

# UNOFFICIAL COPY

This Document Prepared by and after  
Recording Return to:



Goldstine, Skrodzki, Russian,  
Nemec and Hoff, Ltd.  
835 McClintock Drive  
Second Floor  
Burr Ridge, Illinois 60527  
Attn: Thomas P. Russian

Doc#: 1010233088 Fee: \$50.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 04/12/2010 11:08 AM Pg: 1 of 8

*Recorder's use only.*

*C.T.S./G  
NW 220012  
CS 210009126  
3 all*

## ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES ("Assignment") is dated March 26, 2010, from BEDFORD AUTO GROUP, LLC, an Illinois limited liability company ("Bedford"), and STANLEY R. TOMASHUNAS and ALICE M. TOMASHUNAS, their successors and assigns ("Assignee"), having an address at 1207 Prospect, Willow Springs, IL 60480.

### WITNESSETH:

WHEREAS, Assignee has made a loan to Assignor in the principal sum of ONE HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$180,000.00) (the "Loan"), which Loan is evidenced by that certain Secured Promissory Note of Assignor of even date hereinafter made payable to the order of Assignee and otherwise on the terms and conditions stated therein (the "Note"); and

WHEREAS, under the terms of the Note, and as a material inducement to Assignee to make the Loan and accept the Note, Assignor agreed to grant this Assignment to secure (i) the payment in full of all principal of and interest on the Note; (ii) the performance of all obligations, covenants, promises and agreements contained in that certain Mortgage and Security Agreement of even date herewith from Assignor to Assignee, as amended, supplemented and restated from time to time (the "Mortgage"), granting to Assignee a mortgage on the real estate legally described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Premises") as security for the Note and any and all other indebtedness intended to be secured thereby; (iii) the performance of all obligations, covenants, promises and agreements hereunder; and (iv) the payment of all expenses and charges, legal or otherwise, paid or incurred by Assignee in realizing upon or protecting the indebtedness referred to in the foregoing clauses (i) to and including (iv) above or any security therefor, including this Assignment (all of the foregoing being hereinafter collectively referred to as the "indebtedness secured hereby"). The Note, the Mortgage, Assignment of Rents and all other documents and instruments contemplated herein or therein and given as security for payment of the Note are hereinafter referred to collectively as the "Obligations" or the "Loan Documents."

NOW, THEREFORE, for and in consideration of the foregoing, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure the

**BOX 333-CT**

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payment and performance of the Obligations, Assignor does hereby assign, transfer and grant unto Assignee all of the right, title and interest of Assignor in and to: (i) all the rents, issues, security deposits and profits, including but not limited to earnings, deposits, escrows or security deposits, now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use, sale, or occupancy of the Premises or any part thereof, which may be made or agreed to by Assignee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all the said leases and agreements (hereinafter collectively referred to as the "Leases") and security deposits, and all the avails thereof, to Assignee, (ii) without limiting the generality of the foregoing, all and whatever right, title and interest Assignor now or hereafter has in and to any Lease now or hereafter encumbering all or any portion of the Premises, all on the following terms and conditions, and (iii) rights and claims for damages against tenants arising out of defaults under any Leases, including rights to compensation with respect to rejected Leases pursuant to applicable or replacement sections of the Bankruptcy Code of the United States.

1. Assignor does hereby appoint irrevocably Assignee its true and lawful attorney in its name and stead (with or without taking possession of the Premises), to rent, lease, or let all or any portion of said Premises to any party or parties at such price and upon such terms, in its discretion as it may determine, and to collect all of said avails, rents, issues, deposits, and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the Leases, written or verbal, or other tenancy existing or which may hereafter exist on said Premises, with the same rights and powers and subject to the same immunities, exoneration of liability, and rights of recourse and indemnity as Assignee would have upon taking possession of said Premises pursuant to the provisions hereinafter set forth. The foregoing rights shall be exercised only after a default by Assignor that is not cured within any applicable cure period.

2. Assignor represents, warrants and agrees that (i) Assignor is the sole lessor under any Leases for the Premises or any portions thereof; (ii) all Leases are valid and enforceable and no Lease has been altered, modified or amended in any manner whatsoever; (iii) there are no defaults (or matters that with the passage of time or notice, or both, would constitute defaults) under any of the terms, covenants or conditions of any Lease; (iv) Assignor is entitled to receive all of the rents, issues and profits and to enjoy all the other rights and benefits mentioned herein and assigned hereby; (v) the aforementioned rents, issues, profits and rights have not been heretofore sold, assigned, transferred or set over by any instrument now in force and will not at any time until the Note is paid in full be sold, assigned, transferred or set over by Assignor or by any person or persons whomsoever except subject to this Assignment; (vi) that Assignor has good right to sell, assign, transfer and set over the same and to grant to and confer upon Assignee the rights, interest, powers and/or authorities herein granted and conferred; and (vii) no rents or other sums due under any Leases have been prepaid for more than thirty (30) days in advance of the time when the same became due under the terms of said Leases except for applicable security deposits.

3. Assignor, without cost, liability or expense to Assignee, shall (i) at all times promptly and faithfully abide by, discharge, and perform all of the covenants, conditions and agreements contained in all Leases of all or any portion of the Premises, on the part of the landlord thereunder to be kept and performed, (ii) enforce or secure the performance of all of the covenants, conditions

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and agreements of the Leases on the part of the lessees to be kept and performed, (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of landlord or of the lessees thereunder, (iv) transfer and assign to Assignee upon request of Assignee, any lease or Leases of all or any part of the Premises heretofore or hereafter entered into, and make, execute and deliver to Assignee upon demand, any and all instruments required to effectuate said assignment, (v) furnish Assignee, within ten (10) days after a request by Assignee so to do, a written statement containing the names of all lessees, terms of all Leases, including the spaces occupied, the rentals payable and security deposits, if any, paid thereunder, (vi) exercise within ten (10) days of any demand therefor by Assignee any right to request from the lessee under any of the Leases of all or any part of the Premises a certificate with respect to the status thereof, and (vii) not, without Assignee's prior written consent: (a) execute an assignment or pledge of any rents of the Premises or of any of the Leases of all or any part of the Premises, except to Assignee as security for the indebtedness secured hereby, (b) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, (c) agree to any amendment to or change in the terms of any of the Leases, which substantially reduces the rent payable thereunder or increases any risk or liability of the lessor thereunder, except that Assignor may permit or consent to any assignment or subletting of all or a portion of the Premises as permitted by a lease approved by Assignee.

4. Notwithstanding anything to the contrary contained herein, so long as there shall exist no default by Assignor in the payment or in the performance of any of the Obligations, Assignor shall have the right to collect at the time of, but not more than thirty (30) days prior to, the date provided for the payment thereof, all rents, security deposits, income and profits arising under the Leases and to retain, use and enjoy the same.

5. Upon or at any time after default in the payment or in the performance of any of the Obligations and the expiration of any applicable cure period and without regard to the adequacy of any other security therefor or whether or not the entire principal sum secured hereby is declared to be immediately due, forthwith, upon demand of Assignee, Assignor shall surrender to Assignee and Assignee shall be entitled to take actual possession of the Premises, or any part thereof, personally or by its agent or attorneys, and Assignee in its discretion may enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers, and accounts of Assignor or the then manager of the Premises relating thereto, and may exclude Assignor and its agents or servants, wholly therefrom and may, as attorney in fact or agent of Assignor, or in its own name as Assignee and under the powers herein granted: (i) hold, operate, manage, and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Assignor, (ii) cancel or terminate any of the Leases or any sublease for any cause or on any ground which would entitle Assignor to cancel the same, (iii) elect to disaffirm any other Leases or any sublease made subsequent to the Mortgage or subordinate to the lien thereof, (iv) extend or modify any of the then existing Leases and make new Leases, which

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extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Assignor and all persons whose interests in the Premises are subject to the lien hereof and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the Premises as to Assignee may seem judicious, (vi) insure and reinsure the Premises and all risks incidental to Assignee's possessions, operations, and management thereof, and (vii) receive all avails, rents, issues and profits.

6. Any avails, rents, issues and profits of the Premises received by Assignee pursuant hereto shall be applied in payment of or on account of the following, in such order as Assignee may determine: (i) to the payment of the operating expenses of the Premises, including reasonable compensation to Assignee or its agent or agents, if management of the Premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases and the payment of premiums on insurance hereinabove authorized, (ii) to the payment of taxes, special assessments, and water taxes now due or which may hereafter become due on the Premises, or which may become a lien prior to the lien of the Mortgage, (iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the Premises, and of placing said property in such condition as will, in the judgment of Assignee, make the Premises readily rentable, (iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any overplus or remaining funds, to Assignor, its successors, or assigns, as their rights may appear.

7. Assignee shall not be liable for any lien sustained by Assignor resulting from Assignee's failure to let the Premises after default or from any other act or omission of Assignee in managing the Premises after default unless such loss is caused solely by the willful misconduct or gross negligence of Assignee. Nor shall Assignee be obligated to perform or discharge nor does Assignee hereby undertake to perform or discharge, any obligation, duty, or liability under said Leases or under or by reason of this Assignment and Assignor shall and does hereby agree to indemnify, defend and hold harmless Assignee and its successors and assigns from, any and all liability, loss or damage (including without limitation, reasonably attorneys' fees and litigation expenses) which may or might be incurred under any of the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in the Leases. Should Assignee incur any such liability under the Leases, or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and be immediately due and payable. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises upon Assignee, nor for the



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carrying out of any of the terms and conditions of any of the Leases, nor shall it operate to make Assignee responsible or liable for any waste committed on the Premises by the tenants or any other parties or for any dangerous or defective conditions of the Premises, or for any negligence in the management, upkeep, repair, or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereinafter contained.

8. Upon payment in full of the principal sum, interest and indebtedness secured hereby, this Assignment shall be released by Assignee at the expense of Assignor.

9. Assignor hereby authorizes and directs the lessee named in each of the Leases, and any other or future lessee or occupant of the Premises, upon receipt from Assignee of written notice with a copy to Assignor at the address set forth in the Mortgage to the effect that Assignee is then the holder of the Note and Mortgage and that a default exists thereunder or under this Assignment, to pay over to Assignee all rents, security deposits, and other sums, if any, arising or accruing under said lease and to continue to do so until otherwise notified by Assignee, without investigating the reason for any action taken by Assignee or the validity or the amount of indebtedness owing to Assignee or the existence of any default hereunder or under the Loan Documents or the application to be made by Assignee of any amounts to be paid to Assignee. The sole signature of Assignee under this Agreement and the sole receipt of Assignee for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Premises. Checks for all or any part of the rentals collected under this Assignment shall, at the option of Assignee, be drawn to the exclusive order of Assignee.

10. Assignee may take or release other security for the payment of said principal sum, interest and indebtedness; may release any party primarily or secondarily liable therefor; and may apply any other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to any of its rights under this Assignment.

11. This Assignment establishes a present absolute and primary transfer and assignment of all rents, earnings, income, issues and profits of the Premises, and not merely the passing of a security interest, but so long as no default shall exist under any Loan Documents and no event shall exist which by lapse of time or service of notice, or both, has or would become a default thereunder, Assignor shall have the right and license to collect, use and enjoy all rents and other sums due or to become due under and by virtue of any Lease as they respectively become due.

12. Assignor will, from time to time, execute upon request of Assignee, any and all instruments requested by Assignee to carry this instrument into effect or to accomplish any other purposes deemed by Assignee to be necessary or appropriate in connection with this Assignment or the Premises including, without limitation, specific assignments of any lease or agreement relating to use or occupancy of the Premises or any part thereof now or hereafter in effect and not specifically defined herein as a Lease, as may be necessary or desirable, in the sole opinion of Assignee.

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13. The term "Leases" as used herein means (I) each of the Leases hereby assigned and any extension or renewal thereof, and (ii) any present and future guaranty of any Lease.

14. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the Mortgage or any of the other Loan Documents, and this Assignment is made without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Note, Mortgage and all other Loan Documents. The right of Assignee to collect said principal sum, interest and indebtedness and to enforce any other security therefor held by it may be exercised by Assignee, either prior to, simultaneously with or subsequent to any action taken by it hereunder.

15. This Assignment and the covenants therein contained shall inure to the benefit of Assignee, its successor and assigns, and any subsequent holder of the Note and Mortgage and shall be binding upon Assignor, its successors and assigns and any subsequent owner of the Premises.

16. All provisions hereof are severable and if any provisions hereof shall be invalid or unenforceable, the validity and enforceability of the remaining portions hereof shall in no way be affected thereby. This Assignment shall be construed and enforced according to the laws of the State of Illinois.

17. Assignor shall release from the lien and encumbrance of this Assignment any portion of the Premises which Assignor is obligated to release under the terms of the Note and Mortgage upon payment by Assignor of the principal amount of the Note and accrued interest, if any, otherwise required to be paid upon the sale of such portion of the Premises.

Signatures on following page.



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## EXHIBIT A TO ASSIGNMENT OF RENTS AND LEASE

### LEGAL DESCRIPTION

LOT 16 IN BLOCK 20 IN ARGO THIRD ADDITION TO SUMMIT BEING A SUBDIVISION OF THAT PART OF THE NORTH 3/4 OF THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF THE CENTER OF ARCHER AVENUE (EXCEPT THE NORTH 540.41 FEET THEREOF) IN COOK COUNTY, ILLINOIS.

Property Address: 6135 South Archer Road, Summit, IL 60501

Permanent Index No.: 18-13-308-001-0000