

FIDELITY NATIONAL TITLE

SCI9032303A

This Instrument Prepared by and to be Returned to:

Daniel Kohn, Esq.  
Duane Morris LLP  
190 South LaSalle Street  
Suite 3700  
Chicago, Illinois 60603



Doc# 2002249072 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/22/2020 10:08 AM PG: 1 OF 10

Permanent Tax Index Number: 07-16-100-015-0000

**ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of January 21, 2020, by AJZ-INFINITI HOFFMAN ESTATES, LLC, a Michigan limited liability company ("Assignor"), to and for the benefit of HUNTINGTON NATIONAL BANK, a national banking association, and its successors and assigns ("Assignee"), for itself as a Lender (as hereinafter defined) and as the administrative agent (the "Agent") for the Lenders (as hereinafter defined) pursuant to a certain Credit and Security Agreement of even date herewith among Assignor, Zeigler Auto Group II, Inc., a Michigan corporation ("Zeigler Auto"), and certain affiliates of Assignor (the "Other Borrowers"; Assignor, Zeigler Auto and the Other Borrowers are sometimes hereinafter collectively referred to as "Borrowers"), Assignee and the other Lenders (together with any and all renewals, amendments, modifications, supplements, restatements, extensions for any period, or increases or rearrangements thereof, the "Loan Agreement").

**RECITALS:**

A. Assignor is the owner of certain real property located in Cook County, State of Illinois, more particularly described in Exhibit A attached hereto.

B. Borrowers, Assignee, as a lender and in its capacity as Agent, and the other lenders set forth therein (the "Other Lenders"; Assignee and the Other Lenders are sometimes hereinafter individually referred to as a "Lender" and are sometimes collectively referred to as "Lenders") have entered into the Loan Agreement, pursuant to which Lenders have made certain loans to Borrowers (collectively, the "Loan"), which Loan is evidenced by those certain Floorplan Loan Notes (as defined in the Loan Agreement), Mortgage Loan Notes (as defined in the Loan Agreement) and Term Notes (as defined in the Loan Agreement) made by Borrowers, as applicable, in favor of Lenders, as applicable (collectively, as amended, modified and restated from time to time, the "Notes"), pursuant to which Lenders made loans to Borrowers in the aggregate maximum principal amount of Four Hundred Forty-Four Million Thirteen Thousand Two Hundred Thirty-Six and 22/100 Dollars (\$444,013,236.22), as such maximum principal amount may increase and/or decrease from time to time.

C. The Loan is secured, among other items, by that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents (as amended, modified and restated from time to time, the "Mortgage"), dated as of even date herewith, executed and delivered

AJZ-Infiniti Hoffman Estates, LLC  
Assignment of Leases and Rents

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by Assignor in favor of Assignee, for the benefit of all Lenders, encumbering certain interests in real and personal property as more particularly described on Exhibit A attached hereto (the “Property”); and (ii) certain other documents securing repayment of the Notes (together with the Mortgage, this Assignment, the Loan Agreement, the Notes, and all other documents evidencing or securing the Loan, the “Loan Documents”). All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Agreement and the Loan Documents are hereby made a part of this Assignment to the same extent and with the same force and effect as if they were fully set forth herein and Assignor covenants and agrees to keep and perform them, or cause them to be kept and performed, strictly in accordance with their terms.

D. The obligations of Assignor under the Loan Agreement, the Notes, the Mortgage, this Assignment, and the other Loan Documents are collectively referred to herein as the “Obligations”.

E. Assignor is required as a condition to the making and/or restating of the Loan to transfer and assign to Assignee all of Assignor’s right, title and interest in, to and under the Leases and Rents (as defined below).

## AGREEMENT:

**NOW, THEREFORE**, as an inducement to make the Loan, Assignor hereby represents, warrants, covenants and agrees as follows:

1. **Definitions**. As used herein, the following terms shall have the following meanings:

“Event of Default” means an Event of Default, as defined in the Loan Agreement.

“Leases” means all leases, subleases, rental contracts, occupancy agreements, licenses and other arrangements (in each case whether existing now or in the future) pursuant to which any person or entity occupies or has the right to occupy or use any portion of the Property, and includes (a) any supplement, modification, amendment, renewal or extension of any Lease and (b) any security or guaranty for any Lease.

“Lessees” means the lessees under the Leases or any subtenants or occupants of the Property.

“Rents” means all rents, issues, income, revenues, royalties, profits and other amounts now or in the future payable under any of the Leases, including those past due and unpaid.

Capitalized terms used in this Assignment and not otherwise defined are used as defined in the Loan Agreement.

2. **Assignment**. As security for the payment and performance of the Obligations, Assignor hereby absolutely and unconditionally transfers, sets over and assigns to Assignee all present and future right, title and interest of Assignor in, to and under the Leases and the Rents, together with all advance payments, security deposits and other amounts paid or payable to or deposited with Assignor under any of the Leases and all other rights and interests of Assignor

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under or in respect of any of the Leases. This Assignment is intended to be and is an absolute present assignment from Assignor to Assignee, it being intended hereby to establish a complete and present transfer of all Leases and Rents with the right, but without the obligation, to collect all Rents.

3. **License.** Except as hereinafter set forth, Assignor shall have a license to collect the Rents accruing under the Leases as they become due ("License"), but not in advance, and to enforce the Leases. The License shall automatically be revoked, at Assignee's option, upon the occurrence of an Event of Default. Assignor covenants and agrees that in exercising its License it shall hold all Rents in trust and shall apply the same first to the payment of the reasonable expenses of owning, maintaining, repairing, operating and renting the Property, and then to payment of the Obligations.

4. **Representations and Warranties.** Assignor hereby represents and warrants to Assignee that: (a) Assignor is the absolute owner of the entire lessor's interest in each of the Leases, with absolute right and title to assign the Leases and the Rents; (b) the Leases are valid, enforceable and in full force and effect and have not been modified, amended or terminated; (c) there are no outstanding assignments or pledges of the Leases or of the Rents and no other party has any right, title or interest in the Leases or the Rents; (d) there are no existing defaults under the provisions of the Leases on the part of the lessor and to Assignor's knowledge, there are no existing defaults under the provisions of the Leases on the part of Lessees thereunder; (e) to Assignor's knowledge, no Lessee has any defense, set-off or counterclaim against Assignor; (f) no Lessee has any purchase option or first refusal right or any right or option for additional space with respect to the Property; (g) Assignor has not accepted prepayments of installments of rent or any other charges under any Lease for a period of more than one (1) month in advance except for security or similar deposits; and (h) all work required to be performed by Assignor, as landlord, as of the date hereof under any Lease has been completed in accordance with the provisions of such Lease.

5. **Covenants of Assignor.**

5.1 **New Leases and Lease Terminations and Modifications.** Assignor shall not enter into, cancel, surrender or terminate (except as a result of a material default by Lessee thereunder and failure of such Lessee to cure the default within the applicable time periods set forth in the Lease), amend or modify any Lease, or make any subsequent assignment or pledge of a Lease, or consent to the subordination of the interest of any Lessee in any Lease, or consent to any assignment by and Lessee or any subletting, without the prior written consent of Assignee. Any attempt to do any of the foregoing without the prior written consent of Assignee (if such consent is required) shall be null and void.

5.2 **Performance under Leases.** Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof. With respect to any Lease, Assignor shall not (a) release the liability of any Lessee or any guaranty thereof, (b) consent to any Lessee's withholding of rent or making monetary advances and off-setting the same against future rentals, (c) consent to any Lessee's claim of a total or partial eviction, (d) consent to a termination or cancellation, except as

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specifically provided above, or (e) enter into any oral leases with respect to all or any portion of the Property.

5.3 Collection of Rents. Assignor shall not collect any of the Rents, issues, income or profits assigned hereunder more than one (1) month in advance of the time when the same shall become due, except for security or similar deposits.

5.4 Further Assignment. Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all Rents, except as specifically permitted by the Loan Documents.

5.5 Lease Guaranty. Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law.

5.6 Waive Rental Payments. Assignor shall not waive or excuse the obligation to pay rent under any Lease.

5.7 Defending Actions. Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any Lessee or guarantor thereunder, and shall pay all costs and expenses of Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear.

5.8 Enforcement. Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by Lessees and guarantors thereunder.

5.9 Notice. Assignor shall notify Assignee of any material breach by a Lessee or guarantor under any Lease within ten (10) business days following Assignor's receiving knowledge of any such breach.

5.10 Subordination. Assignor shall not permit any Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent.

5.11 Bankruptcy of Lessee. If any Lessee is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check.

6. Cancellation of Lease. In the event that any Lease permits cancellation thereof on payment of consideration and the privilege of cancellation is exercised, the payments made or to

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be made by reason thereof are hereby assigned to Assignee, and if an Event of Default has occurred, shall be applied, at the election of Assignee, to the Obligations in whatever order Assignee shall choose in its discretion or shall be held in trust by Assignee as further security, without interest, for the payment of the Obligations. Prior to such Event of Default, Assignor may use and apply such termination payments to expenses of the Property.

7. **Assignee's Rights Upon Lessee Bankruptcy.** Upon the occurrence of an Event of Default, and if a Lessee under a Lease files or has filed against it any petition in bankruptcy or for reorganization, or undertakes or is subject to similar action, Assignee shall have, and is hereby assigned by Assignor, all of the rights which would otherwise inure to the benefit of Assignor in such proceedings, including, without limitation, the right to seek "adequate protection" of its interests, to compel rejection of any Lease, and to seek such claims and awards as may be sought or granted in connection with the rejection of such Lease. Unless otherwise consented to by Assignee in writing, Assignee's exercise of any of the rights provided herein shall preclude Assignor from the pursuit and benefit thereof without any further action or proceeding of any nature. Assignee, however, shall not be obligated to make timely filings of claims in any bankruptcy, reorganization or similar action, or to otherwise pursue creditor's rights therein.

8. **Default of Assignor**

8.1 **Remedies.** Upon the occurrence and continuation of an Event of Default, Assignor's License to collect Rents shall immediately cease and terminate. Assignee shall thereupon be authorized at its option to enter and take possession of all or part of the Property, in person or by agent, employee or court appointed receiver, and to perform all acts necessary for the operation and maintenance of the Property in the same manner and to the same extent that Assignor might reasonably so act. In furtherance thereof, Assignee shall be authorized, but under no obligation, to collect the Rents arising from the Leases, and to enforce performance of any other terms of the Leases including, but not limited to, Assignor's right to fix or modify rents, sue for possession of the leased premises, relet all or part of the leased premises, and collect all Rents under such new Leases. Assignor shall also pay to Assignee, promptly upon any Event of Default: (a) all rent prepayments and security or other deposits paid to Assignor pursuant to any Lease assigned hereunder; and (b) all charges for services or facilities or for escalations which have theretofore been paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default. Assignee will, after payment of all reasonable costs, charges and any damages, apply the net amount of such Rents to the Obligations. Assignee shall have sole discretion as to the manner in which such Rents are to be applied, the reasonableness of the costs to which they are applied, and the items that will be credited thereby.

8.2 **Notice to Lessee.** Assignor hereby irrevocably authorizes each Lessee, upon demand and notice from Assignee of the occurrence of an Event of Default, to pay all Rents under the Leases to Assignee. Assignor agrees that each Lessee shall have the right to rely upon any notice from Assignee directing such Lessee to pay all Rents to Assignee, without any obligation to inquire as to the actual existence of an Event of Default, notwithstanding any notice from or claim of Assignor to the contrary. Assignor shall have no claim against any Lessee for any Rents paid by Lessee to Assignee.



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8.3 Assignment of Defaulting Assignor's Interest in Lease. Assignee shall have the right to assign Assignor's right, title and interest in and to the Leases to any person acquiring title to the Property through foreclosure or otherwise. Such assignee shall not be liable to account to Assignor for the Rents thereafter accruing.

8.4 No Waiver. Assignee's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Assignee's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Assignee has under the Loan Agreement, the Notes, the Mortgage and any of the other Loan Documents. Assignee's rights and remedies hereunder may be exercised as often as Assignee deems expedient.

8.5 Costs and Expenses. The cost and expenses (including any receiver's fees and fees) incurred by Assignee pursuant to the powers contained in this Assignment shall be immediately reimbursed by Assignor to Assignee on demand, shall be secured hereby and, if not paid by Assignor, shall bear interest from the date due at the Default. Assignee shall not be liable to account to Assignor for any action taken pursuant hereto, other than to account for any Rents actually received by Assignee.

9. Indemnification of Assignee. Assignor hereby agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all liability, loss, cost, expense or damage (including reasonable attorneys' fees) that Assignee may or might incur under the Leases or by reason of this Assignment. Such indemnification shall also cover any and all claims and demands that may be asserted against Assignee under the Leases or this Assignment. Nothing in this section shall be construed to bind Assignee to the performance of any Lease provisions, or to otherwise impose any liability upon Assignee, including, without limitation, any liability under covenants of quiet enjoyment in the Leases in the event that any Lessee shall have been joined as party defendant in any action to foreclose the Mortgage and shall have been barred thereby of all right, title, interest, and equity of redemption in the Property. This Assignment imposes no liability upon Assignee for the operation and maintenance of the Property or for carrying out the terms of any Lease before Assignee has entered and taken possession of the Property. Any loss or liability incurred by Assignee by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Assignee's request, be immediately reimbursed by Assignor. Such reimbursement shall include interest at the Default Rate provided in the Loan Agreement, costs, expenses and reasonable attorney fees. Assignee may, upon entry and taking of possession, collect the Rents and apply them to reimbursement for any such loss or liability. The provisions of this Section 9 shall survive repayment of the Obligations and any termination or satisfaction of this Assignment.

10. Additions to, Changes in and Replacement of Obligations. Assignee may take security in addition to the security already given Assignee for the payment of the Obligations or release such other security, and may release any party primarily or secondarily liable on the Obligations, may grant or make extensions, renewals, modifications or indulgences with respect to the Obligations or the Mortgage and replacements thereof, which replacements of the Obligations or the Mortgage may be on the same terms as, or on terms different from, the present terms of the Obligations or the Mortgage, and may apply any other security held by it to the satisfaction of the Obligations, without prejudice to any of its rights hereunder.

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11. **No Mortgagee in Possession; No Other Liability.** The acceptance by Assignee of this Assignment, with all of the rights, power, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Property by Assignee, be deemed or construed to: (a) constitute Assignee as a mortgagee in possession nor place any responsibility upon Assignee for the care, control, management or repair of the Property, nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by any Lessee, occupant or other party, or for any dangerous or defective condition of the Property, nor thereafter at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases or to the Property; (b) require Assignee to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases; or (c) require Assignee to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by Lessees and not assigned and delivered to Assignee. Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person in or about the Property.

12. **Termination of Assignment.** Assignee shall terminate and release this Assignment as to all or a portion of the Property to the same extent as the Mortgage is released in whole or in part.

13. **Miscellaneous.**

13.1 **Severability.** If any term of this Assignment or the application hereof to any person or set of circumstances, shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such provision or part thereof to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent consistent with applicable law.

13.2 **Captions.** The captions or headings at the beginning of each section hereof are for the convenience of the parties only and are not part of this Assignment.

13.3 **Counterparts.** This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall be construed together and shall constitute one instrument. It shall not be necessary in making proof of this Assignment to produce or account for more than one such counterpart.

13.4 **Notices.** All notices and other communications provided for in this Assignment shall be sent in accordance with the terms of Section 29 of the Mortgage.

13.5 **Modification.** No amendment, modification or cancellation of this Assignment or any part hereof shall be enforceable without Assignee's prior written consent.

13.6 **Successors and Assigns; Gender; Joint and Several Liability.** The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all subsequent owners of the Property, and all subsequent holders of the Notes and the Mortgage, subject in all events to the provisions of the Mortgage regarding transfers of the Property by Assignor. In this Assignment, whenever the

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context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. If there is more than one (1) party constituting Assignor, all obligations of Assignor hereunder shall be joint and several.

13.7 Expenses. Assignor shall pay on demand all costs and expenses incurred by Assignee in connection with the review of Leases, including reasonable fees and expenses of Assignee's outside counsel.

## 14. Governing Law and Consent to Jurisdiction.

14.1 Substantial Relationship. The parties agree that the State of Illinois has a substantial relationship to the parties and to the underlying transactions embodied by the Loan Documents.

14.2 Place of Delivery. Assignor agrees to furnish to Assignee at Assignee's office in Chicago, Illinois all further instruments, certifications and documents to be furnished hereunder, if any.

14.3 Governing Law. This Assignment and the obligations of Assignor hereunder that affect the Property shall be governed by and interpreted and determined in accordance with the laws of the State of Illinois.

15. WAIVER OF JURY TRIAL. ASSIGNOR HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG ASSIGNOR AND ASSIGNEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT, ANY OF THE OTHER LOAN DOCUMENTS, OR ANY RELATIONSHIP BETWEEN ASSIGNOR AND ASSIGNEE. THIS PROVISION IS A MATERIAL INDUCEMENT TO ASSIGNEE TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

[SIGNATURE PAGES FOLLOW]





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## EXHIBIT A

### Legal Description

#### PARCEL A:

Lot 1 in the Plat of Consolidation of Motor Werks Infiniti recorded December 21, 2007 as document 0735515053, being a consolidation of Lot 1 in Hoffman Hills Commercial Subdivision Unit No. 2, and Part of Lot 1 in Hoffman Hills Commercial Subdivision Unit No. 1, All being a part of the Northwest 1/4 of Section 16, Township 41 North, Range 10, East of the Third Principal Meridian, in Cook County, Illinois.

Common Address: 1075 W. Golf Road, Hoffman Estates, IL 60169

Permanent Tax Index Number: 07-16-100-015-0000

Property of Cook County Clerk's Office