



MTG 2011101625



NOV 28 2011 11:46 P 6

Fee amount: 30.50
 FB: 0C-42354
 COMP: LM

Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 11/28/2011 11:46:38.00



2011101625

Return to:

Leininger, Smith, Johnson,
 Baack, Placzek & Allen
 P.O. Box 790
 Grand Island, NE 68802-0790
 Attn: Bruce I. Smith

DEED OF TRUST

THIS DEED OF TRUST is made as of the 1st day of November, 2011. The Trustor (whether one or more) is NISSAN OF OMAHA, LLC, a Delaware limited liability company, and is sometimes identified herein as "Guarantor". The Trustee is WELLS FARGO BANK, National Association. The Beneficiary is WELLS FARGO BANK, National Association, and is sometimes identified herein as "Lender".

GUARANTOR IRREVOCABLY CONVEYS TO TRUSTEE, IN TRUST, WITH POWER OF SALE, THE FOLLOWING:

Lot 5, in West Dodge Place, a Subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska;

together with all buildings, improvements, fixtures, streets, alleys, passageways, easements, rights, privileges, and appurtenances located thereon or in anywise pertaining thereto, and the rents, issues and profits, reversions and remainders thereof, and such personal property that is attached to the improvements so as to constitute a fixture, including but not limited to heating and cooling equipment, and together with the homestead or marital interests, if any, which interests are hereby released and waived; all of which, including replacements and additions thereto, is hereby declared to be a part of the real estate secured by the lien of this Deed of Trust and all of the foregoing being referred to herein as the "Property".

This Deed of Trust secures the payment of all obligations of Guarantor arising under and as evidenced by that certain Unconditional Guaranty dated October 5, 2011 executed by Guarantor in favor of Lender (the "Unconditional Guaranty") that secures the timely payment and performance of all liabilities and obligations of Philip E. Lokey, Scott A. Wilkerson and Eric W. Chelline pursuant to that certain Promissory Note dated October 5, 2011 in the principal sum of Three Million Twenty-Five Thousand and No/100 Dollars (\$3,025,000.00) executed by said Philip E. Lokey, Scott A. Wilkerson and Eric W. Chelline in favor of Lender, which has a stated

maturity date of September 30, 2016 and all extensions, modifications and renewals thereof (hereinafter referred to as "Debt").

Guarantor covenants that Guarantor is lawfully seized of such real estate and has the legal power and lawful authority to convey the same, and warrants and will defend title to the real estate against the lawful claims of all persons. Guarantor warrants that the lien created hereby and the execution and delivery of the Deed of Trust will be subject only to the first lien in favor of Wells Fargo Bank, N.A. pursuant to a certain Construction Security Agreement Deed of Trust and Assignment of Rents and Leases wherein Guarantor is the Trustor and does not violate any contract or other obligation to which Guarantor is subject.

GUARANTOR AND LENDER AGREE AS FOLLOWS:

1. Guarantor shall pay all obligations imposed upon Guarantor pursuant to the Unconditional Guaranty.

2. Guarantor shall pay all general real estate taxes and special assessments against the Property before the same become delinquent.

3. Guarantor shall keep the improvements on said Property insured for their insurable value against loss by fire and hazards included with the term "extended coverage", and policies for the same shall include a standard mortgage clause showing Lender herein. In event of loss, Lender may make proof of loss if not promptly made by Guarantor. Insurance proceeds shall be applied to restoration or repair of the Property damaged, unless both parties otherwise agree, except if restoration or repair is not economically feasible, or if Lender's security is not lessened.

4. Upon written demand by Lender, Guarantor shall pay to Lender, in such manner as Lender may designate, sufficient sums to enable Lender to pay as they become due one or more of the following: (i) all taxes, assessments, and other charges against the Property; (ii) the premiums on the property insurance required hereunder, and (iii) the premiums on any mortgage insurance required by Lender.

5. Guarantor shall keep the described Property in good condition and repair; shall promptly repair or replace any improvement which may be damaged or destroyed; shall not commit or permit any waste or deterioration of the real estate hereinabove described; shall not remove, demolish, or substantially alter any of the improvements on the Property; shall not commit, suffer, or permit any act to be done in or upon the Property in violation of any law, ordinance, or regulation; and shall promptly discharge at Guarantor's cost and expense all liens, encumbrances, and charges levied, imposed, or assessed against the described real estate or any part thereof.

6. Guarantor shall keep the Property in compliance with all applicable laws, ordinances, and regulations relating to industrial hygiene or environmental protection (collectively referred to herein as "Environmental Laws"). Guarantor shall keep the Property free from all substances deemed to be hazardous or toxic under any Environmental Laws (collectively referred to herein as "Hazardous Materials"). Guarantor hereby warrants and

represents to Lender that there are no Hazardous Materials on or under the Property. Guarantor hereby agrees to indemnify and hold harmless Lender and its directors, officers, employees, and agents, and any successors to Lender's interest, from and against any and all claims, damages, losses, and liabilities arising in connection with the presence, use, disposal, or transport of any Hazardous Materials on, under, from, or about the Property. THE FOREGOING WARRANTIES AND REPRESENTATION, AND GUARANTOR'S OBLIGATIONS PURSUANT TO THE FOREGOING INDEMNITY, SHALL SURVIVE RECONVEYANCE OF THIS DEED OF TRUST.

7. Guarantor shall not sell, transfer, assign, convey, or further encumber all or any part of or any interest in the Property hereinabove described, either voluntarily or involuntarily, without the express prior written consent of Lender, or as otherwise herein permitted; and in the event of any such sale, transfer, assignment, conveyance, or transfer in violation of this provision, Guarantor shall be deemed to be in default of the Unconditional Guaranty and Lender shall have the option to pursue all remedies granted hereunder and pursuant to the terms of the Unconditional Guaranty.

8. If Guarantor fails to perform the covenants and agreements herein contained, Lender may do and pay for whatever is necessary to protect the value of the property and Lender's rights in the Property, including the paying of any sum secured by a lien which has priority over this Deed of Trust, appearing in Court, paying reasonable attorney fees, and entering the Property to make repairs. Any amount disbursed by Lender under this paragraph shall become an additional obligation of Guarantor secured by this Deed of Trust, to bear interest from the date of disbursement, and said amount, together with the then-unpaid principal amount, shall bear interest at the highest lawful rate until refunded by Guarantor.

9. The proceeds of any condemnation award are hereby assigned and shall be paid to Lender and shall be applied to the Debt guaranteed by Guarantor pursuant to the Unconditional Guaranty, whether or not then due, with any excess to be paid to Guarantor.

10. Any extensions or modifications of the Debt shall not operate to release the liability of Guarantor under the Unconditional Guaranty. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

11. This Deed of Trust shall be governed by Nebraska Law.

12. Lender shall give notice to Guarantor following Guarantor's breach of any covenant or agreement in this Deed of Trust and the Unconditional Guaranty of the Debt that it secures. The notice shall specify (a) the default, (b) the action required to cure the default, (c) a date not less than ten (10) days from the date the notice is given to Guarantor by which the default must be cured, and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the obligation secured by this Deed of Trust and sale of the Property pursuant to the power of sale herein granted. The notice shall further inform Guarantor

of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Guarantor to acceleration and sale.

If default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums due under the Debt subject to the Unconditional Guaranty without further demand and may invoke the power of sale and any other remedies permitted by Nebraska Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph or otherwise taken to protect its interest in collateral described in this Deed of Trust or enforce any provisions hereof, including but not limited to reasonable attorney fees and costs of title evidence.

13. If the power of sale is invoked, Trustee shall record a notice of default in each county in which any part of the Property is located and shall mail copies of such notice in the manner prescribed by Nebraska law. Trustee, without demand on Guarantor, shall sell the Property, at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale, in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously-scheduled sale. Lender or its designee may purchase the Property at any sale.

Upon receipt of payment of the price bid, Trustee shall deliver to the purchaser a Trustee's Deed conveying the Property. Trustee shall apply the proceeds of sale in the following order: (a) to all expenses of the sale, including but not limited to Trustee's fees as permitted by Nebraska law and reasonable attorney fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

14. As additional security for Guarantor's obligations under the Unconditional Guaranty, Guarantor hereby assigns all rents, issues and profits of the Property to Lender. Upon acceleration under paragraph 12 or abandonment of the Property, Lender (in person, by agent, or by judicially-appointed receiver) shall be entitled to enter upon, take possession of, and manage the Property and to collect the rents of the Property, including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including but not limited to receiver's fees, premiums on receiver's bonds, and reasonable attorney fees, and then to the sums secured by this Deed of Trust.

15. Upon the termination of the Unconditional Guaranty, Lender shall direct Trustee to reconvey the Property and shall surrender this Deed of Trust and the obligations secured hereby. Trustee shall reconvey the Property without warranty and without charge to the persons legally entitled to it.

16. Lender, at its option, may from time to time remove Trustee and appoint a successor Trustee by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the property, the successor Trustee shall succeed to all the title, power, and duties conferred upon Trustee herein and by Nebraska Law.

17. The parties hereby request that a copy of any notice of default, notice of sale or other notice (collectively "notice") provided for in this Deed of Trust be mailed to each party required by this Deed of Trust or by law to receive such notice at the following addresses:

As to Guarantor: Nissan of Omaha, LLC
11540 West Dodge Road
Omaha, NE 68154

As to Trustee: Wells Fargo Bank, National Association
8875 Hidden River Parkway, 5th Floor
Tampa, FL 33637
Attn: Bryce A. Lewis

and

Wells Fargo Bank, National Association
Winston-Salem Loan Center
One West Fourth Street, 3rd Floor
Winston-Salem, NC 27101
Attn: Todd Hammett

As to Beneficiary: Wells Fargo Bank, National Association
8875 Hidden River Parkway, 5th Floor
Tampa, FL 33637
Attn: Bryce A. Lewis

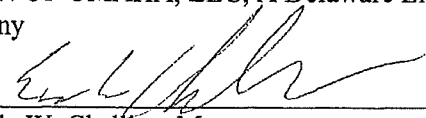
and

Wells Fargo Bank, National Association
Winston-Salem Loan Center
One West Fourth Street, 3rd Floor
Winston-Salem, NC 27101
Attn: Todd Hammett

Except for any notice required under applicable law to be given in another manner, any notice provided for in this Deed of Trust shall be given by mailing such notice by certified mail addressed to the other parties, at the address set forth above. Guarantor, Trustee or Beneficiary may change its address from time to time by giving ten (10) days' prior written notice to the other parties. Any notice provided for in this Deed of Trust shall be effective upon mailing in the manner designated herein. If Guarantor is more than one person, notice sent to the address set forth above shall be notice to all such persons.


IN WITNESS WHEREOF the Guarantor has signed this Deed of Trust on the Date first noted above.

NISSAN OF OMAHA, LLC, A Delaware Limited Liability Company

By 
Eric W. Chelline, Manager

STATE OF Virginia)
)
COUNTY OF Fairfax)

The foregoing instrument was acknowledged before me on November 4, 2011 by Eric W. Chelline, one of the Managers of the Management Committee of Nissan of Omaha, LLC, a Delaware Limited Liability Company on behalf of said Company.


Notary Public

My commission expires: 11-30-2015

**JOHN MICHAEL ROSS
NOTARY PUBLIC 7506970
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES 11/30/2015**

1/147/363974