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This Instrument Prepared by And
Upon Recordation Return to:
Robert A. Sternberg
Kovitz Shifrin Nesbit
750 Lake Cook Road, Suite 350
Buffalo Grove, Illinois 60089



Doc#: 0801460060 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/14/2008 12:47 PM Pg: 1 of 16

PIN# 07-09-301-023

This space reserved for Recorder's use only

Ticor Title Insurance

F.D.W. REAL ESTATE, INC., an Illinois corporation, as assignor (Borrower)
to
MIDWEST BANK AND TRUST COMPANY, as assignee (Lender)

ASSIGNMENT OF LEASES AND RENTS

Dated: January 2, 2008

Location: 911 West Higgins Road, Schaumburg, Illinois 60195

484390v1

BOX 15

9900 37373 NW

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THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") made as of the 2nd day of January, 2008 (the "Effective Date"), by F.D.W. REAL ESTATE, INC., an Illinois corporation having its principal place of business at 911 West Higgins Road, Schaumburg, Illinois, as assignor (hereinafter referred to as "Borrower") to MIDWEST BANK AND TRUST COMPANY having an address at Attn. Loan Operations, 501 West North Avenue, Melrose Park, Illinois 60160-1603, its successors and assigns, as assignee ("Lender").

RECITALS:

Borrower by its Mortgage Note of even date herewith given to Lender is indebted to Lender in the principal sum of One Million Six Hundred Forty-Five Thousand One Hundred Eleven and 60/100 Dollars (\$1,645,111.60) in lawful money of the United States of America (together with all extensions, renewals, modifications, substitutions and amendments thereof, the "**Consolidated Note**"), with interest from the date thereof at the rates set forth in the Consolidated Note, principal and interest to be payable in accordance with the terms and conditions provided in the Consolidated Note.

Borrower by its Revolving Mortgage Note of even date herewith given to Lender is indebted to Lender in the principal sum of One Million Dollars (\$1,000,000.00) in lawful money of the United States of America (together with all extensions, renewals, modifications, substitutions and amendments thereof, the "**Revolving Note**"), with interest from the date thereof at the rates set forth in the Revolving Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

For purposes of this Assignment, the Consolidated Note and the Revolving Note are collectively referred to herein as the "**Notes**".

Borrower desires to continue to secure the payment of the "Debt" (defined below) and the performance of all of its obligations under the Notes and all other obligations of Borrower as set forth in the "Mortgage" (defined below).

ARTICLE 1 ASSIGNMENT

Section 1.1 **Property Assigned.** Borrower hereby absolutely and unconditionally assigns and grants, and continues to assign and grant, to Lender the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower:

(a) **Leases.** All existing and future leases, including, without limitation, that certain lease dated November 1, 2006, as amended, by and between Borrower, as Landlord, and SUBARU OF SCHAUMBURG, INC., an Illinois corporation, as Tenant, affecting the use, enjoyment, or

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occupancy of all or any part of that certain parcel of real property, more particularly described in Exhibit A annexed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "Property") and the right, title and interest of Borrower, its successors and assigns, therein and thereunder.

(b) **Other Leases and Agreements.** All other leases, subleases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, whether made before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. § 101 *et seq.*, as the same may be amended from time to time (the "**Bankruptcy Code**") together with any extension, renewal or replacement of the same, this Assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment. The leases described in **Subsection 1.1(a)** and the leases and other agreements described in this **Subsection 1.1(b)**, together with all other present and future leases and present and future agreements and any extension or renewal of the same are collectively referred to as the "**Leases**".

(c) **Rents.** All rents, additional rents, revenues, income, issues and profits arising from the Leases and renewals and replacements thereof and any cash or security deposited in connection therewith and together with all rents, revenues, income, issues and profits from the use, enjoyment and occupancy of the Property, and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas and mining Leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Borrower under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Property, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**").

(d) **Bankruptcy Claims.** All of Borrower's claims and rights (the "**Bankruptcy Claims**") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code.

(e) **Lease Guaranties.** All of Borrower's right, title and interest in and claims under any and all lease guaranties, letters of credit and any other credit support given by any guarantor in connection with any of the Leases (individually, a "**Lease Guarantor**", collectively, the "**Lease**

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Guarantors") to Borrower (individually, a "**Lease Guaranty**", collectively, the "**Lease Guaranties**").

(f) **Proceeds.** All proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims (collectively, "**Proceeds**").

(g) **Other.** All rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt or the Other Obligations), and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties (collectively, "**Other Rights**").

(h) **Entry.** The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents.

(i) **Power of Attorney.** Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in **Section 3.1** of this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

(j) **Other Rights and Agreements.** Any and all other rights of Borrower in and to the items set forth in **subsections (a) through (i)** above, and all amendments, modifications, replacements, renewals and substitutions thereof.

Section 1.2 Consideration. This Assignment is made in consideration of those certain loans (the "**Loans**") made by Lender to Borrower evidenced by:

(a) The Consolidated Note and secured by that certain Mortgage and Security Agreement (the "**Consolidated Mortgage**"), given by Borrower to or for the benefit of Lender, of even date.

(b) The Revolving Note and secured by that certain Mortgage and Security Agreement (the "**Revolving Mortgage**"), given by Borrower to or for the benefit of Lender, of even date.

(c) The Consolidated Mortgage and the Revolving Mortgage are collectively referred to herein as the "**Mortgages**".

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(d) The principal sum, interest and all other sums due and payable under the Notes, the Mortgages, this Assignment and the "Other Security Documents" (defined below) are collectively referred to as the "Debt". The documents other than this Assignment, the Notes or the Mortgages now or hereafter executed by Borrower and/or others and by or in favor of Lender which wholly or partially secure or guarantee payment of the Debt are referred to herein as the "Other Security Documents". The Notes, the Mortgages, this Assignment and the Other Security Documents are collectively referred to herein as the "Loan Documents".

Section 1.3 **Termination of Assignment.** Upon payment in full of the Debt and the delivery and recording of a satisfaction or discharge of Mortgages duly executed by Lender, this Assignment shall become null and void and shall be of no further force and effect.

ARTICLE 2 TERMS OF ASSIGNMENT

Section 2.1 **Present Assignment and License Back.** The parties intend that this Assignment grants a present, absolute, and unconditional assignment of the Leases, Rents, Lease Guaranties and Bankruptcy Claims, Proceeds, and Other Rights and shall, immediately upon execution, give Lender the right to collect the Rents and other sums due under the Lease Guaranties and to apply them in payment of the Debt. Such assignment and grant shall continue in effect until the Debt is paid in full and all of the Other Obligations are fully satisfied. Subject to the provisions set forth herein and provided there is no Default then existing, Lender grants to Borrower a revocable license to enforce the Leases and collect the Rents as they become due (excluding, however, any Lease termination, cancellation or similar payments which Borrower agrees shall be held in trust and turned over to Lender for credit to principal under the Loans), and Borrower shall hold the same, in trust, to be applied first to the payment of all impositions, levies, taxes, assessments and other charges upon the Property, second to maintenance of insurance policies upon the Property required hereby, third to the expenses of Property operations, including maintenance and repairs required hereby, fourth to the payment of that portion of the indebtedness then due and payable, and fifth, the balance, if any, to or as directed by Borrower. Borrower shall deliver such Rents to Lender as are necessary for the payment of principal, interest and other sums payable under the Loan Documents as such sums become due. Borrower shall comply with and observe Borrower's obligations as landlord under all Leases. Borrower will not lease any portion of the Property for use which is not consistent with the permitted use of the Property, except with the prior written approval of Lender. Borrower, at Lender's request, shall furnish Lender with executed copies of all Leases, and all Leases and amendments thereto hereafter entered into will be on a form of Lease previously approved by Lender. All renewals of Leases and all proposed Leases for space in the Property shall provide for rental rates comparable to existing

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local market rates and shall be arms-length transactions. All Leases other than for space in the Property shall be terminable on not less than sixty (60) days' notice, unless approved in writing by Lender prior to Borrower's execution thereof.

Section 2.2 Notice to Lessees. Borrower hereby agrees to authorize and direct the lessees named in the Leases or any other or future lessees or occupants of the Property and all Lease Guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any Lease Guaranties upon receipt from Lender of written notice to the effect that Lender is then the holder of the Mortgages and that a "Default" (defined below) exists, and to continue so to do until otherwise notified by Lender.

Section 2.3 Incorporation by Reference. All representations, warranties, covenants, conditions and agreements contained in the Mortgages as same may be modified, renewed, substituted or extended are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

ARTICLE 3 REMEDIES

Section 3.1 Remedies of Lender. Upon or at any time after the occurrence of a default under this Assignment or an "Event of Default" (as defined in the Mortgages, as amended) (a "Default"), the license granted to Borrower in **Section 2.1** of this Assignment shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents and sums due under any Lease Guaranties, whether or not Lender enters upon or takes control of the Property. In addition, Lender may, at its option, without waiving such Default, without notice and without regard to the adequacy of the security for the Debt, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Borrower and its agents and servants from the Property, without liability for trespass, damages or otherwise and exclude Borrower and its agents wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents and sums due under all Lease Guaranties, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender and may apply the Rents and sums received pursuant to any Lease Guaranties to the payment of the following in such order and proportion as Lender in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries,

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fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Debt, together with all costs and reasonable attorneys' fees. In addition, upon the occurrence of a Default, Lender, at its option, may (1) complete any construction on the Property in such manner and form as Lender deems advisable, (2) exercise all rights and powers of Borrower, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties, (3) either require Borrower to pay monthly in advance to Lender or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Borrower or (4) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

Section 3.2 **Other Remedies.** Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Notes, the Mortgages, or the Other Security Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Debt and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Borrower under this Assignment, the Notes, the Mortgages, the Other Security Documents or otherwise with respect to the loan secured hereby in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Notes, the Mortgages, or any of the Other Security Documents (provided, however, that the foregoing shall not be deemed a waiver of Borrower's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

Section 3.3 **Other Security.** Lender may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or

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satisfaction of the Debt without prejudice to any of its rights under this Assignment.

Section 3.4 **Non-Waiver**. The exercise by Lender of the option granted it in **Section 3.1** of this Assignment and the collection of the Rents and sums due under the Lease Guaranties and the application thereof as herein provided shall not be considered a waiver of any default by Borrower under the Notes, the Mortgages, the Leases, this Assignment or the Other Security Documents. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Mortgages, the Notes or the Other Security Documents, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Notes, the Mortgages or the Other Security Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

Section 3.5 **Bankruptcy**.

(a) Upon or at any time after the occurrence of a Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten (10) day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy

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Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

Section 3.6 **Security Deposits**. All security deposits of lessees, whether held in cash or any other form, shall be treated by Borrower as trust funds, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower in one or more segregated accounts at such commercial or savings bank or banks as is reasonably satisfactory to Lender. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under applicable legal requirements (a) shall be maintained in full force and effect unless replaced by cash deposits as hereinabove described, (b) shall be issued by an entity reasonably satisfactory to Lender, (c) shall, if permitted pursuant to legal requirements, name Lender as payee or beneficiary thereunder (or at Lender's option, subject to applicable Borrower requirements, be fully assignable to Lender), and (d) shall, in all respects, comply with applicable legal requirements and otherwise be reasonably satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence reasonably satisfactory to Lender of Borrower's compliance with the foregoing. Following the occurrence and during the continuance of any default, Borrower shall, upon Lender's request, if permitted by applicable legal requirements, turn over to Lender the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Property, to be held by Lender subject to the terms of the Leases.

ARTICLE 4 NO LIABILITY, FURTHER ASSURANCES

Section 4.1 **No Liability of Lender**. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after a Default or from any other act or omission of Lender in managing the Property after a Default unless such loss is caused by the willful misconduct and bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment and Borrower shall, and hereby agrees, to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Leases, any Lease Guaranties under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Lender by reason of any alleged obligations and undertakings on its part to

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perform or discharge any of the terms, covenants or agreements contained in the Leases or any Lease Guaranties. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment and by any Mortgage and the Other Security Documents and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower so to do Lender may, at its option, declare all sums secured by this Assignment and by any Mortgage and the Other Security Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, including without limitation the presence of any "Hazardous Substances" (as defined in the Mortgages), or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

Section 4.2 **No Mortgagee in Possession**. Nothing herein contained shall be construed to consider Lender a mortgagee in possession in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

Section 4.3 **Further Assurances**. Borrower will, at the cost of Borrower, and without expense to Lender, execute, acknowledge and deliver all and every such further acts, conveyances, assignment, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable Mortgages, to evidence more effectively the lien and security interest hereof in and upon the Leases.

ARTICLE 5 MISCELLANEOUS PROVISIONS

Section 5.1 **Conflict of Terms**. In case of any conflict between the terms of this Assignment and the terms of any Mortgage, the terms of such Mortgage shall prevail.

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Section 5.2 **No Oral Change**. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 5.3 **Certain Definitions**. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein", the word "Lender" shall mean "Lender and any subsequent holder of any one or more of the Notes," the word "Notes" shall mean the Consolidated Note and the Revolving Note and any other evidence of indebtedness secured by the applicable Mortgage, the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, the phrases "attorneys' fees" and "counsel fees" shall include any and all reasonable attorneys and paralegal fees and disbursements, and the word "Debt" shall mean the principal balance of the Notes with interest thereon as provided in each applicable Note and each applicable Mortgage and all other sums due pursuant to such Note, such Mortgage, this Assignment and the Other Security Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 5.4 **Authority**. Borrower represents and warrants that it has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Borrower or the Property.

Section 5.5 **Inapplicable Provisions**. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

Section 5.6 **Counterparts**. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment.

Section 5.7 **Choice of Law**. THIS ASSIGNMENT SHALL BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO

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CONFLICTS OF LAW PRINCIPLES, PROVIDED, HOWEVER, THAT TO THE EXTENT THE MANDATORY PROVISIONS OF THE LAWS OF ANOTHER JURISDICTION RELATING TO (a) THE PERFECTION OR THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTERESTS IN ANY OF THE PROPERTY, (b) THE LIEN, ENCUMBRANCE OR OTHER INTEREST IN THE PROPERTY GRANTED OR CONVEYED BY THIS ASSIGNMENT, OR (c) THE AVAILABILITY OF AND PROCEDURES RELATING TO ANY REMEDY HEREUNDER OR RELATED TO THIS ASSIGNMENT ARE REQUIRED TO BE GOVERNED BY SUCH OTHER JURISDICTION'S LAWS, SUCH OTHER LAWS SHALL BE DEEMED TO GOVERN AND CONTROL.

Section 5.8 **Notices.** All notices required or permitted hereunder shall be given as provided in the Mortgage.

Section 5.9 **Jurisdiction and Venue.** BORROWER HEREBY IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL SUITS, ACTIONS OR OTHER PROCEEDINGS WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION HERewith SHALL BE SUBJECT TO LITIGATION IN COURTS HAVING SITUS WITHIN OR JURISDICTION OVER COOK COUNTY, ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF SUCH COUNTY, AND HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO REQUEST TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDINGS BROUGHT BY LENDER IN ACCORDANCE WITH THIS PARAGRAPH, OR TO CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

Section 5.10 **Waiver of Trial by Jury.** BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THIS ASSIGNMENT, THE NOTES, THE MORTGAGES OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Section 5.11 **Liability.** If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 5.12 **Headings, etc.** The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not

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to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 5.13 **Number and Gender**. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 5.14 **Costs and Expenses of Borrower**. Wherever pursuant to this Assignment it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees and disbursements of Lender, whether with respect to retained firms, the reimbursement of the reasonable expenses for in-house staff or otherwise.

Section 5.15 **Successors and Assigns**. Borrower may not assign its rights under this Assignment. Borrower hereby acknowledges and agrees that Lender may assign this Assignment without Borrower's consent. Subject to the foregoing, this Assignment shall be binding upon, and shall inure to the benefit of, Borrower and the Lender and their respective successors and assigns and any subsequent owner of the Property.

THIS ASSIGNMENT, together with the covenants and warranties therein contained, shall inure to the benefit of Lender and any subsequent holder of the either or both Mortgages, and shall be binding upon Borrower, its heirs, executors, administrators, successors and assigns and any subsequent owner of the Property.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGE FOLLOWS]**

UNOFFICIAL COPY**EXHIBIT A****Legal Description****PARCEL 1:**

LOT 2 IN T AND C COMMERCIAL UNIT NO. 3, BEING A RESUBDIVISION OF LOT 2 IN T AND C COMMERCIAL UNIT NO. 1, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPTING THAT PART THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE SOUTHWARD ALONG THE EAST LINE OF SAID LOT 2, SOUTH 3 DEGREES 00 MINUTES 15 SECONDS EAST, A DISTANCE OF 243.28 FEET TO THE SOUTHEAST CORNER OF SAID LOT 2; THENCE WESTWARD ALONG THE SOUTH LINE OF SAID LOT 2, SOUTH 86 DEGREES 59 MINUTES 45 SECONDS WEST, A DISTANCE OF 164.76 FEET; THENCE NORTHWARD ALONG A LINE BEING PARALLEL WITH THE WEST LINE OF SAID LOT 2, NORTH 00 DEGREES 40 MINUTES 44 SECONDS EAST, A DISTANCE OF 299.78 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 2, BEING THE SOUTHERLY RIGHT OF WAY LINE OF HIGGINS ROAD; THENCE EASTWARD ALONG THE SAID NORTHERLY LINE, SOUTH 71 DEGREES 59 MINUTES 46 SECONDS EAST, A DISTANCE OF 155.87 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS AS RESERVED IN DEED FROM LA SALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 1, 1964 AND KNOWN AS TRUST NUMBER 31018, TO AMERICAN MOTORS SALES CORPORATION DATED AUGUST 18, 1972 AND RECORDED AUGUST 25, 1972 AS DOCUMENT NO. 22028696 OVER THE FOLLOWING DESCRIBED AREA, TO WIT:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 10, WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD; THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD A DISTANCE OF 210 FEET TO A POINT OF BEGINNING; THENCE SOUTHERLY ALONG A LINE PARALLEL WITH THE WEST LINE OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 10, A DISTANCE OF 125.00 FEET; THENCE EASTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE A DISTANCE OF 100 FEET; THENCE NORTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE AND ALONG SAID WEST LINE OF LOT 2, A DISTANCE OF 25.00 FEET; THENCE WESTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 57 FEET; THENCE NORTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE AND PARALLEL WITH THE WEST LINE OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 10, A DISTANCE OF 87 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD; THENCE NORTHWESTERLY ALONG THE SAID SOUTHERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD, A DISTANCE OF 45 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR PLACEMENT, INSTALLATION, CONSTRUCTION AND OPERATION OF A SIGN AS RESERVED IN DEED FROM LA SALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 1, 1964 AND KNOWN AS TRUST NUMBER 31018, TO AMERICAN MOTORS SALES CORPORATION DATED AUGUST 18, 1972 AND RECORDED AUGUST 25, 1972 AS DOCUMENT NO. 22028696 OVER THE FOLLOWING DESCRIBED AREA, TO WIT:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 10, OF THE SOUTHERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD; THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD A DISTANCE OF 255 FEET TO A POINT OF BEGINNING; THENCE SOUTHERLY ALONG A LINE PARALLEL WITH THE WEST LINE OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 10, A DISTANCE OF 25.00 FEET; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD A DISTANCE OF 25.00 FEET; THENCE NORTHERLY ALONG A LINE PARALLEL WITH THE WEST LINE OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 10, TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD; THENCE NORTHWESTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

NON-EXCLUSIVE RIGHT OF WAY AND EASEMENT FOR THE BENEFIT OF PARCEL 1 AS GRANTED IN DECLARATION OF EASEMENT MADE BY AND BETWEEN LA SALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 7, 1973 AND KNOWN AS TRUST NUMBER 45858, AND O'HARE INTERNATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 15, 1971 AND KNOWN AS TRUST NUMBER 72 L 103, RECORDED JULY 24, 1973 AS DOCUMENT NO. 22411512 FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED AREA, TO WIT:

EASEMENT 25 FEET IN WIDTH AS DEPICTED ON EXHIBIT A OF THE AFORESAID DECLARATION AS THE CROSS-HATCHED AREA.

PARCEL 5:

EASEMENT 45 FEET IN WIDTH FOR THE BENEFIT OF PARCEL 1 AS GRANTED IN DECLARATION OF EASEMENT MADE BY AND BETWEEN LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 1, 1964 AND KNOWN AS TRUST NUMBER 31018, AND CARBO INVESTMENT COMPANY, INC. DATED DECEMBER 17, 1971 AND RECORDED DECEMBER 28, 1971 AS DOCUMENT NO. 21760760 FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED AREA, TO WIT:

AN EASEMENT THAT LIES 22.5 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED LINE, ALL IN THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BETWEEN THE SOUTHERLY RIGHT OF WAY LINE OF HIGGINS ROAD AND A LINE BEING 70 FEET NORTH AND PARALLEL WITH THE CENTER LINE OF GOLF ROAD; COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHWEST 1/4; THENCE NORTHWARD ALONG THE EAST LINE OF SAID SOUTHWEST 1/4, A DISTANCE OF 53.10 FEET TO A POINT ON A LINE BEING 70 FEET NORTH AND PARALLEL WITH THE CENTER LINE OF GOLF ROAD; THENCE WESTWARD ALONG SAID PARALLEL LINE A DISTANCE OF 710.93 FEET FOR POINT OF BEGINNING; THENCE NORTHWARD A DISTANCE OF 523.97 FEET ALONG A LINE TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF HIGGINS ROAD.