

DECLARATION OF RESTRICTIVE COVENANT AND GRANT OF RIGHT OF FIRST REFUSAL

This DECLARATION OF RESTRICTIVE COVENANT AND GRANT OF RIGHT OF FIRST REFUSAL (this "Declaration") is made as of December 14, 2007, by LEVIN AUTOMOTIVE, INC. d/b/a LEVIN BMW, an Illinois corporation (the "Declarant"). hul under

RECITALS

A. BMW Financial Services NA, LLC (the "Lender") and the Declarant are parties to certain Loan Agreement dated as of December 14, 2007 (the "Loan Agreement").
B. To secure the obligations of the Declarant under the Loan Agreement, the Declarant has executed and delivered a certain Mortgage, Assignment of Leases, Security Agreement, Fixture Filir and Financing Statement\ (the "Security Instrument"), which in Security Instrument was recorded in the Office of the Recorder of Lake County, Indiana (the "Recording Office") on December, 2007 in Boog, Page, and encumbers real property described on Exhibit "A" attached hereto (the "Property").
C. As a condition of entering into the Loan Agreement, the Lender has required that the Declarant execute and deliver to Lender this Declaration with respect to the Property.
D. The Declarant has determined that the Loan Agreement directly benefits, and that execution and delivery of this Declaration, is in the best interests of the Declarant.
E. Capitalized terms which are not otherwise defined herein shall have the meaning ascribed to such terms in the Loan Agreement.
NOW, THEREFORE, in order to induce the Lender to enter into the Loan Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge and intending to be legally bound, the Declarant hereby subjects the Property to the terms and condition of this Declaration, as follows:
1. Restrictive Covenant. During the Term (as defined below), all of the Proper shall be utilized solely as a sales and/or service point for BMW Group Products (except for incidental sa of used or previously titled non-BMW Group vehicles as permitted by Lender or Lender's Affiliates) and
for no other purpose.

Right of First Refusal 2.

Grant. Subject to subparagraphs (b), (c), (d) and (e) below, during the Term the Declarant hereby grants to Lender a continuing right of first refusal to purchase the Property.

b. <u>Applicable Transactions</u>. If the Declarant receives an offer to buy all or any portion of the Property from a third party and it intends to accept such offer, or if the Declarant decides to make an offer to sell all or any portion of the Property to a third party (each, an "Offer"), the Declarant will give a true and complete written copy of such Offer to the Lender. The Lender will have the right to accept the Offer by written notice to the Declarant given within thirty (30) days after the Lender's receipt of the Offer. If the Lender so accepts the Offer, the Lender will be bound to purchase the Property (or such applicable portion thereof) in accordance with the terms of the Offer with closing to occur within sixty (60) days of Lender's acceptance of the Offer.

1800 A Right of Inspection. Notwithstanding the terms of the Offer, (i) during the thirty (30) day period during which the Lender has the right to accept an Offer, the Lender shall have the right, upon reasonable prior notice to the Declarant, to make such inspections and investigations of the

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Property as the Lender deems necessary or appropriate to evaluate the Offer, and (ii) Lender shall have the right to extend the closing date specified in the Offer for up to thirty (30) days.

- d. <u>Failure to Sell.</u> Following an Offer, if the Lender does not elect to exercise its right of first refusal, then the Declarant shall have the right to sell such portion of the Property as identified in the Offer under the same terms as the Offer. If the Declarant does not sell such portion of the Property to the third party, pursuant to the terms of the Offer within six (6) months after the initial submission of the Offer to Lender, but continues to desire to proceed with the offer as initially submitted to Lender, or if the transaction described in the offer otherwise fails to close but Declarant later receives another such offer, then the Declarant shall be obligated to resubmit the Offer to the Lender, subject to the foregoing procedure, at such time as the Declarant has agreed to terms with another third party. If the Declarant sells only a portion of the Property to a third party, then the right of first refusal in favor of the Lender shall remain in effect as to the unsold portion of the Property.
- e. <u>Assignment of Right</u>. So long as the Lender has properly exercised its right of first refusal in accordance with subparagraph (b) above, the Lender may assign its right to purchase the Property to a third party.
- 3. <u>Term and Scope</u>. The term of this Declaration (the "Term") shall commence on the date hereof and continue in full force and effect until the earlier of: (a) the expiration of one (1) year following the Lender's recording of a satisfaction or release of the Security Instrument, or (b) twenty-one (21) years from the date hereof.
- Recording Office.

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- 5. Successors and Assigns. This Declaration shall run with the land and be binding upon the Declarant and its successors and assigns, and shall inure to the benefit of the Lender and its successors and assigns, including all future holders of the Security Instrument.
- 6. Amendments. This Declaration may not be changed or amended without the express written consent of the Lender.

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IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed the day a
year first above written.
LEVIN AUTOMOTIVE, INC. d/b/a LEVIN BMW, an
By:
ILLINOIS
STATE OF INDIANA)
COUNTY OF W''
Before me, a Notary Public in and for State of Indiana and a resident of WILL Before me, a Notary Public in and for State of Indiana and a resident of WILL Begin Automotive Inc. d/b/a Levin
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 Restrictive Covenant and Right of First Refusal for and on behalf of said corporation.
WITNESS my hand and Notarial Seal this 11 day of december, 2007.
My Commission Expires: O
the Lake County Resorder D M VELLENDER NOTARY PUBLIC - STATE OF ILLINOIS MY COMMISSION EXPIRES 3:95/10
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.
SEAL MOIANA TITLE

EXHIBIT A

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.

