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LEVIN BMW  
FINANCIAL SERVICES

MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT

MADE BY

LEVIN AUTOMOTIVE, INC. d/b/a LEVIN BMW, an Illinois corporation

as Borrower

to

BMW FINANCIAL SERVICES NA, LLC, a Delaware limited liability company



*60.00  
claim  
3443 #*

**HOLD FOR MERIDIAN TITLE**

3477LK 07

**MORTGAGE, ASSIGNMENT OF LEASES, SECURITY  
AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT (this "Mortgage") dated as of December 14, 2007, is made by LEVIN AUTOMOTIVE, INC. d/b/a LEVIN BMW, an Illinois corporation, with an address at 1400 Indianapolis Boulevard, Schererville, Indiana 46375 ("Borrower") in favor of BMW FINANCIAL SERVICES NA, LLC, a Delaware limited liability company, with an address at 5550 Britton Parkway, Hilliard, Ohio 43026 ("Lender").

**ARTICLE 1  
OBLIGATIONS; SECURITY**

1.1 Obligations; Loan Documents. This Mortgage is executed, acknowledged and delivered by Borrower to secure payment and performance of the following obligations and liabilities (collectively, the "Obligations"):

1.1.1 The payment of (i) the principal sum of Six Million Ninety-Six Thousand and No/100 Dollars (\$6,096,000.00) in the aggregate to be paid with interest thereon pursuant to the terms and conditions of a certain loan agreement, dated this date, between Borrower and Lender (the "Loan Agreement"), as evidenced by a certain promissory note, dated this date, made by Borrower in favor of Lender with a Maturity Date of December 14, 2027 (the "Note"); (ii) all sums now or in the future advanced or coming due or required to be paid under the Loan Documents (hereafter defined) whether for principal, interest, fees, costs, charges, expenses, or other amounts owing under reimbursement or indemnification obligations under the Loan Documents; whether by acceleration or otherwise; whether such advances are voluntary or obligatory; whether such obligations presently exist or come into existence at some future time; and whether such advances, costs and expenses were made or incurred at the request of Borrower, any other obligor or guarantor under the Loan Documents, or Lender; including, without limitation, advances for principal or interest payments to prior secured parties, mortgagors or lienors, or for taxes, levies, insurance, rent, wages, repairs to or maintenance or storage of any Collateral; and (iii) all sums which may hereafter be lent to Borrower by Lender when evidenced by a promissory note or other obligation reciting that said note or obligation is intended to be secured by this Mortgage; and

1.1.2 The performance of all of the terms, covenants, conditions, agreements, obligations and liabilities of Borrower or any other obligor or guarantor under or with respect to, (i) the Project, the Loan Agreement, the Note, this Mortgage, all other documents referred to as "Loan Documents" in the Loan Agreement, the Note and any other document now or hereafter given to evidence, secure or facilitate the payment and performance of any of the Obligations, whether now existing or hereafter incurred, whether or not evidenced by any note or other instrument, matured or unmatured, direct, absolute or contingent, joint or several; (ii) all extensions, renewals, replacements or modifications of, or amendments or additions to any of the foregoing; and (iii) any note, document or instrument now or hereafter evidencing an obligation of Borrower to Lender which recites that it is intended to be secured by this Mortgage (all of the foregoing being collectively referred to in this Mortgage as the "Loan Documents"). Borrower shall pay and perform the Obligations required in accordance with the provisions of the Loan Documents.

1.1.3 All indebtedness, obligations, and/or liabilities of any Guarantor to Lender.

1.1.4 All indebtedness, obligations and/or liabilities of Borrower on account of those certain loans evidenced by that certain Second Amended and Restated Inventory Finance Agreement dated December \_\_\_\_, 2007.

1.1.5 With respect to each of 1.1.1 through 1.1.4 above, inclusive, including all such indebtedness, obligations and liabilities, both now existing and hereafter incurred, accruing or arising, direct or indirect, absolute or contingent, liquidated or unliquidated, due or to become due, evidenced by

and/or incurred pursuant to any of the instruments or agreements described or referred to above, including any such instruments or agreements as are or may be amended, restated, supplemented and/or replaced from time to time, and, to the extent provided in any such instrument or agreement, all principal, interest, fees, costs, expenses and attorneys' fees and all other indebtedness of whatever nature of description.

1.1.6 "Obligor" shall mean, collectively, Borrower, the Guarantor and each and every other person and/or entity obligated on or liable under any of the Loan Documents or for any of the Obligations, regardless of whether recourse thereon is limited in any way.

1.2 Grant of Mortgage; Mortgaged Property. For the purpose of securing payment and performance of all Obligations of Borrower and any Obligor, Borrower hereby irrevocably and unconditionally does hereby MORTGAGE AND WARRANT, grant, convey, bargain, sell, release, confirm, assign to, and grant a security interest in, unto Lender all of the following, whether presently in existence, to come into existence at some future time or later acquired (collectively, the "Mortgaged Property" or sometimes "Property"):

1.2.1 The parcel(s) of land situated generally at 1400 Indianapolis Boulevard, City of Schererville, Indiana 46375, as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Land");

1.2.2 All buildings, structures and improvements of every kind erected on, under or over the Land (the "Improvements") (the Land and the Improvements being hereinafter referred to as, collectively, the "Real Estate");

1.2.3 All estates, rights, tenements, hereditaments, privileges, easements, and appurtenances of any kind benefiting the Real Estate; all means of access to and from the Real Estate, whether public or private; all water, oil, gas, subsurface and mineral rights; and all other claims or demands of Borrower, either at law or in equity, in possession or expectancy, of, in, or to the Real Estate;

1.2.4 All leases, licenses, occupancy agreements or agreements to lease all or any part of the Real Estate and all extensions, renewals, amendments, and modifications thereof, and any options, rights of first refusal, or guarantees relating thereto (collectively, "Leases"); and all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits, awards, and payments of any kind payable under the Leases or otherwise arising from the Real Estate (collectively, the "Income");

1.2.5 All awards and other compensation heretofore and hereafter to be made to Borrower for any taking by eminent domain, either permanent or temporary, of all or any part of the Real Estate or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, or any of the personal property described in this Section below;

1.2.6 All payments, proceeds, settlements or other compensation heretofore or hereafter made, including any interest thereon, and the right to receive the same, from any and all insurance policies covering the Real Estate or any portion thereof or any of the personal property described in this Section below;

1.2.7 All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally-registered credits (such as emissions reductions credits), other credits, waivers and payments, whether in cash or in kind, due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (a "Governmental Agency") or (ii) any insurance or utility company relating to any or all of the Real Estate or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Real Estate;

1.2.8 All Goods, including without limitation, Fixtures, Equipment and Accessions, delivered on site to the Real Estate in connection with, the construction of, or reconstruction of, or remodeling of, any of the Real Estate from time to time during the term hereof;

1.2.9 All Goods, including without limitation, Fixtures, Equipment and Accessions, attached to, situate or installed in or upon, or used in the operation or maintenance of, the Real Estate or any plant or business situated thereon;

1.2.10 All Accounts and General Intangibles relating to the use, construction upon, occupancy, leasing, sale or operation of the Real Estate;

1.2.11 All As-Extracted Collateral arising from the Land;

1.2.12 All books and records evidencing or relating to the foregoing, including, without limitation, billing records of every kind and description, tenant lists, data storage and processing media, Software and related material, including computer programs, computer tapes, cards, disks and printouts, and including any of the foregoing which are in the possession of any affiliate or property manager; and

1.2.13 All Proceeds of any of the above-described property.

Capitalized terms contained in this Section 1.2 without definition shall have the meanings (both in this Section 1.2 and elsewhere in this Mortgage) ascribed to them in revised Article 9.1 of the Uniform Commercial Code. "Uniform Commercial Code" (or "UCC") shall mean the Uniform Commercial Code as amended from time to time, and any successor statute, enacted and in effect at any time, in the relevant jurisdiction.

TO HAVE AND TO HOLD the Mortgaged Property unto the Lender to and for the use of the Lender forever; PROVIDED, HOWEVER, that if Borrower shall fully pay or cause to be fully paid to the holder of the Note the principal and interest (as the rate thereof may be adjusted as provided in the Loan Agreement), late charges and prepayment premium, if any, to become due thereupon at the time and in the manner stipulated therein, and shall pay or cause to be paid all other sums payable hereunder and all indebtedness hereby secured and shall have performed all covenants and obligations under any Loan Documents, then, in such case, the estate, right, title and interest of Lender in the Real Estate shall cease, terminate and become void, and upon proof being given to the satisfaction of Lender that the Note, together with interest and prepayment premium, if any, thereon have been paid or satisfied, and upon payment of all fees, costs, charges, expenses and liabilities chargeable or incurred or to be incurred by Lender, and of any other sums as herein provided, Lender shall cancel, release and discharge this Mortgage.

1.3 Grant of Security Interest; Security Agreement. This Mortgage is also a "security agreement" under the UCC. Borrower grants, and Lender shall have and may enforce, a security interest in all those property interests included in the Mortgaged Property which may be "personal property" to secure payment and performance of the Loan Documents. Borrower irrevocably authorizes Lender to prepare, execute and file all initial financing statements, and any restatements, extensions, continuations, renewals or amendments thereof, in such form as Lender may require to perfect or continue the perfection of this security interest or other statutory liens held by Lender. Such financing statement shall describe the Mortgaged Property and contain any other information required by the UCC for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower. Borrower agrees to pay all reasonable out-of-pocket expenses of Lender incident to the preparation, execution, filing and/or recording of any of the foregoing. With respect to any of the Mortgaged Property in which a security interest is not perfected by the filing of a financing statement, Borrower consents and agrees to undertake, and to cooperate fully with Lender, to perfect the security interest hereby granted to Lender in the Mortgaged Property. Inasmuch as the parties intend that this Mortgage shall, among other things, constitute a financing statement, Borrower sets forth the following:

1.3.1 The Debtor is LEVIN AUTOMOTIVE, INC. d/b/a LEVIN BMW, an Illinois corporation, with an address of 1400 Indianapolis Boulevard, Schererville, Indiana 46375;

1.3.2 The Secured Party is BMW Financial Services NA, LLC, a Delaware limited liability company, with an address of 5550 Britton Parkway, Hilliard, Ohio 43026;

1.3.3 The collateral includes Fixtures which are or shall be affixed to the Real Estate; and

1.3.4 The record owner of the Real Estate is Levin Automotive, Inc.

1.4 Assignment of Leases and Income.

1.4.1 This Mortgage is also an absolute and unconditional assignment to Lender of all Leases and Income, whether now in existence or hereafter arising, for the purpose of vesting in Lender, as "Assignee," a first priority, perfected security interest in the Leases and the Income. Borrower hereby irrevocably, absolutely, presently and unconditionally assigns, transfers and sets over to Lender all Leases, all Income and all rights of Borrower to enforce the Leases and collect the Income. This assignment includes any award received or receivable by Borrower in any legal proceeding involving any tenant under a Lease whether under the Bankruptcy Code ("Bankruptcy Code" being defined as Title 11 of the United States Code entitled "Bankruptcy" as now or hereafter in effect, or any successor thereto or any other present or future bankruptcy or insolvency statute) or otherwise. This is an absolute assignment, not an assignment for security only.

1.4.2 So long as no Event of Default (and after expiration of all applicable cure periods) shall have occurred hereunder, Borrower shall have a license, revocable at the will of Lender, to enforce the Leases and collect the Income subject to any applicable provisions contained in the Loan Documents. Upon request of Lender, Borrower shall execute and deliver to Lender (i) a specific assignment, in recordable form, of any Lease now or hereafter affecting the Mortgaged Property or any portion thereof to further evidence the assignment hereby made; and (ii) such other instruments as Lender may deem necessary, convenient or appropriate in connection with the payment and delivery directly to Lender of all of the Income.

1.4.3 Notwithstanding subsection 1.4.2 above, Borrower irrevocably appoints Lender the attorney-in-fact of Borrower and, following an Event of Default hereunder and after expiration of all applicable cure periods, Lender may (i) enforce the Leases and demand, receive and collect the Income, and (ii) as the sole and exclusive agent of Borrower, agree to any modifications of the Leases. This power is coupled with an interest and is therefore irrevocable. Borrower shall notify any person that Lender may from time to time specify that the Income should be paid directly to Lender and that any modification of the Leases must be approved by Lender.

1.4.4 All security deposits, prepaid rent permitted to be collected by Borrower, if any (other than prepaid rent for the next succeeding calendar month), and similar payments under any Lease shall be deposited in a separate escrow account with an escrowee satisfactory to Lender which, if Lender is permitted to hold such accounts under applicable law, shall, at Lender's election, be Lender. Borrower shall notify Lender of the identification of the escrow account. Such sums shall be disbursed only upon the prior written consent of Lender except such consent shall not be required when by law or by the terms of the Lease Borrower is required to, and does, return such sums to the party entitled to same under the Lease.

1.4.5 Borrower shall not accept or permit the payment of rent in any medium other than lawful money of the United States of America, or anticipate, discount, compromise, forgive, encumber or further assign the Leases or the Income or any part thereof or any interest therein without the prior written consent of Lender.

1.4.6 Borrower hereby authorizes and directs that all other parties now or hereafter owing or paying Income under any Lease or now or hereafter having in their possession or control any Income from or allocated to the Mortgaged Property, or any part thereof, or the Proceeds therefrom, shall, upon the request of Lender following an Event of Default hereunder (and after expiration of all applicable cure periods), and until Lender directs otherwise, pay and deliver such Income directly to Lender at Lender's address set forth in the introduction to this Mortgage, or in such other manner as Lender may direct such parties in writing and this authorization shall continue until this Mortgage is released of record. No payor making payments to Lender at its request under the assignment contained in this Mortgage shall have any responsibility to see to the application of any of such funds, and any party paying or delivering Income to Lender under such assignment shall be released thereby from any and all liability to Borrower to the full extent and amount of all such Income so delivered. Borrower agrees to indemnify and hold harmless any and all parties making payments to Lender, at Lender's request under the assignment contained in this Mortgage, against any and all liabilities, actions, claims, judgments, costs, charges and attorneys' fees resulting from the delivery of such payments to Lender.

1.4.7 Notwithstanding any legal presumption to the contrary, Lender shall not be obligated by reason of its acceptance of this assignment to perform any obligation of Borrower as lessor under any Lease. Neither the acceptance of this assignment nor the collection of Income under the Leases shall constitute a waiver of any rights of Lender under the Loan Documents or constitute a cure of any default by Borrower thereunder.

1.5 Fixture Filing. This Mortgage constitutes a financing statement filed as a fixture filing under Article 9.1 of the Uniform Commercial Code in the state in which the Mortgaged Property is located, 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. The description of the Property in this Mortgage includes Goods which are or are to become fixtures on the Premises and/or Improvements of which Mortgagor is the record owner. For this purpose, the respective addresses of Borrower, as debtor, and Lender, as secured party from which information concerning the security interest may be obtained, are as set forth in §1.3 above.

**This Document is the property of  
the Lake County Recorder!**  
**ARTICLE 2**  
**TITLE MATTERS**

2.1 Warranty of Title. Until the Obligations are fully satisfied, Borrower represents, warrants and covenants that:

2.1.1 Borrower has good and marketable fee simple absolute title to the Mortgaged Property subject only to those exceptions to title more particularly described in the title commitment issued to, and accepted by, Lender in connection with this transaction (the "Permitted Exceptions") and Borrower shall defend the validity, priority and enforceability of the lien of this Mortgage against the claims of all persons excepting only those claiming under Permitted Exceptions;

2.1.2 Borrower has full power and lawful authority to subject the Mortgaged Property to the lien of this Mortgage;

2.1.3 The execution, delivery and performance of this Mortgage and the other Loan Documents will not contravene any Legal Requirements (hereafter defined) or any agreement, document or instrument to which Borrower is a party or by which Borrower or the Mortgaged Property is bound;

2.1.4 Borrower shall make, execute, acknowledge and deliver all such further or other deeds, documents, instruments or assurances and cause to be done all such further acts and things as may at any time be required by Lender to confirm and fully protect the lien and priority of this Mortgage; and

2.1.5 Borrower shall make such payments, all before the same shall become delinquent, and perform all obligations as are required under any Permitted Exceptions affecting the Mortgaged Property.

2.2 Restrictions on Transfers: Due on Sale. Borrower will not cause or permit any Transfer of the Mortgaged Property or any portion thereof, whether voluntary, involuntary, by operation of law, or otherwise, nor shall Borrower enter into any agreement or transaction to Transfer, or accomplish in form or substance a Transfer, of the Mortgaged Property. Notwithstanding any other provision of this Mortgage, upon any Transfer of the Mortgaged Property, the Obligations shall become immediately due and payable, without notice or grace. A "Transfer" of the Mortgaged Property shall mean the occurrence of any one or more of the following without the prior written consent of Lender, which consent may be withheld in the sole discretion of Lender (i) the direct or indirect sale, agreement to sell, transfer, alienation, pledge, assignment, mortgage, encumbrance, hypothecation, conveyance or other disposition of the Mortgaged Property or any portion thereof or interest therein; (ii) the execution of any installment land sale contract or similar instrument affecting all or a portion of the Mortgaged Property; (iii) the lease or sublease of all or a portion of the Mortgaged Property; and (iv) the transfer of any membership, stock, partnership or other ownership interests in Borrower (if Borrower is a limited liability company, partnership, joint venture or corporation).

2.3 No Other Financing or Liens. Without the prior written consent of Lender in each instance, which consent may be given or withheld in Lender's sole discretion, Borrower shall not create or cause or permit to exist any lien on the Mortgaged Property whether superior to or subject to the lien of this Mortgage except the Permitted Exceptions (if any) and such other liens or security interests as are expressly and specifically agreed to be permitted upon the Mortgaged Property by Lender under the Loan Documents.

2.4 Leases. Borrower represents and warrants that there are no Leases affecting the Mortgaged Property other than the Leases (if any) listed in the schedule of Leases and Income delivered by Borrower to Lender in connection with this transaction. Borrower shall not enter into any Leases without the prior written consent of Lender being obtained (which consent shall not unreasonably be withheld) in each instance unless Borrower provides to Lender copies of all executed Leases within ten (10) days after execution.

**ARTICLE 3**  
**OBLIGATIONS REGARDING MORTGAGED PROPERTY**

3.1 Legal Requirements Generally. Borrower represents and warrants to Lender that the Mortgaged Property is in material compliance with Legal Requirements (hereafter defined). Borrower shall promptly comply with, and cause the Mortgaged Property to be kept in compliance with, all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, restrictions and requirements (collectively "Legal Requirements") of the United States of America, the state in which the Mortgaged Property is located and any political subdivision thereof or any town, city, county or municipality in which the Mortgaged Property is located or any agency, department, bureau, board, commission or instrumentality of any of the foregoing now existing or hereafter created (individually, a "Governmental Authority" and, collectively, "Governmental Authorities") having jurisdiction over Borrower or the Mortgaged Property or the construction, use, occupancy, operation, maintenance, or improvement of the Mortgaged Property, whether foreseen or unforeseen, ordinary or extraordinary.

3.2 Land Use Approvals. Borrower represents and warrants to Lender that the Mortgaged Property is and shall remain one or more zoning lots separate and apart from all other premises. Borrower shall not, by any act or omission, impair the integrity of the Mortgaged Property as such separate zoning lot or lots. Borrower shall not, without the prior written consent of Lender, submit or cause to be submitted to any Governmental Authority an application for zoning, subdivision or development approval affecting the Mortgaged Property if any of the following would result from such proposed zoning change, subdivision or development: (a) the separate transfer, use and ownership of the Mortgaged Property is not permitted as a matter of right under applicable Legal Requirements; (b) the

use of the Mortgaged Property as of the date of this Mortgage is no longer permitted as a matter of right under applicable Legal Requirements; or (c) any portion of the Mortgaged Property is used to fulfill a Legal Requirement of other property not subject to the lien of this Mortgage.

### 3.3 Environmental Matters.

3.3.1 Borrower represents and warrants that neither Borrower nor, to the best of its actual knowledge, any other person has (i) used, installed or disposed of any Hazardous Materials (hereafter defined) on, from, or affecting the Mortgaged Property except in full compliance with Applicable Environmental Laws; or (ii) received any notice from any Governmental Authority with regard to Hazardous Materials on, from or affecting the Mortgaged Property.

3.3.2 Borrower shall not use the Mortgaged Property, nor allow it to be used, to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials except in full compliance with Applicable Environmental Laws. Borrower shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Borrower or any other person, a release of Hazardous Materials onto, from or affecting the Mortgaged Property or any other use, installation, or disposition of Hazardous Materials except in full compliance with Applicable Environmental Laws. Borrower shall comply, and enforce compliance by all tenants and subtenants, with all Applicable Environmental Laws and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to any Applicable Environmental Laws.

3.3.3 If Borrower receives any notice from any Governmental Authority with regard to Hazardous Materials on, from or affecting the Mortgaged Property, or any notice of violation of Applicable Environmental Laws, Borrower shall promptly notify Lender. Borrower shall conduct and complete all reasonable investigations, studies, sampling, and testing, and all reasonable remedial, removal, and other actions reasonably necessary to clean up and remove all Hazardous Materials on, from or affecting the Mortgaged Property in accordance with all Applicable Environmental Laws and the provisions of the Loan Documents, to the satisfaction of Lender.

3.3.4 Should Lender have reason to believe that there are any Hazardous Materials on the Mortgaged Property, Lender may require that Borrower retain a qualified and licensed environmental engineer to conduct a full environmental audit of the Mortgaged Property, which engineer and audit, including testing and sampling procedures, shall be reasonably acceptable to Lender and the Borrower shall use best efforts to have the audit report delivered to Lender within thirty (30) days of Borrower's initial request and shall be prepared at Borrower's sole expense.

3.3.5 If any investigation, environmental report or governmental investigation or order indicates that there may exist any damage or risk to the Mortgaged Property, or any liability of Borrower relating to any Hazardous Materials or other environmental conditions with respect to the Mortgaged Property, Lender may require Borrower to furnish immediately an indemnity bond in an amount determined by Lender, in its sole discretion, to be sufficient to pay all actual and estimated cleanup costs and to protect against any liens that may arise with respect to such potential cleanup costs. Lender's demand that Borrower post any bond or other security shall not be a waiver of any Event of Default hereunder or of any other right or remedy available to Lender.

3.3.6 The term "Applicable Environmental Laws" shall mean, without limitation, all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

3.3.7 The term "Hazardous Materials" shall mean, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum-based products, methane, hazardous materials, hazardous wastes,



hazardous or toxic substances or related materials, as defined in any Environmental Law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous and Solid Waste Amendments of 1984, as amended (42 U.S.C. 6901 et seq.), the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), the Clean Water Act, as amended (33 U.S.C. Sections 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Sections 7401, et seq. and the Occupational Safety and Health Act, as amended (29 U.S.C. Sections 651, et seq.).

3.3.8 The Mortgaged Property does not constitute "property" within the meaning of the Indiana Responsible Property Transfer Law, I.C. 13-11-2-174.

3.4 General Obligations. Until the Obligations are fully satisfied, Borrower shall:

3.4.1 Perform all maintenance, repair, restoration and rebuilding required to keep the Mortgaged Property in good repair, order and condition in full compliance with the requirements of the Loan Documents, any Leases affecting the Mortgaged Property and all Legal Requirements;

3.4.2 Pay all charges for water, sewer, gas, electric and other utility services provided to the Mortgaged Property promptly as and when due;

3.4.3 Complete any improvements to the Mortgaged Property required under the Loan Documents, any Leases affecting the Mortgaged Property, or required by any Governmental Authority or insurer insuring the Mortgaged Property, in a good and workmanlike manner and free of mechanics' liens;

3.4.4 Permit, and cause any lessee or occupant of the Mortgaged Property to permit, Lender and its agents and representatives, to enter upon the Mortgaged Property at any reasonable time to appraise and photograph the Mortgaged Property and to inspect for compliance with Legal Requirements (including subsurface investigations to determine compliance with Applicable Environmental Laws), insurance requirements, and the Obligations of Borrower under this Mortgage and the other Loan Documents; provided, however, Lender shall not unreasonably interfere with the normal business operations of Borrower or any tenant of Borrower as a result of such entry; and

3.4.5 Make the books and accounts relating to the Mortgaged Property available for inspection by Lender, or its representatives, upon request at any reasonable time.

3.5 General Restrictions. Until the Obligations are fully satisfied, Borrower shall not, without the prior written consent of Lender being obtained in each instance:

3.5.1 Abandon the Mortgaged Property or any portion thereof or allow the same to become vacant;

3.5.2 Commit or suffer waste with respect to the Mortgaged Property;

3.5.3 Impair or diminish the value or integrity of the Mortgaged Property or the priority or security of the lien of this Mortgage;

3.5.4 Remove, demolish or materially alter any of the Mortgaged Property without the prior written consent of Lender in each instance (which consent shall not unreasonably be withheld), except that Borrower shall have the right to remove and dispose of, free of the lien of this Mortgage, such Fixtures as may, from time to time, become worn out or obsolete, provided that, simultaneously with or prior to such removal, any such Fixtures shall be replaced with other Fixtures which shall have a value

and utility at least equal to that of the replaced Fixtures and, by such removal and replacement, Borrower shall be deemed to have subjected such replacement Fixtures to the lien and priority of this Mortgage;

3.5.5 Make, install or permit to be made or installed, any additions or improvements to the Mortgaged Property except in a good and workmanlike manner, free of mechanic's liens, in compliance with Legal Requirements, and in accordance with plans and specifications approved by Lender; or

3.5.6 Make, suffer or permit any nuisance to exist on the Mortgaged Property or any portion thereof.

3.6 Required Notices. Borrower shall notify Lender promptly of the occurrence of any of the following:

3.6.1 A fire or other casualty causing material damage to the Mortgaged Property,

3.6.2 A pending or threatened condemnation of the Mortgaged Property,

3.6.3 A violation of a Legal Requirement or other notice from or to a Governmental Authority relating to the Mortgaged Property,

3.6.4 Receipt or giving of any notice of default or cancellation under any Lease of all or a material portion of the Mortgaged Property,

3.6.5 Commencement of any litigation affecting the Mortgaged Property,

3.6.6 Discovery, discharge or release of any Hazardous Material for which Borrower is or may be responsible under any Applicable Environmental Laws; or

3.6.7 The occurrence of a default under, or the receipt or giving of any notice under, any Permitted Encumbrance.

3.6.8 The existence of any event or condition which presents a risk of creating material liability of Borrower under ERISA (Public Law 93-406, as amended); or

3.6.9 Receipt of the filing by or against Borrower of a petition under the Bankruptcy Code.

**ARTICLE 4  
TAXES AND INSURANCE**

4.1 Real Estate Taxes and Assessments.

4.1.1 Borrower shall pay when due and before interest or penalties commence to accrue thereon, all taxes, assessments, water and sewer rents, levies, encumbrances and all other charges or claims of any nature and kind, whether public or private, which may be assessed, levied, imposed, suffered, placed or filed at any time against the Mortgaged Property or any part thereof or which by any present or future law may have priority (either in lien or in distribution out of the proceeds of any sale) over the lien of this Mortgage (individually, an "Imposition" and, collectively, "Impositions"); provided, however, nothing in this Mortgage shall restrict Borrower from contesting the validity or enforceability of any Imposition imposed or assessed against the Mortgaged Property so long as such contest is pursued diligently, in good faith and in accordance with all laws, ordinances and/or regulations governing such contest(s) and Article 5 of the Loan Agreement.

4.1.2 Upon Lender's request, Borrower shall produce to Lender official receipts evidencing payment of any Imposition. If Borrower is not in default under this Mortgage or any Loan Document and in good faith and by appropriate legal action shall contest the validity or amount of any Imposition and shall have established a reserve for the payment thereof in such form and amount as Lender may reasonably require (including any interest and penalties which may be payable in connection therewith), then Borrower shall not be required to pay the Imposition or to produce the receipts while the reserve is maintained and so long as the contest operates to prevent collection, is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Borrower.

4.1.3 Borrower shall, following the written request of Lender or upon the occurrence of any Event of Default (and after expiration of all applicable cure periods), make insurance and tax escrow deposits, in amounts reasonably determined by Lender from time to time as being needed to pay taxes and insurance premiums when due, in an interest bearing escrow account held by Lender in Lender's name and under its sole dominion and control. All payments deposited in the escrow account, and all interest accruing thereon, are pledged as additional collateral for the Loan. Notwithstanding Lender's holding of the escrow account, nothing herein shall obligate Lender to pay any insurance premiums or real property taxes with respect to any portion of the Project unless the Event of Default has been cured to the satisfaction of Lender. If the Event of Default has been satisfactorily cured, Lender shall make available to Borrower such funds as may be deposited in the escrow account from time to time for Borrower's payment of insurance premiums or real property taxes due with respect to the Real Estate.

4.2 Taxes on Lender. If any Governmental Authority shall levy, assess or charge any tax, assessment or imposition upon this Mortgage or any other Loan Document (including any requirement to have affixed to this Mortgage any revenue, documentary or similar stamps) or upon the interest of Lender in the Mortgaged Property by reason of this Mortgage or any other Loan Document, Borrower shall pay the same directly to such Governmental Authority as an Imposition. If Borrower is not legally permitted to pay such Imposition or to reimburse Lender for amounts advanced on account of such payment, then Lender may declare the entire amount of the Obligations immediately due and payable on demand. Without limiting the foregoing, Borrower shall pay upon demand all fees and taxes imposed by any Governmental Agency in connection with the recording of this Mortgage and any amendment or supplement thereto.

4.3 Corporate, Partnership or Limited Liability Company Borrower. If Borrower (or any successor or transferee of Borrower) is a corporation, partnership, limited liability company or other legally recognized entity, Borrower shall at all times until the Obligations are satisfied in full:

4.3.1 Keep in effect and in good standing its existence and rights as a corporation, partnership or limited liability company or legally recognized entity, as the case may, be under the laws of the state of its incorporation or organization and its right to own property and transact business in the state in which the Mortgaged Property is situated; and

4.3.2 File returns for all federal, state and local taxes with the proper Governmental Authorities, and pay, when due and payable and before interest or penalties are due thereon, all taxes owing by Borrower to any Governmental Authorities.

4.4 Insurance Coverages. Until the Obligations are fully satisfied, Borrower shall maintain and keep in force the following policies of insurance with respect to the Mortgaged Property:

4.4.1 Insurance against loss or damage to the Mortgaged Property by fire and any of the risks covered by insurance of the type commonly known as "special form coverage" or its equivalent in an amount not less than the full replacement cost (evidenced by a "Replacement Cost Endorsement") of the Mortgaged Property;

4.4.2 During the course of any construction or repair of any improvements on the Mortgaged Property, builder's completed value risk insurance against "all risks of physical loss," including collapse and transit coverage, during construction of such improvements, in non-reporting form;

4.4.3 Boiler and machinery insurance (to the extent the Mortgaged Property includes items covered by such insurance), in such amounts as are reasonably satisfactory to Lender;

4.4.4 Coverage against sprinkler leakage;

4.4.5 Vandalism and malicious mischief insurance;

4.4.6 Commercial general liability insurance on an "occurrence basis" against claims for personal injury including bodily injury, death or property damage occurring on or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, with minimum protection to a limit of not less than \$5,000,000 (or such higher amounts as are required under any other Loan Document) with respect to personal injury or death to any one or more persons or damage to property;

4.4.7 Worker's compensation insurance (including employer's liability insurance) for all employees of Borrower engaged on or with respect to the Mortgaged Property in such amount as is reasonably satisfactory to Lender, or, if such limits are established by law, in such amounts;

4.4.8 Flood insurance, in accordance with the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973, if any portion of the Mortgaged Property lies within a flood hazard area designated by the Department of Housing and Urban Development, Federal Insurance Administration as a "Flood Hazard Area";

4.4.9 Business interruption and/or rental loss coverage for a period equal to the reasonable period of time required to rebuild and restore the Mortgaged Property upon the occurrence of a substantial destruction; and

4.4.10 Such other insurance, and in such amounts, as may from time to time be required by Lender.

4.5 Policy Requirements. The insurance coverages required above shall be insured under policies: (i) in form satisfactory to Lender; (ii) issued by companies licensed by the state where the Property is located, having a general policyholder's rating of A or better and financial rating of Class XII or better, according to the current Best's rating guide, and otherwise satisfactory to Lender; (iii) endorsed with a standard Lender clause in favor of the Lender providing not less than thirty days' notice to Lender of any cancellation or change in coverage; (iv) endorsed to name Lender as additional insured and, subject only to Permitted Exceptions (if any), as loss payee; and (v) not subject to contribution or co-insurance. Certificates of insurance, addressed to Lender, evidencing such insurance coverage, may be delivered to Lender in lieu of the policies therefor, but only if Borrower provides to Lender copies of such policies. Certificates shall be delivered to Lender on or before the date of this Mortgage and, thereafter, at least thirty (30) days before expiration of the existing policies. If any insurance required under this Mortgage is cancelled, expires, becomes void or voidable or otherwise becomes unsatisfactory to Lender, Borrower shall place or cause to be placed new insurance on the Mortgaged Property reasonably satisfactory to Lender. In the event of any loss, Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment under such insurance including return of unearned premiums, directly to Lender instead of to Borrower and Lender jointly, and Borrower appoints Lender, irrevocably, as Borrower's attorney-in-fact to endorse any draft therefor.

4.6 Installments for Insurance, Taxes and Other Charges. Without limiting the effect of the other provisions of this Article, Borrower, if required by Lender following an Event of Default hereunder by Borrower, shall pay to Lender monthly an amount equal to one-twelfth (1/12) of the annual amount of all Impositions and premiums for insurance policies required under this Article plus any additional sums necessary to pay, or establish adequate reserves for the payment of, such premiums and Impositions as and when due. The amounts so paid shall be security for the premiums and Impositions and shall be used in payment thereof if Borrower is not otherwise in default under this or any other Loan Document.

No amount so paid shall be deemed to be trust funds but may be commingled with general funds of Lender and no interest shall be payable thereon. Upon the occurrence of an Event of Default (and after expiration of all applicable cure periods) under this Mortgage or any Loan Document, Lender shall have the right, at its election, to apply any amount so held against the Obligations. At Lender's option, Lender from time to time may waive, and after any such waiver may reinstate, the provisions of this section requiring installment payments.

## ARTICLE 5 CASUALTY; CONDEMNATION

5.1 Casualty. If the Mortgaged Property is damaged by fire or other casualty, Borrower shall promptly repair and restore the same to its condition prior to the damage. If, and only for so long as, the following terms and conditions are fully satisfied by Borrower, Lender shall release insurance proceeds for repair and restoration of the Mortgaged Property; otherwise, and to the extent of any excess proceeds, Lender shall have the right to apply the proceeds toward reduction of the Obligations:

5.1.1 No default under this or any other Loan Document shall have occurred and be continuing uncured;

5.1.2 Borrower shall have delivered evidence satisfactory to Lender that the Mortgaged Property can be fully repaired and restored within a period of time during which all payments coming due under the Obligations are fully covered by the proceeds of business interruption or rental loss insurance applicable to the loss or damage to the Mortgaged Property;

5.1.3 No holder of a Permitted Encumbrance has a right to apply insurance proceeds to the obligations secured by such Permitted Encumbrance or, if it does, the holder has waived in writing its right to do so;

5.1.4 No Lease is cancellable by the lessee on account of the casualty or, if it is, the lessee has waived in writing its right to cancel;

5.1.5 The work is performed by a reputable general contractor satisfactory to Lender in its reasonable discretion under a fixed price or guaranteed maximum price contract satisfactory to Lender in its reasonable discretion, in accordance with plans and specifications satisfactory to Lender in its reasonable discretion and in compliance with all Legal Requirements, and no work shall commence until waivers of mechanics' liens have been filed by the general contractor and all those claiming by, through, or under the general contractor;

5.1.6 Borrower shall have deposited with Lender for disbursement in connection with the restoration the greater of (i) the applicable deductible under the insurance policies covering the loss; or (ii) the amount by which the cost of restoration is estimated by Lender to exceed the insurance proceeds available for restoration;

5.1.7 The insurance proceeds are held by Lender (or an escrow agent satisfactory to Lender) for disbursement periodically as the work progresses in amounts not exceeding 90% of the value of labor and materials incorporated into the restoration. The remaining 10% will be released upon final completion of the work in accordance with the aforesaid plans and specifications, and upon a receipt of a release of liens from all contractors, subcontractors and materialmen engaged in the restoration; and

5.1.8 Borrower has paid as and when due all of Lender's out-of-pocket costs and expenses incurred in connection with the collection of insurance proceeds, approval of plans, charges of Lender's inspection representative and such reasonable fees as may be charged by Lender to monitor the restoration and disburse the insurance proceeds.

5.2 Condemnation.

5.2.1 In the event of any condemnation or taking of any material part of the Mortgaged Property by eminent domain, alteration of the grade of any street, or other material injury to or material decrease in the value of the Mortgaged Property by any public or quasi-public authority or corporation, all Proceeds (including the award or agreed compensation for the damages sustained) allocable to Borrower, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit) including reasonable attorney's fees incurred by Lender in connection with the collection of such Proceeds, shall be paid to Lender and applied, at Lender's election, (i) toward restoration of the Mortgaged Property (in which case the terms and conditions applicable to restoration in the case of casualty shall apply); or (ii) to the Obligations. No settlement for damages sustained shall be made by Borrower without Lender's prior written approval.

5.2.2 If prior to the receipt of the Proceeds by Lender, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Lender shall have the right to receive the Proceeds to the extent of:

5.2.2.1 the full amount of all such Proceeds if Lender is the successful purchaser at the foreclosure sale, or

5.2.2.2 if anyone other than Lender is the successful purchaser at the foreclosure sale, in addition to the net sale proceeds to be received by Lender in connection with the sale, any deficiency (as hereinafter defined) due to Lender in connection with the foreclosure sale, with legal interest thereon, and reasonable counsel fees, costs and disbursements incurred by Lender in connection with collection of such Proceeds of condemnation and the establishment of such deficiency. For purposes of this section, the word "deficiency" shall be deemed to mean the difference between (A) the net sale proceeds actually received by Lender as a result of such foreclosure sale less any reasonable out-of-pocket costs and expenses incurred by Lender in connection with enforcement of its rights under the Loan Documents, and (B) the aggregate amount of all sums which Lender is entitled to collect under the Loan Documents.

5.2.3 Lender shall have the right to prosecute to final determination, or settlement, an appeal or other appropriate proceedings in the name of Lender or Borrower, for which Lender is hereby appointed as attorney-in-fact for Borrower, which appointment, being for security, is irrevocable. In that event, the expenses of the proceedings, including reasonable counsel fees, shall be paid first out of the Proceeds, and only the excess, if any, paid to Lender shall be applied to the Obligations.

5.2.4 Nothing herein shall limit the rights otherwise available to Lender, at law or in equity, including the right to intervene as a party to any condemnation proceeding.

## ARTICLE 6 DEFAULTS; REMEDIES

6.1 Right to Make Advances. If Borrower should fail to pay or perform any of its Obligations with respect to the Mortgaged Property as required under Article 3 and Article 4 of this Mortgage, or otherwise fails to pay or perform any of its other Obligations under this or any other Loan Document, then Lender, at its election, shall have the right, but not the obligation, to make any payment or expenditure and to take any action which Borrower should have made or taken or which Lender deems advisable to protect the security of this Mortgage or the Mortgaged Property. Such action shall be without prejudice to any of Lender's rights or remedies available under this Mortgage or the other Loan Documents or otherwise at law or in equity. All such sums, as well as costs and expenses, advanced by Lender shall be due immediately from Borrower to Lender, shall become part of the Obligations secured by this Mortgage and the other Loan Documents, and shall bear interest (including any judgment obtained on account of any of the Obligations) at the applicable rate provided in the Loan Documents in effect after maturity or default (the "Default Rate") until repayment in full to Lender.

6.2 Events of Default. The occurrence of any one or more of the following events shall, at the election of Lender, constitute an Event of Default under this Mortgage:

6.2.1 Any default or Event of Default (subject to any applicable cure period) under any of the other Loan Documents;

6.2.2 Failure to pay any sum required to be paid under this Mortgage as and when due;

6.2.3 Any breach of warranty or other violation of any provision contained in Article II of this Mortgage;

6.2.4 The commencement by Borrower of any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any state or federal bankruptcy or insolvency law or any dissolution or liquidation proceeding;

6.2.5 Any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any state or federal bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is involuntarily commenced against or in respect of Borrower, or an order for relief is entered in such proceeding and not dismissed within the period of time, if any, expressly agreed to be permitted by Lender under the Loan Documents;

6.2.6 The occurrence of any Transfer;

6.2.7 Nonperformance of, or noncompliance with, any of the agreements, covenants, conditions, warranties, representations or other provisions contained in this Mortgage (if and only to the extent not included in any of the occurrences listed above), which nonperformance or noncompliance is not cured and remedied within thirty (30) days after notice thereof is given to Borrower, which thirty (30) day period shall be reasonably extended by Lender if such non-performance, non-observance, violation of or non-compliance cannot be cured within such period and Borrower is diligently pursuing a cure, but in no event shall Lender be obligated to extend such period for more than sixty (60) days; or

6.2.8 The failure of any Obligor to pay, perform or satisfy any of the Obligations of such Obligor when due and/or the occurrence of an Event of Default or default after applicable notice and cure period under any instrument or agreement evidencing or governing any of the Obligations.

6.3 Remedies; Execution. Upon the occurrence of an Event of Default (subject to any applicable cure period), and at all times thereafter:

6.3.1 Lender shall have the right to declare and accelerate any and all Obligations (including interest thereon at the Default Rate) pursuant to the terms of the Loan Documents to be immediately due and payable and to enforce its rights under this Mortgage and the other Loan Documents by exercising such remedies as are available to Lender under applicable law, either by suit in equity or action at law, or both, whether for specific performance of any provision contained in this Mortgage or any of the other Loan Documents or in aid of the exercise of any power granted in this Mortgage or the other Loan Documents.

6.3.2 Lender shall have the right to obtain judgment for the Obligations (including all amounts advanced or to be advanced by Lender under Section 6.1 above, all out-of-pocket costs and expenses of collection and suit, including any bankruptcy or insolvency proceeding affecting Borrower, and reasonable attorneys' fees incurred in connection with any of the foregoing) together with interest on such judgment at the Default Rate until payment in full is received by Lender and Lender shall have the right to obtain execution upon the Mortgaged Property on account of such judgment.

6.3.3 Lender may institute an action of mortgage foreclosure, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security or any other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the principal debt, with interest at the Default

Rate, together with all other sums due from Borrower in accordance with the provisions of this Mortgage and the other Loan Documents, including all sums which may have been loaned by Lender to Borrower after the date of this Mortgage, all sums which may have been advanced by Lender for taxes, water or sewer rents, other lienable charges or claims, insurance or repairs or maintenance, and all costs of suit, including reasonable counsel fees. Borrower authorizes Lender at its option to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be asserted by Borrower as a defense to any proceedings instituted by Lender to recover the indebtedness secured hereby or any deficiency remaining unpaid after any foreclosure sale of the Mortgaged Property; however, nothing herein contained shall prevent Borrower from asserting in any proceedings disputing the amount of the deficiency or the sufficiency of any bid at such foreclosure sale that any such tenants adversely affect the value of the Mortgaged Property.

6.4 Remedies; Collection of Income. Upon the occurrence of an Event of Default (and after expiration of all applicable cure periods) and at all times thereafter, 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, enter upon the Mortgaged Property and, with or without taking possession of the Mortgaged Property, and with or without legal action, collect all Income and, after deducting all costs of collection and administration expense including attorneys' fees and reasonable reserves, apply the net Income to any of the Obligations in such order and amounts as Lender in its sole discretion may determine, or any of the following in such order and amounts as Lender in its sole discretion may elect: the payment of any sums due, or accumulation of necessary reserves for, payment of all costs and expenses arising from or incurred in connection with (i) the preservation and protection of the validity and priority of the lien of this Mortgage; (iii) the preservation and protection of the Mortgaged Property; (ii) compliance with Legal Requirements; and (iv) fulfilling any obligations of Borrower or any other obligor or guarantor under the Permitted Exceptions, the Leases, this Mortgage or the Loan Documents. Lender shall not be accountable for more monies than it actually receives from the Mortgaged Property nor shall it be liable for failure to collect the Income. Lender shall have the right to determine the method of collection and the extent to which enforcement of collection of Income shall be prosecuted and Lender's judgment shall be deemed conclusive and reasonable.

6.5 Remedies; Repossession. Upon the occurrence of an Event of Default (and after expiration of all applicable cure periods) and at all times thereafter, Lender shall have the right to take possession of any portion of the Mortgaged Property constituting fixtures or other personal property subject to the UCC, and any records pertaining thereto. Lender shall have the right to use, operate, manage, lease or otherwise control the Mortgaged Property in any lawful manner and, in its sole discretion but without any obligation to do so, insure, maintain, repair, renovate, alter or remove such Mortgaged Property; use, in connection with any assembly, use or disposition of such Mortgaged Property any trade mark, trade name, trade style, copyright, brand, patent right or technical process used or utilized by Borrower; sell or otherwise dispose of all or any of such Mortgaged Property at any public or private sale at any time or times without advertisement or demand upon or notice to Borrower, all of which are expressly waived to the extent permitted by law, with the right of Lender or its nominee to become purchaser at any sale (unless prohibited by statute) free from any equity of redemption and from all other claims, and after deducting all legal and other expenses for maintaining or selling such Mortgaged Property, and all attorneys' fees, legal or other expenses for collection, sale and delivery, apply the remaining proceeds of any sale to pay (or hold as a reserve against) the Obligations and exercise all rights and remedies of a secured party under the UCC or any other applicable law.

6.6 Remedies; Appointment of Receiver. Upon the occurrence of an Event of Default (and after expiration of all applicable cure periods) and at all times thereafter, Lender may, without notice and without giving a bond to Borrower or anyone claiming through Borrower, obtain appointment of a receiver for the Mortgaged Property without regard to the adequacy of any security for the Obligations. Upon the occurrence of an Event of Default (and after expiration of all applicable cure periods), Borrower agrees that Lender shall be entitled to the appointment of a receiver as a matter of right in accordance with I.C. 32-30-5-1 in any action by Lender seeking to enforce this Mortgage, including, without limitation, judicial foreclosure.



6.7 Remedies; Actions Prior to Acceleration. Lender shall have the right, from time to time, to bring an appropriate action or actions to recover any sums required to be paid by Borrower under the terms of this Mortgage, as they become due, without regard to whether or not the Obligations shall be due and payable in full, and without prejudice to the right of Lender thereafter to bring an action of mortgage foreclosure, or any other action, for any default by Borrower existing at the time the earlier action was commenced.

6.8 No Marshalling. Any of the Mortgaged Property sold pursuant to any writ of execution issued on a judgment obtained on the Obligations or pursuant to any other judicial proceedings relating to the Loan Documents or this Mortgage, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Lender, in its sole discretion, may elect.

6.9 Other Remedies. Lender may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Borrower or any other person or entity in favor of Lender in connection with the Obligations or any part thereof, without prejudice to the right of Lender thereafter to enforce any appropriate remedy against Borrower. Lender shall have the right to pursue all remedies afforded to a mortgagee under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

6.10 Rights and Remedies Cumulative.

6.10.1 All rights and remedies of Lender as provided in this Mortgage and the other Loan Documents shall be cumulative and concurrent, may be pursued separately, successively or together against Borrower or the Mortgaged Property, or both, at the sole discretion of Lender and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

6.10.2 Any failure by Lender to insist upon strict performance by Borrower of any of the terms and provisions of this Mortgage or the other Loan Documents shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage or the other Loan Documents and Lender shall have the right thereafter to insist upon strict performance by Borrower of any and all of them.

**ARTICLE 7  
LOCAL LAW PROVISIONS**

7.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 7 and the terms and conditions of this Mortgage, the terms and conditions of this Article 7 shall control and be binding.

**ARTICLE 8  
MISCELLANEOUS**

8.1 Lender's Powers. Without affecting the liability of 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 Mortgaged Property not then or theretofore released as security of the full amount of all unpaid obligations, Lender may, from time to time and without notice (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release or reconvey or cause to be released or reconveyed at any time at Lender's option any parcel, portion or all of the Mortgaged Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

8.2 Additional Security. No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Mortgage; and all

additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of the time of payment of the indebtedness shall not diminish the force, effect or lien of this Mortgage and shall not affect or impair the liability of any maker, surety or endorser for the payment of said indebtedness. In the event Lender at any time holds additional security for any of the Obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently, or after a sale is made hereunder.

8.3 Indemnity. Except to the extent relating to the negligence or willful misconduct of Lender, Borrower shall indemnify, defend and hold Lender harmless from and against any claims, expenses, demands, losses, costs, fines or liabilities of any kind (including those involving death, personal injury or property damage and including reasonable attorneys' fees and costs) arising from or in any way related to the failure of Borrower to comply with, or the failure of the Mortgaged Property to be kept in compliance with, the Legal Requirements, Applicable Environmental Laws, the Leases and the Permitted Exceptions. The indemnification of Borrower under this section shall survive the release or termination of this Mortgage and shall remain effective notwithstanding any foreclosure of this Mortgage or other execution against the Mortgaged Property or acceptance of a deed in lieu of foreclosure. Except as set forth in the first sentence of this Section 8.3, the indemnification agreement of Borrower under this section is specifically excepted from any limitation of liability provision contained in this or any other Loan Document.

8.4 Successors and Assigns. This Mortgage applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

8.5 Amendments. This Mortgage or any provision hereof cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

8.6 Notices. Every notice and communication under this Agreement or any of the other Loan Documents shall be in writing and shall be given by either hand-delivery, first class mail (postage prepaid), or reliable overnight commercial courier (charges prepaid), to the following addresses:

If to Borrower:

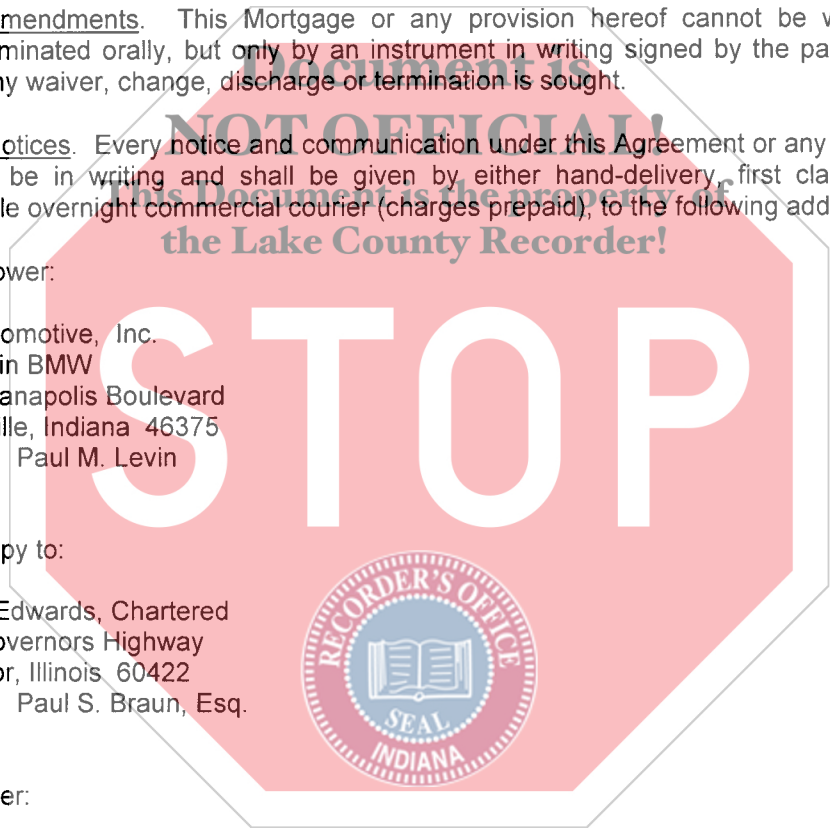
Levin Automotive, Inc.  
d/b/a Levin BMW  
1400 Indianapolis Boulevard  
Schererville, Indiana 46375  
Attention: Paul M. Levin

With a copy to:

Braun & Edwards, Chartered  
18630 Governors Highway  
Flossmoor, Illinois 60422  
Attention: Paul S. Braun, Esq.

If to Lender:

BMW Financial Services NA, LLC  
5550 Britton Parkway  
Hilliard, Ohio 43026  
Attention: Dealer Finance Manager



With a copy to:

Thompson Hine LLP  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1219  
Attention: Linda A. Striefsky, Esq.

Notice by overnight courier shall be deemed to have been given and received on the date scheduled for delivery. Notice by mail shall be deemed to have been given and received three (3) calendar days after the date first deposited in the United States Mail. Notice by hand delivery shall be deemed to have been given and received upon delivery. A party may change its address by giving written notice to the other party as specified herein.

8.7 Applicable Law. This Mortgage shall be governed by and construed in accordance with the law of Indiana, without regard to choice of law rules.

8.8 Invalidity of Certain Provisions. Every provision of this Mortgage is intended to be severable. In the event any term of provisions hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Mortgage is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage. Nothing contained in this Mortgage or in any other Loan Document shall require Borrower to pay, or Lender to accept, interest in an amount which would subject Lender to penalty under applicable law.

8.9 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Property, such proceeds have been or will be advanced by Lender at Borrower's request and 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 said liens, charges or encumbrances are released.

8.10 Declaration of No Set-Off. Within ten (10) days after requested to do so by Lender, Borrower shall certify to Lender or to any proposed assignee of this Mortgage or participant in the Obligations in a writing duly acknowledged, the amount of principal, interest and other charges then owing on the Obligations secured by this Mortgage and whether there are set-offs or defenses against them.

8.11 Joint and Several Liability. If Borrower, or any successor or grantee of Borrower, shall be more than one person, all Obligations of Borrower under this Mortgage shall be joint and several and shall bind and affect all persons who are defined as "Borrower" as fully as though all of them were specifically named herein wherever the word "Borrower" is used.

8.12 Non-Foreign Entity.

8.12.1 Borrower hereby certifies, under penalty of perjury, that: (i) Borrower is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code of 1986, as amended and regulations promulgated thereunder; and (ii) Borrower's principal place of business is set forth in the introduction paragraph of this Mortgage.

8.12.2 Borrower warrants that withholding of tax will not be required in the event of any disposition of the Mortgaged Property, or any portion thereof, pursuant to the terms of this Mortgage.

Borrower covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Lender shall require. The provisions of this section shall survive the foreclosure or other execution upon the lien of this Mortgage or acceptance of a deed in lieu of foreclosure.

8.13 Waiver of Statutory Rights. To the extent permitted by law, Borrower hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Borrower hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Borrower and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

8.14 Waiver of Trial by Jury. BORROWER AND LENDER EACH WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS MORTGAGE AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

8.15 Costs, Expenses and Attorneys' Fees. Whether or not the transactions contemplated by this Mortgage and the other Loan Documents are fully consummated, if Lender, or someone on Lender's behalf, retains the services of any attorney in connection with this Mortgage, Borrower shall pay, immediately upon demand, all out-of-pocket costs and expenses of Lender, including, but not limited to, reasonable attorneys', paralegals' and experts' fees, costs, disbursements and expenses (a) if Lender finds it necessary or desirable upon an Event of Default (or event which would, with the giving of notice or passage of time, give rise to an Event of Default) to secure the services or advice of one or more attorneys with regard to collection of the Note against Borrower or any other party liable therefore or for the protection of its rights under this Mortgage or under any Loan Documents, (b) in any state insolvency, receivership or federal bankruptcy proceeding to which the Borrower is a party, whether prior to or after confirmation of a plan of reorganization, (c) if Lender shall be made a party to or shall intervene in any action or proceeding, whether in court or before any governmental agency or other adjudicative authority, affecting the Real Estate or the title thereto or the interest of Lender under this Mortgage, including without limitation any form of condemnation or eminent domain proceeding, and (d) as provided in the Loan Agreement or other Loan Documents. In addition to the foregoing entitlement to attorneys', paralegals' and experts' fees, costs, disbursements and expenses, Lender shall be entitled to its attorneys', paralegals' and experts' fees, costs, disbursements and expenses incurred in any post-judgment proceedings to collect or enforce any judgment or order relating to this Mortgage or the other Loan Documents. Until paid, such amounts incurred by Lender shall bear interest at the Default Rate and shall be secured by this Mortgage as a further charge and encumbrance upon the Real Estate. Notwithstanding the foregoing, such amounts incurred by Lender in connection with a condemnation or eminent domain proceeding shall accrue interest at the Default Rate if not paid within ten (10) business days after demand for payment has been made to Borrower. This provision is separate and several and shall survive the merger of this provision into any judgment.

8.16 Controlling Agreement. All agreements between Borrower (and any other party liable for any part of the Obligations) and Lender, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no event whatsoever, whether by reason of acceleration of the maturity of the Obligations or otherwise, shall the interest contracted for, charged or received by Lender hereunder or otherwise exceed the maximum amount permissible under applicable law. If from any circumstances whatsoever interest would otherwise be payable to Lender in excess of the maximum lawful amount, the interest payable to Lender shall be reduced automatically to the maximum amount

permitted under applicable law. If Lender shall ever receive anything of value deemed interest under applicable law which would apart from this provision be in excess of the maximum lawful amount, the amount which would have been excessive interest shall be applied to the reduction of the principal amount owing on the Obligations in inverse order of maturity and not to the payment of interest, or if such amount which would have been excessive interest exceeds the unpaid principal balance of the Obligations, such excess shall be refunded to Borrower, or to the maker of the Note or other evidence of indebtedness if other than Borrower. All interest paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term, including any renewal or extension, of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the maximum permitted by applicable law. The terms and provisions of this section shall control and supersede every other provision of all existing and future agreements between Borrower, the maker of the Note or other evidence of indebtedness if other than Borrower, and Lender.

8.17 Headings. The headings of sections have been included in this Mortgage for convenience of reference only and shall not be considered in interpreting this Mortgage.

8.18 Construction. Whenever used in this Mortgage, unless the context clearly indicates a contrary intent:

8.18.1 The word "Borrower" shall mean the persons who execute this Mortgage and any subsequent fee owner of the Mortgaged Property and his respective heirs, executors, administrators, personal representatives, successors and assigns;

8.18.2 The word "Lender" shall mean, collectively, all of the entities listed as Lender hereinabove or any subsequent holder of this Mortgage or participant in the Loan;

8.18.3 The word "person" shall mean individual, corporation, partnership or unincorporated association;

8.18.4 The use of any gender shall include all genders;

8.18.5 The singular number shall include the plural and the plural the singular as the context may require;

8.18.6 The word "including" shall mean "including but not limited to" or "including without limitation" as the context may require.

8.19 Defined Terms. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement.

8.20 Inconsistencies. In the event of any inconsistency between this Mortgage and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid lien upon and security interest in the Mortgaged Property, otherwise the provisions of the Loan Agreement shall be controlling.

8.21 Receipt of Copy. Borrower acknowledges receipt of conformed copies of the Loan Documents and this Mortgage.

8.22 Further Assurances. From time to time, as requested by Lender, Borrower shall take such other action and execute and deliver to Lender all other instruments, supplements, further assurances and security or other agreements as may be required or requested by Lender in order to perfect and continue Lender's lien and interest in the Mortgaged Property. Borrower hereby irrevocably appoints Lender as its agent and attorney in fact to sign all such instruments, supplements, further assurances and security and other agreements.

8.23 Future Advances. This Mortgage is intended to secure future advances under the Note, this Mortgage or under any other Loan Document, and all modifications, extensions and renewals of any of the foregoing, with the same priority as if made on the day of the recording of this Mortgage, up to the maximum amount of \$12,404,000.00, pursuant to I.C. 32-29-1-10.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]



IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Mortgage, under seal, as of the day and year first above written.

LEVIN AUTOMOTIVE, INC. d/b/a LEVIN BMW, an Illinois corporation

By: [Signature]  
Paul M. Levin, President

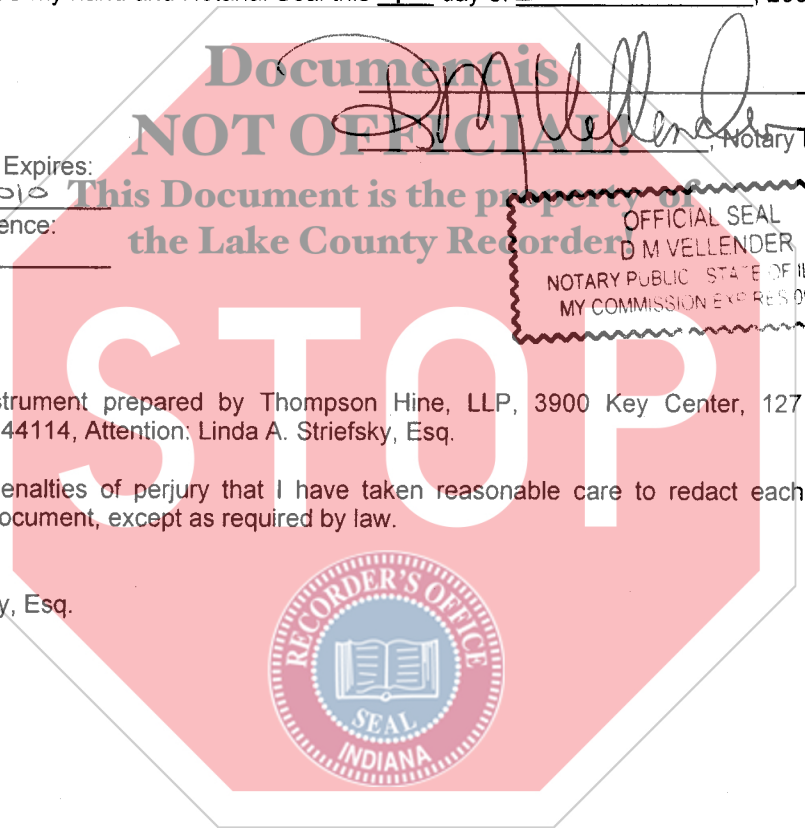
STATE OF ~~INDIANA~~ )  
ILLINOIS ) SS:  
COUNTY OF WILL )

Before me, a Notary Public in and for State of ~~Indiana~~ ILLINOIS and a resident of WILL County, ~~Indiana~~, personally appeared Paul M. Levin, President of Levin Automotive, Inc., d/b/a Levin BMW, an Illinois corporation, who acknowledged execution of the foregoing Mortgage, Assignment of Leases, Security Agreement, Fixture Filing and Financing Statement for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this 11 day of December, 2007.

[Signature], Notary Public

My Commission Expires: 09-05-2010  
County of Residence: Will



This Instrument prepared by Thompson Hine, LLP, 3900 Key Center, 127 Public Square, Cleveland, Ohio 44114, Attention: Linda A. Striefsky, Esq.

I affirm under penalties of perjury that I have taken reasonable care to redact each Social Security Number in this document, except as required by law.

/s/  
Linda A. Striefsky, Esq.



11335194.4

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LAND**

Lots Numbered 2 and 2a as shown on the recorded plat of Fountain Park Subdivision, an Addition to the Town of Schererville recorded in Plat Book 90, page 35 in the Office of the Recorder of Lake County, Indiana.

