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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

40003138

1/1

Report Mortgage Fraud
800-532-8785



1230513039

Doc#: 1230513039 **Fee:** \$90.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/31/2012 01:29 PM **Pg:** 1 of 27

The property identified as: **PIN:** 24-03-408-010-0000

Address:

Street: 4300 W 95th Street

Street line 2:

City: Oak Lawn

State: IL

ZIP Code: 60453

Lender: Nissan Motor Acceptance Corporation

Borrower: Kelly Nissan, Inc

Loan / Mortgage Amount: \$3,041,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: 2BA27594-B400-4945-B148-BC89EBB55759

Execution date: 10/30/2012

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Drawn by, Recording requested by, and
when recorded return to:

Nissan Motor Acceptance Corporation
8900 Freeport Parkway
Irving, Texas 75063-2438
Attention: Jo Ann Catlon

INSTRUCTIONS TO COUNTY RECORDER:

Index this document as

- (1) a mortgage and
- (2) a fixture filing

Permanent Tax	24-03-408-010
Identification Numbers	24-03-400-037
	24-03-408-013
	24-03-400-040

Street Address: 4300 W. 95th Street, Oak Lawn, Illinois

This Mortgage, Security Agreement and Fixture Financing Statement also constitutes a Fixture Financing Statement.

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

This Mortgage, Security Agreement and Fixture Financing Statement ("Mortgage"), dated as of October 30, 2012, is executed by **KELLY NISSAN, INC.**, an Illinois corporation, whose address is 4300 West 95th Street, Oak Lawn, Illinois 60453, Attention: Arthur W. Kelly ("Borrower"), in favor of **NISSAN MOTOR ACCEPTANCE CORPORATION**, a California corporation ("Lender"), as mortgagee, whose address is 8900 Freeport Parkway, Irving, Texas 75063-2438, Attention: Commercial Credit Department. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Note (as defined in Section 2.1(a) below). For all state law, statutory and other purposes hereunder, (i) the term "Borrower" as used herein shall be deemed to mean a mortgagor of the Property as described herein the same as if the term "mortgagor" were used in lieu of the term "Borrower" throughout this Mortgage, and (ii) the term "Lender" as used herein shall be deemed to mean a mortgagee of the Property with all of the rights conferred hereby the same as if the term "mortgagee" were used in lieu of the term "Lender" throughout this Mortgage.

ARTICLE I

GRANT OF SECURITY

1.1 Grant of Security. THAT FOR AND IN CONSIDERATION OF THE SUM OF TEN AND NO/100 DOLLARS (\$10.00), AND OTHER VALUABLE CONSIDERATION,

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INCLUDING THE INDEBTEDNESS HEREIN RECITED AND THE TRUST HEREIN CREATED, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, BORROWER HEREBY IRREVOCABLY MORTGAGES, WARRANTS, GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER, AND ASSIGNS, AND GRANTS A SECURITY INTEREST, TO AND IN FAVOR OF LENDER AND ITS SUCCESSORS AND ASSIGNS (and grants to Lender, pursuant to the Uniform Commercial Code of the State where the real property is located, 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 Borrower now has or may hereafter acquire in or to the following property and interests therein (collectively, the "Property");

(a) That certain real property ("Land") is 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 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 Borrower 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 Borrower'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 gores 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 Borrower in or relating thereto;

(f) All water, water rights and riparian rights (including, without limitation, shares of 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 Borrower now has or may hereafter acquire in the Land and the Improvements, including, without limitation, (1) any and all awards

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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;

(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;

(k) All personal property, whether now existing or hereafter acquired or arising and wherever located (collectively, the "Personal Property"), including, without limitation, 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, books and records; and

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

ARTICLE II

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 Borrower of all indebtedness and other obligations evidenced by or under that certain Promissory Note ("Note") dated as of even date herewith, made by Borrower to the order of Lender, in the stated principal amount of \$3,041,000.00, together with interest at Lender Prime Rate and having a maturity date of October 31, 2017;

(b) The payment and performance of all indebtedness and other obligations of Borrower to Lender contained in all documents executed in connection with the Note and this Mortgage (collectively, the "Loan Documents") including that certain Hazardous

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Materials Agreement, dated as of even date herewith, executed by Borrower in favor of Lender (the "Hazardous Materials Agreement");

(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 Lender, or its successors or assigns, when such indebtedness and obligations are contained in a document which recites that the obligations thereunder are secured by this Mortgage;

(d) The payment by Borrower of all amounts advanced by or on behalf of Lender to improve, protect or preserve the Property (other than amounts, if any, advanced pursuant to the Hazardous Materials Agreement) 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; and

(f) The payment and performance of all obligations of Dealer, including without limitation the Automotive Wholesale Financing and Security Agreement to be entered into between Lender and Dealer.

(g) ANY AND ALL OTHER INDEBTEDNESS NOW OWING OR WHICH MAY HEREAFTER BE OWING BY BORROWER TO LENDER, HOWEVER AND WHENEVER INCURRED OR EVIDENCED, WHETHER EXPRESS OR IMPLIED, DIRECT OR INDIRECT, ABSOLUTE OR CONTINGENT, OR DUE OR TO BECOME DUE, AND ALL RENEWALS, MODIFICATIONS, AMENDMENTS, RESTATEMENTS, CONSOLIDATIONS, SUBSTITUTIONS, REPLACEMENTS AND EXTENSIONS THEREOF.

(h) The principal amount of the indebtedness secured hereby shall not exceed double the original principal amount of the Note.

ARTICLE III

COVENANTS OF BORROWER

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

3.2 Maintenance, Repair, Alterations. Borrower shall maintain and preserve the Property in good condition and repair. Borrower, except upon the prior written consent of Lender, shall not remove, demolish or materially alter any of the Improvements, other than to

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make repairs in the ordinary course of business of a non-structural nature which serve to preserve or increase the value of the Property. Borrower 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. Borrower shall comply with all laws, ordinances, rules, regulations, orders, covenants, conditions or restrictions now or hereafter affecting the conduct or operation of Borrower's business or all or any part of the Property or requiring any alteration or improvement to be made thereon. Borrower 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. Borrower 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. Borrower 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 Lender in the Property. Borrower shall comply with the provisions of all leases, if any, constituting a portion of the Property. Borrower shall not abandon the Property or any portion thereof or leave the Property unprotected, unguarded, vacant or deserted. Borrower 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 Borrower or by the owner thereof without the prior written consent of Lender. Borrower 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. Borrower 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 Lender with respect thereto.

3.3 Insurance.

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

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

(b) 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);

(c) Fire and hazard "all risk" insurance covering one hundred percent (100%) of the replacement cost of all Improvements, Fixtures and tangible

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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);

(d) Commercial general liability insurance in amounts reasonably required by Lender from time to time, and in no event less than \$1,000,000.00 combined single limit;

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

(f) All other insurance reasonably required by Lender from time to time.

All such insurance shall provide that it may not be canceled or modified without thirty (30) days' prior written notice to Lender. The policies required under subparagraphs (b) and (e) shall include a "lender's loss payable endorsement" (Form 438BFU) in form and substance satisfactory to Lender, assuring Lender that all proceeds shall be paid to Lender as encumbrancer. Lender shall be an additional named insured in the policy required under subparagraph (c). No such insurance shall include deductible amounts to which Lender has not previously consented in writing. Certificates of insurance for the above policies (and/or original policies, if required by Lender) shall be delivered to Lender 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 thirty (30) days prior to the expiration of each policy, Borrower shall deliver to Lender evidence of renewal or replacement of such policy reasonably satisfactory to Lender.

Lender shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Lender has caused the insurance to be placed with the insurer after failure of Borrower to furnish such insurance.

As required pursuant to the Collateral Protection Act, 815 ILCS 180/10(3), Borrower is hereby notified that in the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Mortgage or evidence of their renewal as required herein, Lender may, but shall not be obligated to, procure such insurance at Borrower's expense to protect Lender's interests in the Property. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by the terms of this Mortgage. If Lender purchases insurance for the Property as set forth herein, Borrower shall pay all amounts advanced by Lender, together with interest thereon at the Default Rate (as defined in the Note) from and after the date advanced by Lender until actually repaid by Borrower, promptly upon demand by Lender. Any amounts so advanced by Lender, together with interest thereon, shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the

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indebtedness evidenced by the Note. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

3.3.2 Claims. Borrower shall give Lender immediate notice of any casualty to any portion of the Property, whether or not covered by insurance. If covered, Borrower hereby authorizes Lender, if Lender 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. Borrower hereby irrevocably appoints Lender its true and lawful attorney-in-fact for all such purposes. Borrower shall not settle, adjust or compromise any such claim without the prior written approval of Lender.

3.3.3 Delivery of Proceeds to Lender. 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 Borrower, Borrower shall deliver such proceeds to Lender 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 Borrower 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) Borrower shall demonstrate to Lender's reasonable satisfaction that (i) the Proceeds (together with amounts deposited by Borrower 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 Lender (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 respective premises and commence paying rent upon completion (without any abatement or reduction of any kind). Such demonstration shall include, without limitation, delivery to Lender of (iv) plans and specifications reasonably satisfactory to Lender, (v) a guaranteed maximum cost construction contract in form and content, and with a contractor, reasonably satisfactory to Lender, (vi) all necessary building permits and similar governmental approvals, and (vii) all tenant estoppels required by Lender.

(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, Borrower shall deliver to Lender, within five (5) days of demand, funds (the "Shortfall Funds") in the amount of such shortfall, which funds shall be assigned to Lender as security for Borrower's obligations hereunder and held and disbursed in the same manner as the Proceeds.

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(c) Borrower shall execute such documents as Lender requires to evidence and secure Borrower'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.

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

3.3.4.3 In the event that Borrower fails to fulfill the Restoration Conditions within sixty (60) days following the date on which the damage occurs, the Proceeds shall be applied by Lender against one or more of the Secured Obligations, and the selection of which such obligations to apply the Proceeds against shall be made by Lender in its sole and absolute discretion. Borrower hereby grants to Lender a security interest in and to (i) all casualty insurance policies from time to time maintained by Borrower 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 Lender shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of the State where the Property is located and other applicable law with respect to the foregoing collateral and such security interest.

3.3.5 Restoration. Nothing in this Section 3 shall be construed to excuse Borrower 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 sale of the Property pursuant to 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 Borrower 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. Borrower hereby waives all right to recover against Lender (or any officer, employee, agent or representative of Lender) for any loss incurred by Borrower 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

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effective with respect to any insurance policy if the coverage thereunder would be materially reduced or impaired as a result. Borrower 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, Borrower shall immediately notify Lender of such fact. Borrower shall take all actions reasonably required by Lender in connection therewith to defend and protect the interests of Borrower and/or Lender in the Property. At Lender's option, Lender or Borrower may be the nominal party in such proceeding but in any event Lender 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. Borrower hereby grants to Lender, as security for the Secured Obligations, a security interest in and to all compensation, awards, damages and other amounts payable to Borrower 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 Lender shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of the State where the Property is located (the "UCC") with respect to the foregoing collateral and such security interest. Upon receipt, Borrower shall immediately deliver all such compensation, awards, damages and other amounts to Lender. All such proceeds shall first be applied to reimburse Lender 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 Lender against the Secured Obligations in such order as Lender may determine; provided, however, in Lender's sole and absolute discretion, Lender may disburse such proceeds to Borrower 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 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. Borrower 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 Lender (other than Lender'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

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

If permitted by law, Borrower may pay the Imposition described in subparagraphs (a) or (b), above, in installments (together with any accrued interest). Borrower 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) Borrower has demonstrated to Lender'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 Lender's interest under this Mortgage, and (iii) Borrower has furnished Lender with a bond or other security satisfactory to Lender in an amount not less than one hundred percent (100%) of the applicable claim (including interest and penalties). At Lender's request, Borrower shall deliver to Lender, no later than ten (10) days prior to the due date of any Imposition, evidence of payment reasonably satisfactory to Lender. In addition, upon demand by Lender from time to time, Borrower shall furnish to Lender a tax reporting service for the Property of a type and duration, and with a company, reasonably satisfactory to Lender.

3.6 Utilities. Borrower 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. Borrower 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 Lender in writing prior to the execution of this Mortgage. Borrower shall pay and promptly discharge, at Borrower'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 Lender. If Borrower shall fail to remove and discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Lender, Lender may, but shall not be obligated to, discharge the same, without notice to or demand on Borrower, 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. Borrower shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by Lender in connection with the exercise by Lender 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).

3.8 Due on Sale or Encumbrance Clause. Borrower 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 Borrower, without the prior written consent of Lender, which consent may be granted or withheld in Lender's sole and absolute

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discretion. Transfers requiring Lender'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 Borrower, whether voluntary or involuntary; and
- (d) The withdrawal by, or removal of Arthur W. Kelly, as President and Secretary of Borrower.

No sale, lease, mortgage, encumbrance, hypothecation or other transfer shall relieve Borrower 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 Due on Sale of Dealership. Borrower shall not permit or suffer the direct or indirect sale, assignment, encumbrance, hypothecation or other transfer of any ownership interest in Kelly Nissan, Inc., an Illinois corporation (the "Dealership"), without the prior written consent of Lender, which consent may be granted or withheld in Lender's sole and absolute discretion. Transfers requiring Lender'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 Dealership, whether voluntary or involuntary; and
- (d) The withdrawal by, or removal of Arthur W. Kelly, as the President and Secretary of the Dealership.

3.10 Inspections. Lender and its 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 Lender is authorized to perform hereunder or under the terms of any of the Loan Documents.

3.11 Defense of Actions. Borrower, at no cost or expense to Lender, shall appear in and defend any action or proceeding purporting to affect the security of this Mortgage, any of the

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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 Lender hereunder. If Lender elects to become a party to such action or proceeding, or is made a party thereto, Borrower shall indemnify, defend and hold Lender harmless from all liability, damage, cost and expense incurred by Lender 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.

3.12 Protection of Security. If Borrower 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, Lender, in its own discretion, without obligation so to do, without further notice or demand, and without releasing Borrower 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 its general powers), Lender 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 its sole judgment 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 Lender; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in its sole judgment 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.

3.13 Lender's Powers. Without affecting the liability of Borrower 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, Lender 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 Borrower shall be required with respect to the extension or alteration of any unpaid obligation of Borrower to Lender), (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 Lender'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, Lender 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 Lender, or with respect to any unpaid balance of the indebtedness secured hereby. The acceptance by Lender of any sum in an amount less than the sum then due shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due.

3.14 Reimbursement. Borrower shall, immediately upon demand, pay to Lender all costs and expenses incurred by Lender in accordance with the terms and provisions of this Mortgage, including, without limitation, costs of evidence of title, court costs, appraisals, surveys

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and receiver'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").

3.15 Delivery of Data. Borrower 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. Borrower shall deliver to Lender the following:

(a) Within ten (10) days after Borrower'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 Lender's request, a copy of each federal income tax return filed by Borrower; and

(c) Within ten (10) days of Lender's request from time to time: (i) financial statements, income and expense statements and balance sheets of Borrower, the Dealership, and each Guarantor, in form and detail reasonably satisfactory to Lender; (ii) copies of all financial statements and reports that Borrower 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 Borrower 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 Borrower, the Property, the Dealership, any Guarantor or the Loan as reasonably required by Lender from time to time. From time to time on request of Lender, Borrower shall make its books and records available for audit by Lender or a public accountant or other appropriate professional consultant selected by Lender.

3.16 Continued Existence; Chief Executive Office. Borrower shall maintain its existence and continue to be an Illinois corporation in good standing in all appropriate jurisdictions. Borrower shall notify Lender 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.

3.17 Further Assurances. Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender 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 this Mortgage and the other Loan Documents any property intended by

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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 IV

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

4.1 Assignment of Rents, Issues and Profits. Borrower hereby absolutely and irrevocably assigns to Lender all of Borrower'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 Lender the right, power and authority to collect such Rents. Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender, 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 Borrower, for all Rents, and to apply the same to the obligations secured hereby; provided, however, that Borrower shall have a license to collect Rents (but not more than one month in advance unless the written approval of Lender 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 Borrower to Lender and not merely the passing of a security interest.

4.2 Collection Upon Default. Upon the occurrence of an Event of Default hereunder, Borrower's license to collect Rents shall automatically terminate and Lender 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 may hereafter be deposited with Borrower by any lessee or tenant of Borrower to secure the payment of any Rent or for any services thereafter to be rendered by Borrower for any other obligation of any tenant to Borrower arising under any lease, and Borrower agrees that, upon the occurrence of any Event of Default hereunder, Borrower shall promptly deliver all Rents and other monies to Lender), and Lender may apply the same, less costs and expenses of operation

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and collection, including, without limitation, attorneys' fees, whether or not suit is brought or prosecuted to judgment, upon any indebtedness or obligation of Borrower secured hereby, and in such order as Lender 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 Lender a mortgagee-in-possession of all or any part of the Property.

4.3 Further Assignments. Upon Lender's demand Borrower shall, from time to time hereafter, execute and deliver to Lender recordable assignments of Borrower'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 Lender; provided, however, that no such assignment shall be construed as imposing upon Lender any obligation with respect thereto. Lender 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 V

REPRESENTATIONS AND WARRANTIES

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

5.1 Formation, Qualification and Compliance. Borrower (a) is an Illinois corporation, (b) has all requisite authority to conduct its respective business and own and lease its respective properties, and (c) is qualified and in good standing in every jurisdiction in which the nature of its respective business makes qualification necessary or where failure to qualify could have a material adverse effect on its respective financial condition or the performance of its respective obligations under the Loan Documents. Borrower is in compliance in all material respects with all laws and requirements applicable to its respective business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all filings, registrations or qualifications with, any governmental agency that are necessary for the transaction of its respective 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 Borrower and each Guarantor have all requisite authority to execute, and perform their obligations under, the Loan Documents.

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

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(a) Require any consent or approval not heretofore obtained of any person having any interest in Borrower 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, code of regulations, articles of organization, operating agreement or other governing document applicable to Borrower, any Guarantor, or any general partner, managing member or trustee of Borrower 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 Borrower or any Guarantor is a party or by which Borrower 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 Borrower or any Guarantor.

5.2.3 Neither Borrower nor any Guarantor is in default, in any respect that is materially adverse to Lender's interests under the Loan Documents or that would have any material adverse effect on the financial condition of Borrower 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 Lender with respect to Borrower and any Guarantor in connection with the Note (a) is complete and correct in all material respects, (b) accurately presents the financial condition of Borrower and each Guarantor and (c) has been prepared in accordance with generally accepted accounting principles consistently applied. All other documents and information furnished to Lender with respect to Borrower and any Guarantor in connection with the Loan are correct in all material respects and complete insofar as completeness is necessary to give Lender an accurate knowledge of their subject matter. Borrower has no material liability or contingent liability not disclosed to Lender 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 Borrower not disclosed in such financial statements or otherwise disclosed to Lender in writing.

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

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5.5 Tax Liability. Borrower 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 Lender) other than taxes being promptly and actively contested in good faith and by appropriate proceedings. Borrower is maintaining adequate reserves for tax liabilities (including contested liabilities) in accordance with generally accepted accounting principles consistently applied.

5.6 Governmental Requirements. Borrower 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 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 any Illinois Environmental Policy Act, 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. Borrower 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 Borrower's knowledge, threatened against or affecting Borrower or any property of Borrower before any governmental agency, except as disclosed to Lender in writing prior to the execution of this Mortgage.

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

5.10 Status of Property.

- (a) Borrower has received no notice of any public hearing regarding assessments for improvements 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, if applicable, any

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other authorized automobile dealership, and Borrower 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 VI

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 Lender reasonably concludes that Borrower 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 Borrower, or failure by Borrower to perform Borrower's obligations, under Section 3.7, 3.8, or 3.9, above; or the occurrence of any default by Borrower, subject to any applicable contractual cure period, or any Event of Default by Borrower, under any mortgage, deed of trust 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 Lender's prior written consent in its sole and absolute discretion; or

6.1.6 Any change in ownership or active management of Borrower or the Dealership without the prior written consent of Lender.

6.2 Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Lender may, at its option, declare all Secured Obligations to be immediately due and payable without any presentment, demand, protest or further notice of any kind; and whether or not Lender exercises said option, Lender may:

6.2.1 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, and do any acts which it deems necessary or desirable to preserve the value,

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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 Lender 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 Lender or a receiver of all or any portion of the Property or the collection, receipt and application of any of the Rents, the Lender 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;

6.2.2 Commence an action for the foreclosure sale of the Property pursuant to this Mortgage or law, appoint a receiver, or specifically enforce any of the covenants contained herein

6.2.3 Exercise any and/or all of the rights and remedies available to a secured party or mortgagee under the UCC or any other applicable law in such order and in such manner as Lender, 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 Lender and shall be additionally secured by this Mortgage; and/or

6.2.4 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 Foreclosure. Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the indebtedness secured hereby, pursuant to the statutes in such case made and provided, and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Lender. In the event foreclosure proceedings are instituted or filed by Lender, all expenses incident to such proceedings, including, but not limited to, attorneys' fees and costs, shall be paid by Borrower and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Rate (as defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Lender under the Loan Documents, may be bid by Lender in the event of a foreclosure sale hereunder. Lender may, by following the procedures and satisfying the requirements prescribed by law, foreclose on only a portion of the Property and, in such event, said foreclosure shall not affect the lien of the Mortgage on the remaining portion of the Property not foreclosed.

6.4 Appointment of Receiver. Upon the occurrence of an Event of Default under this Mortgage, Lender, as a matter of right and without notice to Borrower or anyone claiming under

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Borrower, and without regard to the then value of the Property or the interest of Borrower therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property, and Borrower 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 Lender 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.

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

6.6 Remedies Not Exclusive. Lender 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 foreclosure or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security for the obligations hereby secured now or hereafter held by Lender in such order and manner as they may in their absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein, or granted to Lender 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 Lender 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 Lender or to which Lender may be otherwise entitled to exercise, concurrently or independently, from time to time and as often as may be deemed expedient by the Lender, and may pursue inconsistent remedies. Borrower may be joined in any action brought by Lender to foreclose under or otherwise enforce this Mortgage.

6.7 Request for Notice. Borrower 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.

6.8 Mortgagee Receives Benefit of Act. Lender shall have the benefit of all of the provisions of the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq. (the "Act"),

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including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

ARTICLE VII

MISCELLANEOUS

7.1 Miscellaneous Provisions in Note. Sections 4, 5 and 6 of the Note, are incorporated herein by this reference as if set forth herein in full, and Borrower hereby agrees to all of such provisions.

7.2 Waivers. Borrower waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Property, and, whether now existing or hereafter arising or created, (b) all rights of valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State of Illinois pertaining to the rights and remedies of sureties.

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

7.4 Statements by Lender. For any statement or accounting requested by Borrower or any other entitled person pursuant to any provision of applicable law, or for any other document or instrument furnished to Borrower by Lender, Lender may charge the maximum amount permitted by law at the time of the request therefor, or if there be no such maximum, then in accordance with Lender's customary charges therefor or the actual cost to Lender therefor, whichever is greater.

7.5 Release by Lender. Lender shall deliver to Borrower a release of this Mortgage in form sufficient for recording with the Recorder of the county where the Property is located upon (a) written request from Borrower stating that all Secured Obligations have been paid and fully performed; (b) confirmation by Lender that all Obligations have been paid and fully satisfied; and (c) upon payment by Borrower of Lender's fees and the costs and expenses of authorizing, executing and recording any requested release. The recitals in any such reconveyance 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 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, Lender 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.

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7.7 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 Borrower to the full extent permitted by law.

7.8 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.

7.9 Intentionally Deleted.

7.10 Setoff, Waiver. All amounts payable by Borrower pursuant to this Mortgage shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Borrower hereby waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any amount secured hereby and payable by Borrower to Lender.

7.11 Further Assurances. Borrower 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 Lender 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 Borrower'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 Lender its respective rights, powers and remedies hereunder.

7.12 Fixture Filing. This Mortgage constitutes a financing statement filed as a fixture filing under the UCC, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Land or Improvements. In connection therewith, the addresses of Borrower, as debtor, and Lender, as secured party, are as set forth in the first paragraph of this Mortgage. The foregoing address of Lender, 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 Intentionally Deleted.

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7.14 Addresses of the Parties.

- | | | |
|----|---|--|
| 1. | Name and address of Mortgagee
(Lender hereunder): | Nissan Motor Acceptance Corporation
8900 Freeport Parkway
Irving, Texas 75063-2438
Attn: Commercial Credit Department |
| 2. | Name and address of Owner
(Borrower hereunder): | Kelly Nissan, Inc.
4300 West 95th Street
Oak Lawn, Illinois 60453 |
| 3. | Street Address of Property initially encumbered by this Mortgage: | 4300 West 95th Street
Oak Lawn, Illinois 60453 |

7.15 Maximum Amount Secured. This Mortgage shall secure the payment of any amounts advanced from time to time by Lender to Borrower under the Note, or under any other promissory note or other document stating that such advances are secured hereby. Lender shall not be obligated to make any advances unless Lender has agreed to do so in writing. The maximum principal amount of unpaid loan indebtedness secured hereby shall be \$3,041,000.00, exclusive of interest, unpaid balances of advances made with respect to the Property for the payment of taxes, assessments, and insurance premiums, costs incurred for the protection of the Property and other costs and amounts which Lender is authorized by this Mortgage to advance or pay on Borrower's behalf, all of which shall also be secured by this Mortgage. Lender is authorized and empowered to do all things permitted to be done by a mortgagee pursuant to applicable laws.

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

7.17 Business Loan. Borrower certifies and agrees that the proceeds of the loans secured by this Mortgage will be held for the purposes specified in Section 4 of the Illinois Interest Act (815 ILCS 205/1 et seq.), and that the principal obligation secured hereby constitutes a "business loan" within the definition and purview of said Section.

7.18 Not Residential or Agricultural Real Estate. Borrower hereby acknowledges that the Land does not constitute agricultural real estate or residential real estate, as such terms are defined in the Act.

[Remainder of this page intentionally left blank; signature page follows.]

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

BORROWER:

KELLY NISSAN, INC.,
an Illinois corporation

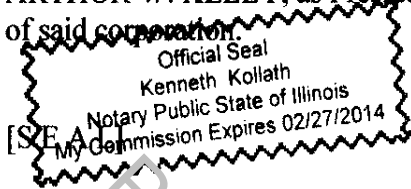
By: Aw Kelly
Name: Arthur W. Kelly
Title: President

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STATE OF ILLINOIS

§
§
§COUNTY OF COOK

This instrument was ACKNOWLEDGED before me on 10/16, 2012 by
ARTHUR W. KELLY, as President of KELLY NISSAN, INC., an Illinois corporation, on behalf
of said corporation.



My Commission Expires:

2/27/14

[Signature]
Notary Public, State of Illinois

KENNETH KOLLATH
Printed Name of Notary Public

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Exhibit A

(Legal Description)

Permanent Tax	24-03-408-010
Identification Numbers	24-03-400-037
	24-03-408-013
	24-03-400-040

Street Address: 4300 W. 95th Street, Oak Lawn, Illinois