance or charge upon all or any part of the Property or any interest therein other than liens, encumbrances and charges approved by Mortgagee in writing prior to the

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execution of this Mortgage. Mortgagor shall pay and promptly discharge, at Mortgagor's sole cost and expense, all liens, encumbrances and charges upon all or any part of the Property or any interest therein, other than encumbrances permitted in writing by Mortgagee. If Mortgagor shall fail to remove and discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, without notice to or demand on Mortgagor, and without inquiring into the validity of such lien, encumbrance or charge or the existence of any defense or offset thereto, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or in any other manner permitted or required by law. Mortgagor shall, immediately upon demand therefor by Mortgagee, pay to Mortgagee an amount equal to all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing right to discharge any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure until paid at the "Default Rate" (as defined in Section 3.14, below), and such amount shall be part of the Secured Obligations secured by the Mortgage.

3.8. **Due on Sale or Encumbrance Clause.** Mortgagor shall not, directly or indirectly, sell, lease, mortgage, encumber, hypothecate or otherwise transfer all or any part of the Property or any interest therein, or permit or suffer the direct or indirect sale, assignment, encumbrance, hypothecation or other transfer of an ownership interest in Mortgagor, without the prior written consent of Mortgagee, which consent may be granted or withheld in Mortgagee's sole and absolute discretion. Transfers requiring Mortgagee's prior written consent shall include, without limitation, the following:

- (a) Involuntary transfers and transfers by operation of law;
- (b) Liens, encumbrances and assignments as security for obligations, whether voluntary or involuntary;
- (c) The, direct or indirect sale, issuance or other transfer of all or any part of any class of the outstanding capital stock, any partnership interest, any membership interest, any beneficiary interest, or any other ownership interest in Mortgagor, whether voluntary or involuntary; and
- (d) The withdrawal by, or removal of, Arthur W. Kelly as President of Mortgagor.

No sale, lease, mortgage, encumbrance, hypothecation or other transfer shall relieve Mortgagor from primary liability for its obligations under the Note and the other Loan Documents or relieve any guarantor from any liability under any guaranty.

3.9. **Inspections.** Mortgagee and its respective agents, representatives and employees, are each authorized, upon notice reasonable under the circumstances (which may be written or oral), to enter at any time upon any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts Mortgagee is authorized to perform hereunder or under the terms of any of the Loan Documents.

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3.10. **Defense of Actions.** Mortgagor, at no cost or expense to Mortgagee, shall appear in and defend any action or proceeding purporting to affect the security of this Mortgage, any of the other Loan Documents, all or any part of the Property or any interest therein, any additional or other security for the obligations secured hereby, or the interests, rights, powers or duties of Mortgagee hereunder. If Mortgagee elects to become a party to such action or proceeding, or is made a party thereto, Mortgagor shall indemnify, defend and hold Mortgagee harmless from all liability, damage, cost and expense incurred by Mortgagee by reason of such action or proceeding (including, without limitation, reasonable attorneys' fees and expenses), whether or not such action or proceeding is prosecuted to judgment or decision.

3.11. **Protection of Security.** If Mortgagor fails to make any payment or to do any act as and in the manner provided in this Mortgage or any of the other Loan Documents Mortgagee without obligation so to do, without further notice or demand, and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as either may reasonably deem necessary to protect the security of this Mortgage. In connection therewith (without limiting their general powers), Mortgagee shall have and is hereby given the right, but not the obligation: (a) to enter upon and take possession of the Property; (b) to make additions, alterations, repairs and improvements to the Property which in the judgment of either may be necessary or proper to keep the Property in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Mortgage or to be or to appear to be prior or superior hereto; and (e) in exercising such powers, to pay all necessary or appropriate costs and expenses and employ necessary or desirable consultants.

3.12. **Mortgagee's Powers.** Without affecting the liability of Mortgagor or any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Mortgage upon any portion of the Property not then or theretofore released as security for the full amount of all Secured Obligations, Mortgagee may from time to time and without notice (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such obligation (provided, however, that the consent of Mortgagor shall be required with respect to the extension or alteration of any unpaid obligation of Mortgagor to Mortgagee), (c) waive any provision contained herein or grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Property, (e) take or release any other or additional security for any obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto. By accepting payment or performance of any obligation secured by this Mortgage after the payment or performance thereof is due or after the filing of a notice of default and election to sell, Mortgagee shall not have thereby waived its right to require prompt payment and performance, when due, of all other obligations secured hereby, or to declare a default for failure so to pay or perform, or to proceed with the sale under any notice of default and election to sell theretofore given by Mortgagee, or with respect to any unpaid balance of the indebtedness secured hereby. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due.

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3.13. **Reimbursement.** Mortgagor shall, immediately upon demand, pay to Mortgagee all costs and expenses incurred by Mortgagee in accordance with the terms and provisions of this Mortgage, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees, costs and expenses, together with interest thereon from the date of expenditure until so paid at the highest rate at which interest is then accruing upon any portion of the Note (the "Default Rate"), and such amount shall be part of the Secured Obligations secured by the Mortgage.

3.14. **Delivery of Data.** Mortgagor shall maintain complete books of account and other records relating to the ownership and operation of the Property in accordance with generally accepted accounting principles consistently applied. Mortgagor shall deliver to Mortgagee the following:

(a) within ten (10) days after Mortgagor's entry into (or modification or termination of) any lease or other agreement pursuant to which any person has the right to occupy or use any portion of the Property in excess of 500 square feet (when aggregated with other portions which such person has the right to occupy or use), notice of such lease (or modification or termination) together with a true and complete copy of all documents executed in connection therewith;

(b) within ten (10) days after Mortgagee's request, a copy of each federal income tax return filed by Mortgagor; and

(c) within ten (10) days of Mortgagee's request from time to time:
(i) financial statements, income and expense statements and balance sheets of Mortgagor and each Guarantor, in form and detail satisfactory to Mortgagee;
(ii) copies of all financial statements and reports that Mortgagor sends to its partners, shareholders, members or other owners as the case may be; (iii) copies of all reports which are available for public inspection or which Mortgagor is required to file with any governmental agency; (iv) during construction of the Improvements, reports of project costs, progress schedules and contractors' cost breakdowns for the construction of the Improvements, itemized as to trade description and item, showing the name of the contractor(s), and including all "soft costs" then incurred in connection with the construction of the Improvements; and (v) all other information relating to Mortgagor, the Property, any Guarantor or the Loan as reasonably required by Mortgagee from time to time. From time to time on request of Mortgagee, Mortgagor shall make its books and records available for audit by Mortgagee or a public accountant or other appropriate professional consultant selected by Mortgagee.

3.15. **Continued Existence; Chief Executive Office.** Mortgagor shall maintain its existence and continue to be an Illinois corporation in good standing in all appropriate jurisdictions. Mortgagor shall notify Mortgagee prior to changing its principal place of business and chief executive and accounting offices from the location set forth in first paragraph of this Mortgage.

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3.16. **Further Assurances.** Mortgagor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Mortgagee all documents, and take all actions, reasonably required by Mortgagee from time to time to confirm and perfect the rights created or now or hereafter intended to be created under this Mortgage and the other Loan Documents, to protect and further the validity, priority and enforceability of this Mortgage and the other Loan Documents, to subject to the this Mortgage and the other Loan Documents any property intended by the terms of this Mortgage and the other Loan Documents to be covered by this Mortgage or any other Loan Document, or otherwise to carry out the purposes of this Mortgage and the other Loan Documents and the transactions contemplated by this Mortgage and the other Loan Documents.

ARTICLE 4

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

4.1. **Assignment of Rents, Issues and Profits.** Mortgagor hereby absolutely and irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in and to all present and future leases, subleases, subtenancies, licenses, occupancy agreements, concessions and any other agreement devising any portion of the Property or relating to the use and enjoyment of all or any part of the Property, and any and all guaranties and other agreements relating to or made in connection with any of the foregoing, whether written or oral and whether in existence at or upon the recordation of this Mortgage or entered into after the recordation of this Mortgage, and any and all amendments, modifications, supplements, extensions and renewals thereof, and any and all rights and benefits arising thereunder or in connection therewith (some or all collectively, as the context may require, "Leases") and all rents, security deposits, other security or collateral, royalties, issues, profits, receipts, earnings, revenue, income, products and proceeds and other benefits of the Property and the Leases, whether now due, past due or to become due, including, without limitation, all prepaid rents, security deposits, fixed, minimum, additional, percentage and contingent rents, deficiency rents and liquidated damages, termination charges, occupancy charges, proceeds payable under any policy of insurance, and all other rights to payments (some or all collectively, as the context may require, "Rents"), and hereby gives to and confers upon Mortgagee the right, power and authority to collect such Rents. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in its name or in the name of Mortgagor, for all Rents, and to apply the same to the obligations secured hereby; provided, however, that Mortgagor shall have a license to collect Rents (but not more than one month in advance unless the written approval of Mortgagee has first been obtained), and to retain and enjoy the same, so long as an Event of Default shall not exist. The assignment of the Rents in this Article 4 is intended to be an absolute assignment from Mortgagor to Mortgagee and not merely the passing of a security interest.

4.2. **Collection Upon Default.** Upon the occurrence of an Event of Default hereunder, Mortgagor's license to collect shall automatically terminate and Mortgagee may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the obligations hereby secured, enter upon and take possession of the Property, or any part thereof, and, with or without taking possession of the Property or any part thereof, in its own name sue for or otherwise collect such Rents (including those past due and unpaid, and all prepaid Rents and all other monies which may have been or

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may hereafter be deposited with Mortgagor by any lessee or tenant of Mortgagor to secure the payment of any Rent or for any services thereafter to be rendered by Mortgagor for any other obligation of any tenant to Mortgagor arising under any lease, and Mortgagor agrees that, upon the occurrence of any Event of Default hereunder, Mortgagor shall promptly deliver all Rents and other monies to Mortgagee), and Mortgagee may apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, whether or not suit is brought or prosecuted to judgment, upon any indebtedness or obligation of Mortgagor secured hereby, and in such order as Mortgagee may determine notwithstanding that said indebtedness or the performance of said obligation may not then be due. The collection of Rents, or the entering upon and taking possession of the Property, or the application of Rents as provided above, shall not cure or waive any default or notice of default hereunder or invalidate any act performed in response to such default or pursuant to such notice of default or be deemed or construed to make Mortgagee a mortgagee-in-possession of all or any part of the Property.

4.3. **Further Assignments.** Upon Mortgagee's demand Mortgagor shall, from time to time hereafter, execute and deliver to Mortgagee recordable assignments of Mortgagor's interest in any and all leases, subleases, contracts, rights, licenses and permits now or hereafter affecting all or any part of the Property. Such assignments shall be made by instruments in form and substance satisfactory to Mortgagee; provided, however, that no such assignment shall be construed as imposing upon Mortgagee any obligation with respect thereto. Mortgagee may, at its option, exercise its rights hereunder or under any such specific assignment and such exercise shall not constitute a waiver of any right hereunder or under any such specific assignment.

ARTICLE 5 **REPRESENTATIONS AND WARRANTIES**

As a material inducement to Mortgagee's agreement to make the Loan, Mortgagor represents and warrants to Mortgagee that:

5.1. **Formation, Qualification and Compliance.** Mortgagor (a) is a corporation, validly existing and in good standing under the laws of the State of Illinois (b) has all requisite authority to conduct its business and own and lease its properties, and (c) is qualified and in good standing in every jurisdiction in which the nature of its business makes qualification necessary or where failure to qualify could have a material adverse effect on its financial condition or the performance of its obligations under the Loan Documents. Mortgagor is in compliance in all material respects with all laws and requirements applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all filings, registrations and qualifications with, any governmental agency that are necessary for the transaction of its business. Each Guarantor that is not a natural person, if any, is validly existing and in good standing in all appropriate jurisdictions, has all requisite authority to conduct its business and own and lease its properties, and has complied with all applicable requirements of governmental agencies.

5.2. **Execution and Performance of Loan Documents.**

5.2.1 Mortgagor and each Guarantor have all requisite authority to execute, and perform their obligations under, the Loan Documents.

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5.2.2 The execution and delivery by Mortgagor and each Guarantor of, and the performance by Mortgagor and each Guarantor of their obligations under, each Loan Document have been authorized by all necessary action and do not and will not:

- (a) require any consent or approval not heretofore obtained of any person having any interest in Mortgagor or any Guarantor;
- (b) require any approval, license, exemption or other authorization from, or any filing, registration or qualification with, any governmental agency not previously obtained;
- (c) violate any provision of any law presently in effect;
- (d) violate any provision of, or require any consent or approval not heretofore obtained under, any partnership agreement, articles of incorporation, by-laws, articles of organization, operating agreement or other governing document applicable to Mortgagor, any Guarantor, or any general partner, managing member or trustee of Mortgagor or any Guarantor;
- (e) constitute a breach or default under, or permit the acceleration of obligations owed under, any contract, loan agreement, lease or other agreement or document to which Mortgagor or any Guarantor is a party or by which Mortgagor or any Guarantor or any of their property is bound; or
- (f) result in or require the creation of any lien, claim, charge or other right of others of any kind (other than under the Loan Documents) on or with respect to any property now or hereafter owned or leased by Mortgagor or any Guarantor.

5.2.3 Neither Mortgagor nor any Guarantor is in default, in any respect that is materially adverse to Mortgagee's interests under the Loan Documents or that would have any material adverse effect on the financial condition of Mortgagor or any Guarantor or the conduct of their business, under any law, contract, lease or other agreement or document described in subparagraph (d) or (e) of the previous Subsection.

5.3. **Financial and Other Information.** All financial information furnished to Mortgagee with respect to Mortgagor and each Guarantor in connection with the Note (a) is complete and correct in all material respects, (b) accurately presents the financial condition of Mortgagor and each Guarantor and (c) has been prepared in accordance with generally accepted accounting principles consistently applied. All other documents and information furnished to Mortgagee with respect to Mortgagor and each Guarantor in connection with the Loan are correct in all material respects and complete insofar as completeness is necessary to give Mortgagee an accurate knowledge of their subject matter. Mortgagor has no material liability or contingent liability not disclosed to Mortgagee in writing and there is no material lien, claim, charge or other right of others of any kind (including liens or retained security titles of conditional vendors) on any property of Mortgagor not disclosed in such financial statements or otherwise disclosed to Mortgagee in writing.

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5.4. **No Material Adverse Change.** There has been no material adverse change in the condition, financial or otherwise, of Mortgagor or any Guarantor since the dates of the latest financial statements furnished to Mortgagee. Since those dates, Mortgagor has not entered into any material transaction not disclosed in such financial statements or otherwise disclosed to Mortgagee in writing.

5.5. **Tax Liability.** Mortgagor has filed all required federal, state and local tax returns and has paid all taxes due (including interest and penalties, but subject to lawful extensions disclosed to Mortgagee) other than taxes being promptly and actively contested in good faith and by appropriate proceedings. Mortgagor is maintaining adequate reserves for tax liabilities (including contested liabilities) in accordance with generally accepted accounting principles consistently applied.

5.6. **Governmental Requirements.** Mortgagor is in compliance with all laws relating to the Property and all licenses, exemptions, approvals and other authorizations of governmental agencies required in connection with the Property and the development and construction of the Improvements, including each of the following as applicable:

- (a) zoning, land use and planning requirements, including requirements arising from, or relating to the adoption or amendment of, any applicable general plan;
- (b) subdivision and parcel map requirements;
- (c) environmental requirements including, but not limited to, requirements of the Illinois Environmental Protection Act and the National Environmental Policy Act and the preparation and approval of all required environmental impact statements and reports;
- (d) requirements in connection with use, occupancy and building permits; and
- (e) requirements of public utilities.

5.7. **Rights of Others.** Mortgagor is in compliance with all covenants, conditions, restrictions, easements, rights of way and other rights of third parties relating to the Property.

5.8. **Litigation.** There are no material actions or proceedings pending or, to the best of Mortgagor's knowledge, threatened against or affecting Mortgagor or any property of Mortgagor before any governmental agency, except as disclosed to Mortgagee in writing prior to the execution of this Mortgage.

5.9. **Delivery of Documents.** Mortgagor has delivered to Mortgagee true and complete copies of every lease, contract and other document that grants rights to, or imposes obligations on, Mortgagor in connection with the Property, and has fully disclosed to Mortgagee in writing the material terms of all oral agreements granting or imposing any such rights or obligations.

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5.10. Status of Property.

(a) Mortgagor has received no notice of any public hearing regarding assessments for improvements or in connection with any taking by eminent domain or condemnation by any government; and

(b) the Property is in compliance with the zoning ordinance and all other requirements applicable to the Property, such zoning ordinance and other requirements permit the use of the Property as a Nissan automobile dealership, and Mortgagor has selected and approved this site as a location for said dealership.

5.11. Use of Proceeds. The Loan proceeds will be used for commercial purposes only and will not be used for personal, family or household use.

ARTICLE 6 REMEDIES UPON DEFAULT

6.1. Events of Default. The occurrence of any of the following events or conditions shall constitute an "Event of Default" hereunder:

6.1.1 The occurrence of any "Event of Default" under the Note or any other Loan Document; or the occurrence of any default under any other document or agreement secured hereby, subject to any applicable contractual cure period set forth in such other document or agreement; or

6.1.2 All or any material part of the Land or improvements is condemned, taken in eminent domain, seized or appropriated by any governmental or quasi-governmental agency or entity; or

6.1.3 The Improvements are materially damaged or destroyed by fire or other casualty to such an extent that Mortgagee reasonably concludes that Mortgagor will not be able to repair such damage within twelve (12) months after the date of the damage or destruction; or

6.1.4 The occurrence of any default by Mortgagor, or failure by Mortgagor to perform Mortgagor's obligations, under Section 3.7, 3.8, or 3.9, above; or the occurrence of any default by Mortgagor, subject to any applicable contractual cure period, or any Event of Default by Mortgagor, under any deed of trust, mortgage or other security document encumbering any of the Property (other than this Mortgage); or

6.1.5 Any entry into, or modification or termination of, any lease affecting the Property, without Mortgagee's prior written consent in its sole and absolute discretion.

6.1.6 Any change in ownership or active management of Mortgagor without the prior written consent of Mortgagee; or

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6.1.7 The occurrence of a default by Mortgagor under the Dealership Agreement or the Automotive Wholesale Financing and Security Agreement between Mortgagor and Mortgagee; or

6.1.8 Any default by Mortgagor under any lease with respect to the Property; or

6.1.9 Failure of Mortgagor to cause the completion of the renovations to the Property described in the Nissan Retail Environment Design Initiative-Facility Program Agreement within six (6) months of the date hereof. Completion shall be deemed to be the date on which Mortgagee has received from Mortgagor the following items: (i) Certificate of Completion by Contractor, (ii) final certificate of occupancy from the appropriate governmental agency, (iii) NNA Brand Audit issuing state of completion, and (iv) any other documents reasonably requested by Mortgagee in connection with the completion of the renovations.

6.2. **Acceleration Upon Default; Additional Remedies.** Upon the occurrence of an Event of Default, Mortgagee may, at its option:

6.2.1 declare all Secured Obligations to be immediately due and payable without any presentment, demand, protest, notice of intent to accelerate, notice of acceleration, or further notice of any kind.

6.2.2 Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name or in the name of Mortgagee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof and, with or without taking possession of the Property, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys' fees, upon any Secured Obligations, all in such order as Mortgagee may determine. The entering upon and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession by Mortgagee or a receiver of all or any portion of the Property or the collection, receipt and application of any of the Rents, the Mortgagee shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including the right to exercise the power of sale.

6.2.3 Foreclose the lien hereof for such Secured Obligations or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to

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cause the interest of such purchaser to be protected by any of such insurance policies. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' 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 assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

6.2.4 Commence an action to specifically enforce any of the covenants contained herein;

6.2.5 Exercise any and/or all of the rights and remedies available to a secured party under the Illinois Uniform Commercial Code or any other applicable law in such order and in such manner as Mortgagee, in its sole discretion, may determine; provided, however, that the expenses of retaking, holding, preparing for sale or the like as provided thereunder shall include reasonable attorneys' fees and other expenses of Mortgagee and shall be additionally secured by this Mortgage; and/or

6.2.6 Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing all or any portion of the obligations secured hereby, or provided by law or in equity.

6.3. **[Intentionally Omitted]**.

6.4. **Appointment of Receiver.** Upon the occurrence of an Event of Default under this Mortgage, Mortgagee, as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Property or the interest of Mortgagor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided herein and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property unless such receivership is sooner terminated.

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6.5. **Impounds.** While any Event of Default remains uncured, if requested by Mortgagee, Mortgagor shall deposit with Mortgagee, in monthly installments, an amount equal to one-twelfth (1/12th) of the estimated aggregate annual Impositions. In such event, Mortgagor shall cause all bills and other documents relating to Impositions to be sent directly to Mortgagee and, upon receipt of the same, and provided Mortgagor has deposited sufficient funds with Mortgagee, Mortgagee shall make such funds available to pay such bills. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee may notify Mortgagor and Mortgagor shall immediately upon such notice deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of such funds or obligate Mortgagee to pay any amounts in excess of the deposited funds. Mortgagee may commingle such funds with its own funds and Mortgagor shall not be entitled to interest thereon.

6.6. **Remedies Not Exclusive.** Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligation secured hereby and to exercise all rights and powers under this Mortgage or under any Loan Document or other agreement or any law now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by guaranty, mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security for the obligations hereby secured now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein, or granted to Mortgagee under any other agreement, or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder, or granted to Mortgagee under any other agreement, or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to the Mortgagee or to which it may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Mortgagee, and it may pursue inconsistent remedies. Mortgagor may be joined in any action brought by Mortgagee to foreclose under or otherwise enforce this Mortgage.

6.7. **Request for Notice.** Mortgagor hereby requests that a copy of any notice of default and that a copy of any notice of sale hereunder be mailed to it at the address set forth in the first paragraph of this Mortgage.

ARTICLE 7 **MISCELLANEOUS**

7.1. **Miscellaneous Provisions in Note.** Sections 3, 4 and 5 of the Note, are incorporated herein by this reference as if set forth herein in full, and Mortgagor hereby agrees to all of such provisions.

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7.2. **Waivers.** Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15 - 1601 or other applicable law or replacement statutes;

(b) Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(c) If Mortgagor is a trustee, Mortgagor represents that the provisions of this paragraph (including the waiver of reinstatement and redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

7.3. **Statements by Mortgagor.** Mortgagor shall, within ten (10) days after notice thereof from Mortgagee, deliver to Mortgagee a written statement setting forth the amounts then unpaid and secured by this Mortgage and stating whether any offset or defense or counterclaim exists against such amounts, and if so, the nature and extent thereof.

7.4. **[Intentionally Omitted].**

7.5. **Reconveyance by Mortgagee.** Once all Secured Obligations have been indefeasibly paid and fully performed, and upon payment by Mortgagor of Mortgagee's fees and the costs and expenses of executing and recording any requested reconveyance, Mortgagee shall release this Mortgage. The recitals in any such release of any matter or fact shall be conclusive proof of the truthfulness thereof. The grantee in any such reconveyance may be described as "the person or persons legally entitled thereto."

7.6. **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the Secured Obligations exceed an amount equal to Two Hundred

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Percent (200%) of the maximum principal amount of the Secured Obligations; provided, however, in no event shall Mortgagee be obligated to advance funds in excess of the face amount of the Note.

7.7. **Subrogation.** To the extent that proceeds of the Note are used, either directly or indirectly, to pay any outstanding lien, charge or prior encumbrance against the Property, Mortgagee shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether such liens, charges or encumbrances are released.

7.8. **Statute of Limitations.** The right to plead, use or assert any statute of limitations as a plea, defense or bar of any kind, or for any purpose, to any obligation secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Mortgage or any rights hereunder, is hereby waived by Mortgagor to the full extent permitted by law.

7.9. **Interpretation.** In this Mortgage the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires; and the word "person" shall include corporation, partnership or other form of association. Any reference in this Mortgage to any document, instrument or agreement creating or evidencing an obligation secured hereby shall include such document, instrument or agreement both as originally executed and as it may from time to time be modified.

7.10. **Further Assurances.** Mortgagor agrees to do or cause to be done such further acts and things and to execute and deliver or to cause to be executed and delivered such additional assignments, agreements, powers, instruments and financing statements, as Mortgagee may reasonably require or deem advisable to correct any defect, error or omission in this Mortgage or the execution or acknowledgment of this Mortgage, to subject to the lien of this Mortgage any of Mortgagor's properties covered or intended to be covered hereby, to perfect and maintain such lien, to keep valid and effective the charges and lien hereof, to carry into effect the purposes of this Mortgage or to better assure and confirm to Mortgagee their respective rights, powers and remedies hereunder.

7.11. **Mortgagee's Powers.** At any time, and from time to time, without liability therefor and without notice, upon written request of Mortgagee and presentation of this Mortgage and the note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness or the performance of any other obligation secured hereby or the effect of this Mortgage upon the remainder of the Property, Mortgagee may (a) reconvey all or any part of the Property, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement, agreement subordinating the lien or charge hereof, or other agreement or instrument relating hereto or to all or any part of the Property.

7.12. **Fixture Filing.** This Mortgage constitutes a financing statement filed as a fixture filing under the Illinois Uniform Commercial Code, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Land or

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Improvements. In connection therewith, the addresses of Mortgagor, as debtor, and Mortgagee, as secured party, are as set forth in the first paragraph of this Mortgage. The foregoing address of Mortgagee, as secured party, is also the address from which information concerning the security interest may be obtained by any interested party. The property subject to this fixture filing is described in Section 1, above. Portions of the property subject to this fixture filing as identified in this Section are or are to become fixtures related to the Land and Improvements.

7.13. **Security Agreement.** Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial 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, which personal property may not be deemed to be affixed to the Property or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the Illinois Uniform Commercial 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 Secured Obligations. 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 Property; 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 Illinois Uniform Commercial 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 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 Property are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby.

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(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 Secured Obligations, 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 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 Property. Mortgagee may

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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 Property. If Mortgagee so elects, the Property 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 Secured Obligations 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 7.13, 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 Property. 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 Property 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 Property;
- (ii) Mortgagor's chief executive office is located in the State of Illinois;
- (iii) Mortgagor's state of incorporation is the State of Illinois;
- (iv) Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage; and

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(v) Mortgagor's organizational identification number is 52139201.

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

7.14. Intentionally Omitted.

7.15. **Exhibits.** Exhibit "A" attached hereto is incorporated herein by this reference. Mortgagor hereby agrees to all of the provisions in such exhibit(s).

7.16 This mortgage is governed by the laws
of the State of Illinois.

[Signature Page Follows]

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IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage as of the date first above written.

MORTGAGOR:

KELLY NISSAN, INC.,
an Illinois corporation

By AW Kelly
Name: ARTHUR W. Kelly
Its Pres.

Property of Cook County Clerk's Office

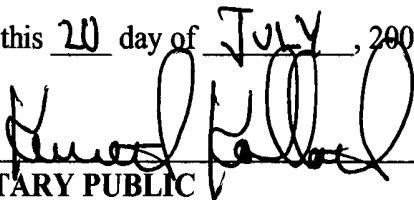
[Signature Page to Mortgage]

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STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

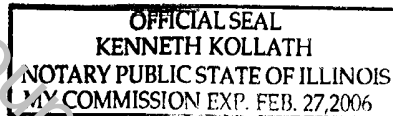
I, KENNETH KOLLATH a Notary Public in and for said County, in the State
aforesaid, do hereby certify that ARTHUR KELLY, the
PREI of KELLY NISSAN, INC., who is personally known to me to be
the same person whose name is subscribed to the foregoing instrument as such
ARTHUR KELLY, appeared before me this day in person and acknowledged that
he/she signed and delivered the said instrument as his/her own free and voluntary act and as the
free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 20 day of JULY, 2005.



NOTARY PUBLIC

(SEAL)



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EXHIBIT "A"
(Legal Description)

[See Attached]

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PARCEL 1 (A)

THE EAST 69.25 FEET OF LOT 3 AND THAT PART OF LOT 2 DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2; THENCE EAST ALONG THE SOUTH LINE OF LOT 2, 140.75 FEET; THENCE NORTH AT RIGHT ANGLES TO THE SOUTH LINE OF LOT 2, 150 FEET TO A POINT; THENCE WEST PARALLEL TO THE SOUTH LINE OF LOT 2, 47 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED LINE 150 FEET TO A POINT IN THE NORTH LINE OF LOT 2 THAT IS 93.75 FEET EAST OF THE NORTHWEST CORNER OF LOT 2; THENCE WEST ALONG THE NORTH LINE OF LOT 2, 93.75 FEET TO THE NORTHWEST CORNER OF LOT 2; THENCE SOUTH ALONG THE WEST LINE OF LOT 2 TO THE POINT OF BEGINNING, ALL IN WIEGEL AND KILGALLENS 95TH STREET SUBDIVISION OF THE NORTH 300 FEET OF THE SOUTH 350 FEET OF THE EAST THREE QUARTERS OF THE SOUTHWEST (1/4) OF THE SOUTH EAST 1/4 OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 1 (B)

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 262.56 FEET THEREOF), OF THE EAST THREE QUARTERS OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 1 (C)

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 3/4 OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF LOT 2; THENCE EAST ALONG THE SOUTH LINE OF LOT 2 FOR A DISTANCE OF 140.75 FEET TO THE POINT OF BEGINNING; THENCE NORTH AT RIGHT ANGLES TO THE SOUTH LINE OF LOT 2 FOR A DISTANCE OF 150.00 FEET TO A POINT; THENCE WEST PARALLEL WITH THE SOUTH LINE OF LOT 2 FOR A DISTANCE OF 47.00 FEET TO A POINT; THENCE NORTH 150 FEET TO A POINT OF THE NORTH LINE OF LOT 2 THAT IS 93.75 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 2; THENCE EAST ALONG THE NORTH LINE OF LOT 2 FOR A DISTANCE OF 87.00 FEET TO A POINT; THENCE SOUTH FOR A DISTANCE OF 300 FEET TO A POINT ON THE SOUTH LINE OF LOT 2, SAID POINT BEING 180.75 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 2; THENCE WEST ALONG THE SOUTH LINE OF LOT 2 FOR A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING, IN CCI

PARCEL 1 (D)

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THE WEST 86.98 FEET OF THE NORTH 25 FEET OF THE SOUTH 375 FEET (EXCEPT THE EAST 33 FEET THEREOF AND EXCEPT THE WEST 425.50 FEET THEREOF) OF THE EAST 3/4 OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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